

**BARMAN COMMISSION
REPORT**



REPORT
OF
THE COMMISSION OF ENQUIRY
ORISSA
STUDENTS' AGITATION
IN 1964

VOLUME I

*Submitted by the Commission to the Government
of Orissa on September 29, 1966*

GOVERNMENT OF ORISSA
HOME DEPARTMENT

~~SECRET~~ - I Systems Unit
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HOME DEPARTMENT

SPECIAL SECTION

NOTIFICATION

The 1st February 1965

No. 428 C. —Whereas the State Government are of the opinion that there should be a full enquiry into the matters hereinafter appearing which are of definite public importance;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Commission of Inquiry Act, 1952 (60 of 1952), the State Government do hereby appoint a Commission of Enquiry, consisting of Shri Justice Satya Bhusan Barman, Judge of the Orissa High Court, to enquire into and report on and in respect of the following matters, namely :—

1. The background, cause, nature and extent of students' disquietude in the State during the period commencing from the 26th September 1964 and ending with the 24th November 1964 ;

2. The role of the Press, Political Parties, other Associations and Organisations and Individuals in the students' agitation ;

3. Whether the measures taken and the quantum of force used by the Magistracy and the Police in handling the situations during the students' agitation were adequate or not, or were in excess of the requirements of the occasion ; and

4. The nature of loss, damage or injury to person and property sustained as a result of various incidents that occurred during the said agitation.

The Commission shall in its report also recommend measures as to how situations of the nature as developed during the aforesaid period can be averted and met and tackled if and when they arise in future and to suggest an appropriate code of conduct to be observed by individuals and organisations concerned so as to obviate any recurrence of such situations.

The report shall be submitted by the Commission to the State Government on or before the 31st May 1965.

By order of the Governor
B. VENKATRAMAN
Secretary to Government

HOME DEPARTMENT

SPECIAL SECTION

NOTIFICATION

The 1st February 1965

No. 429-C.—In exercise of the powers conferred by section 5 of the Commission of Inquiry Act, 1952 (60 of 1952), the State Government hereby direct that all the provisions of sub-section (2), sub-section (3) and sub-section (5) of the said section shall apply to the Commission of Inquiry, appointed by the State Government by notification of the Government of Orissa in the Home Department No. 428-C., dated the 1st February 1965.

By order of the Governor

B. VENKATRAMAN

Secretary to Government

The time for submission of the report was, by subsequent orders, extended to be submitted by the Commission to the State Government on or before the 30th September, 1966.

CONTENTS

VOLUME I

PART I

INTRODUCTORY

		PAGE
CHAPTER I	.. Introduction ..	3--7
CHAPTER II	.. Procedure adopted by the Commission	8--14
CHAPTER III	.. Scope of the reference ..	15--17

PART II

NATURE OF THE PROBLEM

CHAPTER IV	.. Problem of disquietude in modern youth: Student indiscipline.	21--38
------------	--	--------

PART III

STUDENTS' DISQUIETUDE IN ORISSA

CHAPTER V	.. Background and cause of students' disquietude in Orissa.	41--79
CHAPTER VI	.. Nature and extent of students' disquietude in Orissa.	80--128

PART IV

ALLEGED EXCESS : INCIDENTS

CHAPTER VII	.. Cuttack on the night of September 26	131--178
CHAPTER VIII	.. Cuttack in ferment throughout the day September 27.	179--219
CHAPTER IX	.. B N. Hostel, Christ College, Cuttack: Police Raid at night.	220--239
CHAPTER X	.. Alleged ill-treatment by police at OMP Barrack, Cuttack.	240--245
CHAPTER XI	.. Chandanpadia Incident on November 14	246--265
CHAPTER XII	.. Jagatsinghpur Incident ..	266--315
CHAPTER XIII	.. Banki Incident ..	316--334
CHAPTER XIV	.. Binjharpur Incident ..	335--372
CHAPTER XV	.. Sambalpur Incident ..	373--408
CHAPTER XVI	.. Bargarh on October 28 ..	409--447
CHAPTER XVII	.. Bargarh on October 29--Day of chase up to the river Jira.	448--501
CHAPTER XVIII	.. Bhubaneswar Incident ..	502--560
CHAPTER XIX	.. Berhampur (Ganjam) Incident ..	561--649
CHAPTER XX	.. Bhawanipatna (Kalahandi) Incident ..	650--699

VOLUME II

PART V

	ROLE OF ALL CONCERNED	PAGE
CHAPTER XXI	.. The role of the Press ..	703—787
CHAPTER XXII	.. The role of the political parties in the students' agitation.	788—807
CHAPTER XXIII	.. The role of other associations, organisations and individuals.	808—816

PART VI

LOSS AND DAMAGES

CHAPTER XXIV	.. The nature of loss, damage or injury to person and property.	819—878
--------------	---	---------

PART VII

REMEDIES

CHAPTER XXV	.. Code of conduct ..	881—945
CHAPTER XXVI	.. Measures for such situations in future	946—1017

PART VIII

LAST WORD

CHAPTER XXVII	.. Judicial Enquiry ..	1019—1023
---------------	------------------------	-----------

APPENDICES

List of witnesses	..	i—vii
List of exhibits	..	viii—lxxii
Questionnaire sent by the Commission	..	lxxiii—lxxvii
Constitution of the College Union of the University of Baroda.	..	lxxviii—xc

LIST OF MAPS AND PLATES

	Facing to —
1. Site Plan of Ravenshaw College Compound, Cuttack Ex. C/98.	Page 131
2. Spot map of Mangalabag P.-S. Case Nos. 329 to 336 of 1964 Ex-C/3.	Page 218
3. Spot map of Lalbag P.-S. Case No. 497, Dt. 14-11-1964 u/s 147, 149, 337, 323, 504, I. P. C. Ex-C/13.	Page 264
4. Spot map of Police firing of Jagatsingpur on 29-10-1964 Ex-C/32.	Page 314
5. Index map of Kandarpur-Machhagaon and Jagatsingpur-Jaipur Road showing damage of culverts during students' agitation Ex-C/38.	Page 314
6. Spot map of Banki Ex-C/42 ..	Page 334
7. Photographs of Binjharpur incident (6 Nos.) ..	Page 372
8. Sketch of the Site of Police firing on 2-11-1964 at Binjharpur Ex-C/19.	Page 372
9. Spot map of Sambalpur town showing Court area Ex-C/72.	Page 408
10. Site plan of G. M. College building, Sambalpur Ex-C/73.	Page 408
11. Part plan of Baragarh town Ex-C/76 ..	Page 446
12. Mouza Baragarh Ex-C/76-A ..	Page 500
13. Photographs of Bhubaneswar incident (17 Nos.) ..	Page 560
14. Spot map of Police firing at Bhubaneswar on 28-10-1964	Page 560
15. Spot map of Police firing at Berhampur on 29-10-1964 Ex-C/56.	Page 648
16. Spot map of Police firing at Berhampur on 29-10-1964 Ex-C/49	Page 648
17. Spot map of Police firing at Bhawanipatna on 29-10-1964 Ex-C/91.	Page 698

PART I

INTRODUCTORY

CHAPTER I INTRODUCTION

(i) Constitution of the Commission of Enquiry :

On November 5, 1964 there was an Agreement between the Students' Council of Action and the Chief Minister on behalf of the Orissa Government under which the Students' Council of Action decided to recall the students' agitation from the morning of November 5, 1964.

2. The said Agreement was signed by 38 student leaders including Mr. Promode Chandra Samantarai, Chairman of the Students' Central Council of Action, Mr. Prafula Kumar Mohanty, General Secretary, All-Utkal Students' Federation, Mr. Bhagabat Prasad Behera, a prominent student leader, Mr. Abhoy Chandra Mohapatra, President, Ravenshaw College Students' Union who was sent to jail and was on hunger-strike inside the jail. Among the other signatories, who were all student leaders, there were Mr. Trilochan Kanungo, Mr. Lokanath Acharya and others. They also included Mr. Kailash Rout, Mr. Debaprasad Das and Mr. Arakshit Mohanty who were hunger-strikers during the movement. All the signatories to the Agreement were representatives of the Students' Council of Action. The English translation of the Agreement (Ext. 14/1) described as a "Proclamation" runs as follows:

" PROCLAMATION

Dated 5-10-1964

The Students' Council of Action is deciding to recall the students' agitation from the morning of the 5th of November 1964 after a discussion continued for a long time between the Students' Council of Action and on behalf of the Orissa Government, the Chief Minister, the Home Minister, the Education Minister and the Advocate-General in presence of the guardians' committee and some other distinguished lawyers as mediators after arriving at an unanimous decision on the following demands and is requesting the Students' Council of Action at different places of Orissa, to act likewise.

- (1) There will be a judicial enquiry into all the incidents that have occurred throughout Orissa from the 26th September ultimo upto now connected with the students' agitation. The Government and the student community shall abide by the decision of this enquiry
- (2) The compensation as to the loss and damages of life and property occurred during the agitation depends on the judicial enquiry.

- (3) No victimisation will be done on any student connected with this agitation.
- (4) No sort of false and baseless action will be taken on any student connected with this agitation. The Government of Orissa gave reliable assurance on this point.'

3. In terms of the said Agreement by Notification No. 428-C., dated February 1, 1965 issued by the Government of Orissa, Home Department, Special Section, published on February 2, 1965 in the *Orissa Gazette* Extraordinary the Orissa Government in exercise of the powers conferred on it by section 3 of the Commission of Inquiry Act, 1952 (60 of 1952) constituted the present Commission to enquire into and report on and in respect of the matters mentioned in the said Notification. The full text of the said Notification is set out below:

“ GOVERNMENT OF ORISSA

HOME DEPARTMENT

SPECIAL SECTION

NOTIFICATION

Dated Bhubaneswar, the 1st February 1965

No. 428-C.—Whereas the State Government are of the opinion that there should be a full enquiry into the matters hereinafter appearing which are of definite public importance;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 2 of the Commission of Inquiry Act, 1952 (60 of 1952), the State Government do hereby appoint a Commission of Enquiry consisting of Shri Justice Satya Bhusan Barman, Judge of the Orissa High Court to enquire into and report on and in respect of the following matters, namely

- (1) The background, cause, nature and extent of students' disquietude in the State during the period commencing from the 26th September 1964 and ending with the 24th November 1964;
- (2) The role of the Press, Political Parties, other Associations and Organisations and Individuals in the students' agitation;
- (3) Whether the measures taken and the quantum of force used by the magistracy and the police in handling the situations during the students' agitation were adequate or not, or were in excess of the requirements of the occasion; and
- (4) The nature of loss, damage or injury to person and property sustained as a result of various incidents that occurred during the said agitation

The Commission shall in its report also recommend measures as to how situations of the nature as developed during the aforesaid period can be averted and met and tackled if and when they arise in future and to suggest an appropriate code of conduct to be observed by individuals and organisations concerned so as to obviate any recurrence of such situations

The report shall be submitted by the Commission to the State Government on or before the 31st May, 1965.

By order of the Governor
B. VENKATARAMAN
Secretary to Government"

4. The Commission was also given additional power by Orissa Government Notification No. 429-C., dated the 1st February, 1965 which is as follows:

**“ GOVERNMENT OF ORISSA
HOME DEPARTMENT
SPECIAL SECTION
NOTIFICATION**

Dated Bhubaneswar, the 1st February, 1965

No. 429-C.—In exercise of the powers conferred by section 5 of the Commission of Inquiry Act, 1952 (60 of 1952), the State Government hereby direct that all the provisions of sub-section (2), sub-section (3) and sub-section (5) of the said section shall apply to the Commission of Inquiry appointed by the State Government by notification of the Government of Orissa in the Home Department No. 428-C., dated the 1st February 1965.

By order of the Governor
B. VENKATARAMAN
Secretary to Government"

5. The time for submission of the report was, by subsequent orders, extended to be submitted by the Commission to the State Government on or before the 30th September, 1966.

6. Under sub-section (5) of section 5 of the Commission of Inquiry Act, the proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Act XLV of 1860). In course of the proceeding herein, the Commission desired the co-operation of all concerned in maintaining the dignity of the proceeding as a judicial proceeding.

(ii) The relevant provisions of the Orissa Commission of Inquiry Rules, 1963 :

7. Section 12 of the Act authorises the appropriate Government to make rules to carry out the purposes of this Act. In exercise of the powers conferred by section 12, the Orissa State Government made Rules. It will suffice to refer to the Orissa Commission of Inquiry Rules, 1963 which were promulgated by Notification dated August 2, 1963. Rule 7 which provides for notice to persons for giving evidence and the other relevant Rules are for reference set out below :

“ 7. Notice to persons for giving evidence —(1) The Commission shall, as soon as may be after its appointment—

- (a) issue a notice to every person, who in its opinion should be given an opportunity of being heard in the inquiry to furnish to the Commission a statement relating to such matters as may be specified in the notice;
 - (b) issue a notification to be published in such manner as it may deem fit, inviting all persons acquainted with the subject-matter of the inquiry to furnish to the Commission a statement relating to such matters as may be specified in the notice ;
- (2) Every statement furnished under sub-rule (1) shall be accompanied by an affidavit in support of the facts set out in the statement sworn by the person furnishing the statement.
- (3) Every person furnishing a statement under sub-rule (1) shall also furnish to the Commission along with the statement a list of the documents, if any, on which he proposes to rely and forward to the Commission, wherever practicable, the originals of true copies of such of the documents as may be in his possession or power and shall state the name and address of the person from whom the remaining documents may be obtained.

8. Recording of evidence—(1) The Commission shall examine all the statements furnished to it under rule 7 and if, after such examination the Commission considers it necessary to record evidence, it shall first record the evidence, if any, produced by the State Government and may thereafter record in such order as it may deem fit—

- (a) the evidence of any person who has furnished a statement under rule 7 and whose evidence the Commission, having regard to the statement considers relevant for the purpose of the enquiry,
- (b) the evidence of any other person whose evidence, in the opinion of the Commission, is relevant to the inquiry.

(2) If, after all the evidence is recorded under sub-rule (1), the State Government applied to the Commission to recall any witness already examined or to examine any new witness, the Commission shall, if satisfied that it is necessary for the proper determination of any relevant fact so to do, recall such witness or examine such new witness.

9. *Persons likely to be prejudicially affected to be heard*— If, at any stage of the inquiry the Commission—

(a) considers it necessary to inquire into the conduct of any persons ; or

(b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry, the Commission shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence.

10. *Right of cross-examination and representation by legal practitioner*—The State Government, every person referred to in rule 9 and with the permission of the Commission any other person whose evidence is recorded under rule 8—

(a) may cross-examine a witness other than a witness produced by it or him;

(b) may address the Court ; and

(c) may be represented before the Commission by a legal practitioner or, with the consent of the Commission by any other person.

11. *Additional powers of the Commission* —The State Government may by a separate notification direct that all or any of the provisions of sub-section 2 or sub-section 3 or sub-section 4 or sub-section 5 of section 5 of the Act shall apply to the Commission.

12. *Procedure in matters not provided in these rules*—The Commission shall have the power to regulate its own procedure in respect of any matter for which no provision is made in these rules.”

8. The Commission adopted the procedure according to the provisions of the Act and the Rules thereunder.

CHAPTER II

PROCEDURE ADOPTED BY THE COMMISSION

Notice to persons for giving evidence : On February 15, 1965, under rule 7 (1) (a) of the Orissa Commissions of Inquiry Rules, 1963, a notification was issued by and under order of the Commission. The relevant portion of the notification was this:

“ Now, therefore, this notification is issued by and under the order of the Commission fixing the 27th day of February at 10-30 A. M. in the High Court building at Cuttack for issue of all necessary preliminary directions. Any party, individual, association, organisation, office or department who is concerned directly or indirectly or interested in the matter shall appear either in person or through his counsel on the said date positively. Anybody so appearing will be given an opportunity of being heard in the enquiry. In default of appearance on the aforesaid date, the matter will be determined in his absence.”

The said notification contained the terms of reference.

2. *Representation of parties in the proceedings* : The first effective sitting of the Commission was accordingly held on February 27, 1965 at the High Court building, Cuttack, upon notice given under rule 7 (1) (a). On that date the following parties appeared as recorded in the minutes of proceedings of that date:

“ 27-2-1965--Heard counsel for the parties appearing in this enquiry

Messrs. G. Das & R. K. Mohapatra for High Court Bar Association, Cuttack.

Messrs. R. C. Ram & A. C. Mohanty for Secretary, Utkal State Council Communist Party of India at Cuttack.

Mr. A. Mohapatra .. for Citizens' Committee, Jagatsinghpur.

Mr. C. V. Murty .. for Secretary, All Orissa Citizens' Fact Finding Committee and Cuttack Citizens' Fact Finding Committee.

Mr. T. N. Sahu .. for Citizens of Berhampur.

Messrs. A. Das, C. V. Murty, B. B. Rath, L. Rath, (G) S. Misra, & S. K. Kundu for President and Secretary, Christ College Union, General Secretary, Utkal Union of Students and Students of Orissa School of Engineering. Vani Vihar and one of the Citizens of Berhampur.

- Messrs. A. Das, .. for Orissa Samjukta Socialist party,
 C. V. Murty, President, Stewart Science College,
 B. B. Rath, Member, State Council of Action,
 A. Mohapatra, Orissa, and for some students.
 L. Rath,
 (G) S. Misra,
 & S. K. Kundu
- Messrs. A. Das, .. for Citizens' Committee, Sambalpur.
 S. K. Kundu,
 B. B. Rath,
 L. Rath,
 & A. Mohapatra
- Messrs. A. Das, .. for Secretary, All-Orissa Citizens'
 M. N. Das, Committee and Cuttack Citizens'
 C. V. Murty, Committee and for Berhampur Citi-
 B. B. Rath, zens' Committee
 & A. Mohapatra
- Mr. S. K. Kundu .. for Madhabananda Pal, Debendranath
 Pal, Lokanath Roy, Dhruva Charan
 Patnaik, Narsingh Charan Mohanty,
 Gourang Chandra Hota and Yudhi-
 sthir Das.
- Mr. B. M. Pattnaik .. for State of Orissa (including all
 branches of the Government)."

3. No party other than those recorded above appeared although notification under rule 7 (1) (a) was issued on February 15, 1965 and published in five local dailies and three Calcutta dailies and copies whereof were sent to all Heads of Departments of Government as recorded in the minutes, viz., Registrar, Utkal University, Principals of all Colleges, Press Trust of India and the All-India Radio, Cuttack for giving wide publicity to the same.

4. *Preliminary directions* : After hearing the learned counsel for the parties herein directions were given. The relevant directions were these :

- (a) The Commission shall for the present sit in the High Court building at Cuttack on such date or dates as it may fix from time to time. If, however, at a subsequent stage, the Commission is of opinion that it would tend to the general convenience of the parties and witnesses to hold its sitting at any other station or stations of the State, it may sit at such place or places for the purpose of recording evidence or for hearing

- (b) The proceedings of the Commission shall be normally in public. By temperament, training and experience as a Judge, the Commission dislikes any camera enquiry because that robs the proceedings of the appearance of justice. The Commission personally thinks that proceedings in the nature of judicial proceedings should, ordinarily, be under the public gaze. This would however depend on the nature of allegations levelled in the affidavits filed. If there are involved scandalous things or matters of security or things which would excite public feeling which will vitiate the atmosphere then it has to be held in camera in relation to those particular matters, but it can be decided only after the Commission has gone through the statements of both the sides. *Prima facie*, the Commission is inclined to hold it as a public enquiry but if strong reasons exist for a contrary procedure, then the Commission would consider holding it in camera.
- (c) The day sittings of the Commission shall be from 10-30 A. M. to 1 P. M. and again from 2 to 4 P. M. and the morning sittings from 7-30 A. M. to 9-30 A. M. and again from 10 A. M. to 12 noon
- (d) With regard to matters specified in the Government notification, the different Citizens' Committees, Students' Organisations and other parties other than the State of Orissa represented by their respective counsel herein and such other parties or individuals who are desirous of being given an opportunity of being heard in the enquiry are directed to file their respective statements along with a list of documents on which they propose to rely with the Secretary to the Commission, High Court Building, Cuttack, by March 22, 1965.
- (e) Similarly, any other committee or organisation, if any, representing students or citizens at other places and such other persons or individuals of those stations who are desirous of being given an opportunity of being heard in the enquiry are directed to send their statements along with list of documents by registered post with acknowledgment due to the Secretary to the Commission, High Court Building, Cuttack so as to reach him by March 24, 1965.

- (f) The aforesaid statements filed in accordance with rule 7 of the Orissa Commission of Inquiry Rules, 1963, shall be accompanied by affidavit in support of the facts set out in the statement and sworn before any court or magistrate by the person furnishing the statement or by his/her authorised agent.
- (g) The learned counsel for the Government is directed to file his counter-statement accompanied by affidavit sworn as indicated above and the list of documents on which he proposes to rely with the Secretary by April 15, 1965 after supplying 12 additional copies of the same at the Secretary's office. Only those parties who have filed statements under rule 7 (1) (a) of the rules will be entitled to have copies of the counter-statement from the Secretary's office.
- (h) All parties who would file statement under rule 7(1) (a) as directed above may file statement in rejoinder supported by affidavit on or before April 26, 1965 with the Secretary along with three additional copies of the same.
- (i) A notification as required under rule 7 (1) (b) shall be issued by the Secretary to the Commission immediately inviting all persons acquainted with the subject-matter of the enquiry to furnish to the Commission affidavits sworn before any court or magistrate containing a statement of facts to which the deponent is competent to depose. The said notification should also contain the terms of reference. Such affidavits must be strictly confined to the different matters specified in the Government notification and properly verified in the manner as indicated as recorded in the minutes of the proceedings.
- (j) The State of Orissa is directed to file true copies of the relevant post-mortem reports, injury reports and inventories, if any, along with the counter-statement to be filed by it as directed above
- (k) The learned counsel for the Government may inspect the documents and papers if any filed by the parties filing statements under rule 7 (1) (a) as directed above before the Secretary. Similarly, the

learned counsel appearing for the parties filing statements under rule 7 (1) (a) as aforesaid may inspect the documents and papers filed on behalf of the Government in the Secretary's office. Only the Advocates, and the parties or their representatives may inspect. They can take notes or if necessary verbatim copies of any of the documents as may be advised.

- (l) If recording of evidence is considered necessary, oral evidence shall be taken down in the form of question and answer in shorthand by the reporter appointed by the Commission and a transcript thereof be made.
- (m) Tuesday April 27, 1965, 7-30 A. M. in the High Court Building at Cuttack was fixed for commencement of the enquiry when the question of recording of oral evidence will be considered.
- (n) On April 27, 1965, the Commission shall also consider and decide the question of sitting at other places. The Commission received on February 26, 1965 a Resolution of Kalahandi Bar Association, dated February 22, 1965 to the effect that for facility of all concerned the Commission should have sittings at Bhawanipatna for enquiry as that place was also a venue of firing as mentioned in the Resolution. The question of having a sitting at Kalahandi will also be decided on April 27, 1965.

5. Subsequently the time for filing statement, counter-statement and rejoinder was extended on application of different parties and delay was condoned. Accordingly, the enquiry was directed to open on May 8, 1965 in the High Court Building at 7-30 A. M. and the Secretary was directed to advertise this date as peremptorily fixed. In pursuance of the said direction the opening of the case commenced from May 8, 1965.

6 *The question of taking oral evidence* : The question of taking oral evidence was left open to be decided until after the statements, counter-statements and rejoinders were filed. On May 19, 1965 a petition filed by the learned State Counsel stating *inter alia* that the State Government do not propose to adduce evidence under rule 8 (1) was taken into consideration. After examining all the statements and counter-statements furnished to the Commission under rule 7 and after

hearing the parties, the Commission considered that having regard to the nature of the allegations and counter-allegations, some oral evidence was necessary. The State Government was therefore directed tentatively to keep in readiness Dr. B. Samantarai, Principal, Ravenshaw College, Superintendent and Assistant Superintendent, East Hostel, Ravenshaw College and Mr. P. Alam, Sergeant Major to be examined as witnesses as soon as the opening of the case was concluded. The Commission also directed that the question whether the examination of any other person or persons,—who have furnished statements or whose evidence is relevant to the enquiry,—is also necessary will be considered and directions will be given accordingly in due course.

7. In all, 41 C. Ws. were examined as Commission witnesses and 33 P. Ws. as witnesses for the students and the public. The taking of evidence was closed on December 13, 1965.

8. For convenience of all concerned, the Commission held sittings for recording evidence at Berhampur, Sambalpur, Bargarh and Bhawanipatna as also Cuttack. The Commission had local inspection of the affected places at those stations as also at Banki, Binjharpur, Jagatsinghpur and Bhubaneswar.

9. As regards arguments, the counsel for parties jointly prayed and submitted that having regard to the voluminous evidence and documents they should be given at least one month's time from the date they are supplied with the Paper Books. The Commission directed that the arguments would commence from January 27, 1966 on which date Mr. R. M. Patnaik on behalf of the State would begin. Later on, for convenience of the counsel for parties the arguments commenced on January 31, 1966 and were closed on June 7, 1966.

10. *Questionnaire sent to educationists, MPs, MLAs, political and social leaders.* In course of the proceedings certain questions of definite public importance including the question of measures for the future and appropriate code of conduct for all concerned arose on which it was considered that the views of the educationists, political and social leaders and other appropriate authorities would be helpful. Accordingly, a draft questionnaire was prepared. On prior notice in writing to all concerned the draft questionnaire and the forwarding letter to the same were placed before the Commission in the presence of the counsel for the respective

parties. The draft questionnaire was revised and settled after full discussion at the sitting of the Commission. The Commission then directed that the questionnaire be issued to all members of Rajya Sabha, Lok Sabha, MLAs of Orissa, Speakers of all Legislative Assemblies, Editors of all leading newspapers, Vice-Chancellors and reputed educationists of Orissa and other States, ex-Vice-Chancellors and ex-Justices of Orissa, Principals, Professors and Readers of the Colleges of Orissa and other eminent persons. The time allowed for submission of the answers was one month. A copy of the questionnaire is included in the appendices to the report.

11. The Commission takes this opportunity of expressing its thanks to all who very kindly sent their answers to the questionnaire which had been of material help in the work of the Commission.

12. *Acknowledgment of assistance* : The Commission is happy to place on record its deep appreciation of the great assistance that it has derived from the learned and forceful arguments—prepared with care and advanced with commendable ability—by learned counsel on both sides. The Commission is very grateful to the learned counsel particularly to Mr. (L) S. Misra, Mr. Asok Das, Mr. C. V. Murty and Mr. S. K. Kundu appearing for the students and the public; and to Mr. B. M. Patnaik and Mr. S. S. Basu appearing for the State—to all for their kind co-operation and assistance throughout the proceedings. But for their help in classifying the material evidence contained in the depositions and in the affidavits filed on behalf of both sides under different heads of the terms of reference, it would have been difficult, if not impossible, for the Commission to wade through the numerous and voluminous affidavits filed before it.

13. The Commission wishes to record the excellence of the services given throughout this enquiry by its Secretary Mr. K. B. Panda, a senior member of the Orissa Superior Judicial Service. He had the difficult task of organising the office of the Commission. His work has been greatly appreciated by the Commission. The Commission's Deputy Secretary Mr. B. Chowdhury of the Orissa High Court gave the most willing support and assistance to the Secretary and indeed to the Commission. The whole of the ancillary staff earned the Commission's warm gratitude. From the beginning to the end of this enquiry, the high quality and excellent spirit of the Commission's staff were of great assistance.

CHAPTER III

SCOPE OF THE REFERENCE

Although on the first reading, the scope of the reference appears to be so wide as to cover matters of general importance, yet on a careful examination, it is clear that the matters contained in the terms of reference are of definite public importance which the Government intended to refer to the Commission for enquiry and report.

2. In fact, the terms of reference have been limited and confined to only such matters arising out of the students' disquietude in Orissa during a particular period commencing from a particular date and ending with another particular date, all as specifically mentioned in the terms of reference. Let us examine the terms one by one.

3. *First term of reference : background, cause, nature and extent* : This has been limited both as to the period and the area in the particular context of which the Commission was required to enquire into and report on the background, cause, nature and extent of students' disquietude. What was required of the Commission was only in respect of such students' disquietude as happened in the State of Orissa and not anywhere else. Then, as to the period of such students' disquietude, it was also limited to a definite period commencing from September 26 to November 24, 1964—not in respect of any period earlier or later. It was in such particular context of matters of definite public importance relating to the students' disquietude within the State that the Commission was to enquire and report.

4. *Second term of the reference : role of the Press, Political Parties, other Associations and Organisations and individuals* : This term must also be read in the context of the preamble to the notification of appointment which governs the entire reference. The intention of this term was that the role of all directly concerned in the students' agitation was to be enquired into by the Commission. It was also intended to be limited to the students' agitation which took place during the particular period commencing from September 26, 1964 and ending with November 24, 1964. Apart from its having been limited both as to time and place, there is a further limitation in this term of reference, namely, it was not the intention of this term that the Commission was required to enquire into and report on the press or political parties or other associations, or organisations or individuals of any place

other than those in Orissa. That is to say, the enquiry was to be limited to the role of the Orissa newspapers, the political parties, the other associations, organisations and individuals—all in and functioning in Orissa. It was in this sense that these were also matters of definite public importance covered by this term of reference.

5. *Third term of reference : the question of alleged excess or inadequacy of the measures used by the magistracy and the police :* Here also what was intended in the reference was in the particular context of the conduct of the magistrates and the policemen not in general administration but the measures taken by them in course of their action in handling the situation during the students' agitation during the particular period in question. The limitations—both as to time and the place—are applicable to this term as well. In other words, the alleged excess, or inadequacy of the measures taken was intended to be enquired into by the Commission with particular reference to only such incidents which took place in connection with the students' agitation during the period in question. Thus, any alleged excess in any incident not connected with the said students' agitation is not within the scope of the reference.

6. *Fourth term of reference : loss, damage or injury to person and property :* Under this term, the Commission was required to enquire into only the nature of loss, damage or injury to person and property sustained as a result of the various incidents that occurred during the students' agitation. This term again is couched in such language as to limit it to only the 'nature' and not to the question either of amount or to the question of fixing liability for the alleged loss, damage and injury. That apart, there is a further limitation, namely, such loss, damage or injury about whose nature the Commission was to enquire into—to come within the term must be sustained as a result of the various incidents that occurred during the said agitation and not otherwise. In other words, any loss, damage or injury to person and property which anybody might have sustained not in connection with or due to any reason not related to nor connected with the said agitation will be outside the scope of the reference. It is from this point of view that any loss, damage or injury to any person, even it had happened during the period in question, but not connected with the students' agitation—such loss, damage or injury will not come within the terms of the reference.

7. *Last term of reference : measures for the future : code of conduct* : This term must be read in the light and context of the preceding four terms of reference. Thus, keeping in view the various limitations of the preceding four terms of the reference, it will be apparent in what particular context, the Commission is to recommend measures and suggest the code of conduct for all concerned. The last term is governed by the preamble to the notification and the four terms of reference within the scope of which the Commission is to recommend measures and suggest an appropriate code of conduct. The word 'appropriate' is not without significance. It means such code of conduct as it relates to the matters of definite public importance as covered by the aforesaid four terms of reference.

8. In course of the enquiry, it was made clear that the Commission would confine its enquiry within the terms of the reference on a proper interpretation of the same and further that the Commission will confine to matters relating to the students' disquietude during the period in question as mentioned in the terms of reference in the Government notification, dated February 1, 1965.

PART II

NATURE OF THE PROBLEM

CHAPTER IV

PROBLEM OF DISQUIETUDE IN MODERN YOUTH STUDENT INDISCIPLINE

	Paragraph		Paragraph
Introduction	.. 1	D. Student indiscipline in European countries	32--33
A. Nature of the problem	.. 2--14	E. Student indiscipline in other Asiatic countries	36-37
B. Student psychology that works	15--19	F. The recent trend in India	38--54
C. What happened at Berkeley University of California	20--31		

INTRODUCTION

To anyone familiar with the mass students' upheaval in different countries in recent years in the shape of protests, demonstrations, meetings, processions, arson, looting and other rowdy behaviour, it must appear—as they did to any dispassionate onlooker—almost fantastic in their novelty. And the way in which the cry of protest of the mob broke through the mass media, is surely a sign of the times. The background, cause, nature and extent of students' disquietude in Orissa, as discussed in this report, will amply justify the view that the pattern of students' agitation in several States including Orissa is the same. It has become a worldwide law and order problem; recourse to violence cut at the very root of the democratic process. This students' disquietude is said to have deep-rooted implications and this trend is significant.

A. Nature of the problem :

2. The disturbing realisation that worldwide disquietude among the students exists and shows no sign of tapering off, has touched many thoughtful citizens whether they live in Vienna or Laos, New York or Calcutta or Cuttack.

3. There is a fear in some quarters that our very traditions and basic culture are being undermined by our youths. This reminds one of what Socrates wrote in the fifth century B. C. :

“ Our youths love luxury, have bad manners, contempt for authority and disrespect for older people. They contradict their parents, chatter before company, gobble their food and tyrannize their teacher.”

4. So the problem of indiscipline among young men and women is not particularly of the present age, it is a two thousand year old malady. There is a famous saying by Pope who expressed :

“We call our fathers fools and our sons will call us so.”

It is an eternal, unsolved problem of the tension between generations. Youth is always called impulsive, impetuous, rash, easily provokable, gullible, sometimes irrational and what not.

5. The question is : what is the cause ? There are certain facts which cannot conscientiously be disputed. Indeed, the older generation has not left behind any better legacy for the modern youth to emulate. The idealism of the older generation has petered out and the disillusionment has completely dawned on the young men at their immature age. In any case, the ideals of yesterday are no more the ideals of today. Values of things have changed.

6. In modern times and more so in post-independence India, in the process of time and the growth of civilisation, the conflict of loyalties and values is no more latent but has come to the surface. One constantly hears stories of students' clash with authorities including the police on various issues ranging from demand for concession for cinema tickets to a demand for judicial probe into the alleged atrocities of the police on the students while agitating for removal of what the students call a corrupt Government. On the other hand, we also listen to the bemoaning of old peoples' heart-breaks and their feeling of disappointment with their wards even on petty matters on which their views do not agree with the modern trend.

7. Thus, in their haste to accuse each other both forget that with a changing pattern of society, some old pet beliefs and even objects of reverence are bound to shatter. This is more so when until recently an agrarian society like India decided to launch on large-scale industrialisation. The Industrial Revolution--that great transformation of traditional ways of life to which this country has only recently been initiated--has ended our patriarchal society in which the basis of local and national existence was the family. That is the world we have lost or have been fast losing. There is no controversy about the position that though not decided on the pattern--whether on planned economy or free enterprise style -the fate of generations hangs on the balance.

8. One can hardly expect much when the modern city life springs up like mushroom without the basic comforts like pure water, milk, unadulterated food, fresh air, mates of the same age, playgrounds in educational institutions, proper clubs or reading rooms and libraries for the younger generation. This state of things is indeed a good breeding ground for growth of indiscipline.

9. Of course standards of ideal student behaviour differ from country to country. For instance, what is termed as 'eve-teasing' which is causing great concern for Indian elders may be a mild kind of behaviour pattern in the western countries. What may be perfectly legitimate and even normal for psychological growth of a boy or girl in America, may sound atrocious and immoral in a more puritanical set-up of society in Middle East or South-East Asia. For an Indian orthodox home, the very idea of free mixing of boys with girls may sound as a symptom of moral indiscipline. But it is also to be noticed that in many modern Indian homes and co-educated institutions all western ways of boys meeting girls are being practised and in fact connived at. There is a section of opinion among the modern educationists that it should be left for each new generation to practise by trial and error and to discover its own set of moral values. Indeed, there is no such fixed or unalterable table of codes that even to think independently would sound sacrilegious.

10. The same trend is also found in the modern literature. It finds expression in our social fiction in modern Indian languages but it still fails to express clearly the inner suppressed rebellion in the young minds because of the inherent ideological conflict between the old conservative way of thinking and what is called the present progressive idea. One view expressed in the novels is that heroines are victims of the old order and they shed tears, idle tears; in others the rebel ultimately turns out to be not a real rebel but an advocate of the sweet synthesis. There is a third category. The young appear to be caricatures, the old are formidable persons of principles. There is ample evidence in contemporary fiction which reveals this disturbing conflict between the old and the new. Some say that we are passing through a transitional period.

11. Whatever it is, the young are definitely disturbed. They are not living a full life. The view of the sociologists who give thought to this aspect of social evolution is that unrequited love affairs, unfulfilled sex-urge lead to all kinds of unnatural and perverted talent. It is also said that unnatural

behaviour among students can also be attributed to even absence of proper equipment or laboratory facilities for research in the educational institutions. Thousands of our young men come out of the educational 'mills' (as they put it) blindly to fall into the well of unemployment. Hardly either at home or even outside they get any sympathy. Indeed in such a state of affairs the only result is a queer mentality leading to indiscipline which comes in clash with the mode of life with which they are supposed to—but cannot—fit in and adjust.

12. This disquietude in the modern youth is almost universal. Student indiscipline is widespread not only in India but it is also a serious problem in the western countries. America's college students, beatniks who cared for and about nothing a few years ago, suddenly became committed, caring for and about everything. "What are we doing in Santo Domingo?"—is what the students demand of State Department representatives sent to college campuses to explain US policy and, as often as not, they shout down the answers. They cry "pull out of Vietnam" or "Stop investing in South Africa" or "We shall overcome" depending on the occasion. Posters and placards used by the student demonstrators speak for themselves. To illustrate the depth of the feelings of the students some of them are these: In Chicago "Stop the war in Vietnam"; in Oakland "Remove US troops from Vietnam, attack poverty and not people in Vietnam"; in Washington "Stop the bombing, end the war", "Unconditional negotiations—Yes ! Killing Vietnamese children—No !"; at New Haven "Policy or hypocrisy"; at Ann Arbon "U of M students in Alabama need your support !"; at Northampton "We march with Selma". Thus in campus after campus from New England to California, earnest young people are attempting to change a world they never made. Some people say that some of their students' causes are puerile; of course it is controversial.

13. A movement at the University of California in Berkeley organised to protest restrictions on student political activity soon became a well-organised "free speech movement" in defence of their fundamental right of freedom of speech as citizens of the State. What happened at Berkeley, hereinafter more fully discussed, is a pointer to the trend of modern youth movement which must be accepted as a writing on the wall and cannot be ignored whether this movement is in America, Europe or in any part of Asia. The American boys also

raised other legitimate questions as in the cases of Santo Domingo and Vietnam but the conservative section of the intelligentsia expressed suspicion, as said to be not unfounded, that many of the questioners are stirred more by emotion than by logic. The ready answer almost by way of retort is : No movement on progressive lines is possible except on emotion which is not necessarily devoid of logic

14 It is difficult to fully agree with the common view, as expressed in some quarters, that new campus activists are professional authority baiters, some are social outcasts, some just fuzzy-minded. There is a solid section among the students who are serious and hard-headed, challenged by poverty, social discrimination and materialism they see around them—and skeptical of any solution proposed by what they call the ‘authorities’. It is said that the activists in this movement are only 10 per cent of the students; but a willing army of student sympathisers can be rallied to any legitimate cause. Most of them realise that they are merely making a gesture by joining the movement. These sympathisers hope that enough gestures will make something happen to their college and to the Government. This, in short, is said to be the psychology behind a student movement. As an American journal puts it the young leader says: “Every time a kid carries a picket sign on any campus, one more guy has to come to grips with what the sign says” and thus the movement takes shape, assumes volume and ultimately is called the student movement.

B. Student psychology that works :

15. Is student movement in recent years as frivolous as some people suppose? Is it that students are not inspired by any ideal? By way of illustrating student psychology in general which is almost the same everywhere in the world, let us see what some student leaders in certain colleges in U.S.A. have expressed as the reason for joining what they call “the movement” a title which is said to encompass all their protests and demonstrations.

16. One view as expressed by a student of Williams College is this: Students are a new generation of people, developed in precarious times, there is the cold war, and the civil rights movement—which has made the students aware of some glaring problems in their country. Most people look at students who are involved in protest as though the students were still searching for an identity and not yet adjusting to their social situation; they see the

students as “not quite balanced”. Their parents still think that they are going through a phase. It is complained that this common view of what students are all about is wrong—it completely misses the point. How ultimately his mind works is well expressed by what he himself says:

“The thing for me right now is the movement. That’s an interesting word, if you think about it—movement. Because it is people in motion. It’s not an end; it is not static. That’s a very apt word for what we are doing.”

17. Then again there is another view as expressed by a student of Stanford University who does not believe in the American ideal. He says—Gandhi’s doctrine is best: truth is force. Gandhi showed us the true value of every human being and he showed us that pacifism is practical. This young man is not a Communist. He seems to feel proud of the capitalistic system in America where they have always had freedom, culture and sophisticated traditions. Even so, there is the spirit of movement in the young man. What according to him impels students to go for the movement is expressed by him thus:

“Sure, we want to get arrested when we demonstrate. We want to make it clear to the public that we are serious. And we want to show our immediate concern towards our neighbours. Non-violence shows concern, not so much for your friend as for your enemy. When we demonstrate, our non-violence shows that we can disobey and alter without harming the individual. Atleast I hope that’s what we show.”

18. Then we come to a third type—which can be termed somewhat political type—expressing the view of a student of the University of Virginia. He thinks anyone, even a student, who sees the injustice of the South’s segregation system cannot help but realise what is wrong and act. According to him, segregation distorts and twists the minds of fundamentally good people. He cannot stand it; he feels he must do something about it. Students in civil rights groups want to deal with life and reality. It is also said that a lot of students do not get involved with civil rights groups because it might threaten their careers—though they do join the students in civil rights groups in “acceptable” causes like Selma. “It may be true that life is full of compromise but it is for others to compromise, not me” as this young man says. He is not interested in filling one of society’s niches—to be an ordinary guy, go to school, get a good safe job and shut up when something seems wrong. Then he says “when I get discouraged I think about doing

this —taking the easy way out—but then I feel pretty sick at the thought”. When asked as to what he was going to do when the civil rights cause runs out, this university student of Virginia says that it is not just a cause that students arbitrarily picked out just to do something; it is a feeling about humanity—any colour, anywhere; and that won’t change.

19. How a young man feels about change in the values of things is expressed by a student of Tufts University. He speaks of the spirit of the times. It is this: Students are trying to change society. The present generation knows that students have to strike at the system to make it respond. What urges him to movement is, as expressed by him, this:

“ Most middle-class students see their role as going back to supplant Daddy when he retires. Our whole society is moving in a direction that will mean an end to questioning. I hear very little re-evaluation, very little challenge of accepted values. What I want is a world where people are free to make the decisions that affect their own lives, a world in which they are not trapped on a vast merry-go-round of concealed power not forced into situations where the choice is already made for them. I want a “participatory democracy” I feel the university could be a fantastically exciting place in which to begin to create this kind of society I do not think the university does that, but the potential is there.”

This is a sample representing the thinking type. They guess the kinds of pressures a university puts on a professor are really severe. According to him, students too are at fault because the students do not demand of the university what could be there. This young man thinks that certain things can be achieved politically. In this context what he says is this:

“ I see many things we must change politically. I think we’ll continue to hold sit-ins, partly because I can’t stand to see people hit over the head. I put my body in the way of the system, in order to stop the machine from functioning in an insane and adverse way ”

C. What happened at Berkeley, University of California :

20. In many cases student movement raised political issues. The question whether students have right to participate in active politics is controversial. In this context what happened at Berkeley campus during the first week of December, 1964 is somewhat similar to what happened at Ravenshaw College, Cuttack, in September, 1964.

21. The controversy between the Berkeley students and the Administration arose thus: On September 14, 1964, the Administration blandly announced that a narrow strip of land at the entrance to the campus was really University property, and not, as previously assumed, the property of the city. This strip had been the locus of student political activity. Since it was assumed to lie outside the campus, University regulations restricting political activity did not apply. Without consulting the students, the Administration closed off the main outlet for political energies, claiming at first that these activities interfered with pedestrian traffic, but later reaffirming its position that

“ University facilities may not, of course, be used to support or advocate off-campus political or social action.”

22. The students immediately formed a united front, ranging from Goldwaterites to Socialists, to urge the restoration of a free speech area and the modification of the rules. The Chancellor of the University issued a clarification allowing the students to use the steps of the Administration building, Sproul Hall, as a free speech area and to man tables on “the strip” but not for political purposes. The students proceeded to ignore the last restriction, and the Administration to ignore the violations. Tables were set up and political speeches given in forbidden areas. Subsequently, however, the Chancellor made a show of firmness and suspended indefinitely eight students, including three leaders, from among hundreds who claimed to have violated the regulations.

23. This led to a clash. On October 1, 1964 a large rally formed in front of Sproul Hall. A police car taking to jail a person charged with manning a table unlawfully was surrounded and stranded in a sea of students. 200 students then entered Sproul Hall for a sit-in. Faculty efforts at mediation were blocked by the Chancellor’s stubborn insistence that regulations and disciplinary measures were not negotiable. As the tension continued into the next day, a faculty group by-passed the Chancellor and persuaded President Kerr of the need for compromise. Thus began the gradual eclipse of the Chancellor by the President.

24. It is said that at a certain critical stage in the course of the student movement at Berkeley, 27,000 students, 12,000 faculty and non-academic employees, numerous research laboratories, institutes, old-fashioned classrooms, and boasting an annual budget of 60 million dollars suffered an almost

total collapse. Campus authority vanished, academic routines were reduced to a shambles, and the prophesy of Mario Savio was fulfilled: the "machine" came to a "grinding halt". The main issue raised by the students in that connection was over their right to freedom of speech within the campus. The Free Speech Movement which came into existence in October enjoyed since then a near monopoly on the expression of protest. It attracted widespread support and enlisted the energies of thousands of students for the numerous tasks demanded by a political struggle.

25. It would be a serious mistake to suggest that the entire crisis was fabricated and dominated by subversives or riff-raff. It is said to have been well established that most of the followers were intelligent students who were novices in political action. The sacrifices of many who were willing to place their careers on the line, the spontaneity of their indignation, the warm fellowship of their movement, and their unfailing good humour were too real to be explained by subterranean conspiracies.

26. The students at Berkeley raised issues which were political and constitutional centering around whether the University should place any but the most minimum restrictions upon the exercise of political rights by students on campus, and whether the University should restrain and discipline political acts or advocacy performed on the campus but leading to illegal acts off the campus (e. g. a political rally called on campus to organise an illegal sit-in at a hotel). The University Administration had based its highly restrictive policies on a provision of the State constitution requiring that—

"The University shall be entirely independent of all political or sectarian influence and kept free therefrom in the appointment of its Regents and in the administration of its affairs."

It was upon the strength of this provision in the constitution that the University authorities sought to justify prohibiting political advocacy and activity on campus, for defining what activities were political, and for denying the use of campus facilities for organising off-campus political actions. Indeed the policy of the Administration was determined primarily by the desire to prevent the involvement of the University in public controversy.

27. The students' general contention was that they should have the same political rights on campus that they enjoyed as citizens off the campus, and that determination

of the legality of off-campus actions should be reserved exclusively to the Courts. In addition, the students argued that the constitutional provision upon which the Administration relied was intended to prevent the University itself from becoming involved in politics and to prevent the governors of the University from applying political criteria in the conduct of University affairs, but was not intended to deny students the right to engage in political action not involving the name of the University. Finally, the students argued that the Administration had been highly arbitrary in the day-to-day application of its rules.

28. On December 8, 1964 the sentiments expressed by those involved in the controversy were brought before the Academic Senate and passed by a vote of 824—115. These resolutions provide :

1. Only the "time, place and manner" of non-campus political activity should be regulated to "prevent interference with the normal functions of the University" :
2. The content of speech was not to be restricted :
3. Off-campus political activities should not be subject to University regulations :
4. Disciplinary questions arising out of the minimum regulations in resolution (1) should be handled by a faculty committee, i.e., the Administration was not to touch such matters.

29. Ultimately, the faculty and students gained most of the objectives contained in the resolutions of December 8. It is interesting to note that the events of what happened had not cast a foreboding shadow over the future of education at Berkeley. It is said that students reminded all concerned of some basic values that were disappearing in the thoughtless rush for the future. Very much of what they did had to be done before anyone would listen. It is admitted that the result is that, in a climate of respect and concern that offers more promise than has been present, the future of Berkeley can be a noble one.

30. It is significant that since December 1964 student uprising at Berkeley, it has become customary at California to let Civil Courts handle students involved in violations of the law. The University President Clark Kerr feared that adding a University punishment would be taken as breaking an understanding with the thousands of students who had proceeded.

against such "double jeopardy". He foresaw renewal of the whole free speech movement uprising. The effect of months of tumult at Berkeley has been to show, as a student off Yale expressed it, that "students have become somebody in being able to act together".

31. Thus, the new student mood takes many forms ; by combining idealism, emotional appeal techniques and proof that students can act effectively, this cause has lifted students out of their silent-generation apathy.

D. Student indiscipline in European countries :

32. The picture will not be complete without reference to the student activities in Europe. By way of illustrating prevalence of student indiscipline in other western countries a few instances are mentioned which necessarily are not exhaustive.

33. In Spain there was unrest of students in Madrid University where 1,500 students are said to have defied police guards and staged "civil assembly". It is reported that the students packed into a lecture hall and voted to send to the University Rector an ultimatum demanding reinstatement of five professors.

34. There was also similar unrest in Scandinavia. It is said that there was a protest by teenagers. The report is that about 100 long-haired boys and girls in their early or late teens had been arrested and a dozen injured. Their agitation was by way of protest against middle class norms as put by Dr. Gustav Johnson, a Stockholm psychiatrist. He says that the boys are proud of the sensation they have caused in the Press.

35. Even in Britain the report is that the students began a 36-hour parade outside the USA Embassy as a protest to the USA policy in Vietnam. It is said that a group of 200 students carried placards demanding application of 1954 Geneva Agreement on Indo-China and a cease-fire in Vietnam and took position outside the embassy.

E. Student indiscipline in other Asiatic countries :

36. In Korea, six hundred students gathered at the University to denounce the use of troops in their campus where they were demonstrating for one week against the reconciliation treaty with Japan. The Government closed all the eleven Universities temporarily and ordered University authorities to weed out student leaders and expel them. By way of giving exemplary punishment the Government dismissed the President

of Seoul National University, Sin-Tai-Whan. The report is that President Park Chung Hi dismissed his Education Minister holding him responsible for a week of violent student demonstration. Seoul was under a virtual state of seize. Students kept inside their campus. About 10,000 students are said to have gathered in the auditorium of Korea University and began a sitdown strike.

37. In South-East Asia, Vietnam is a troublesome spot. It is reported that there was an under-current of student unrest in South Vietnam towards the end of August 1965. In Saigon, on the installation of Mr. Henry Cabot Lodge as US Ambassador there, there were new ripples in the muddy waters of South Vietnam politics. A few thousand students are said to have gathered in Hue for an anti-Government rally and big demonstrations threatened to break out in the city. The banner-waving students demanded the removal of the South Vietnam regime. The students publicly demanded for restoration of civilian Government.

F. The recent trend in India :

38. The widespread and furious involvement of University students in politics is one of the striking features of Indian history in the present century. University students had been initiators of nationalist and independence movements in the overthrow of Governments and in the rapid growth of radical, political factions and parties. In the course of this activity, student indiscipline has developed its traditions which are of serious concern to the administration. In India, as in Burma and Indonesia, the activity of University and college students in the period prior to independence did not become less intense after independence was attained as was expected.

39. The pattern of student behaviour has persisted even though the ostensible objects of student movement had been obtained with independence. In India, student indiscipline has been a continuing pre-occupation of administrators and it has claimed the attention of Central and State Governments. Whereas before independence political activities of students were focussed on issues of independence from foreign ruler and all grievances were given a political tone, today's student agitation in the Universities of India is much more diffused. It is unfortunate that it often appears to be disproportionate to the trivialities which give it occasion. Violent student riots have arisen from causes, such as, rise in tramcar fares grievances against individual teachers, anti-Hindi agitation and also other causes of somewhat political nature.

40. In a recent statistics collected in New Delhi it is stated that college students have been mainly responsible for strikes in educational institutions in India according to official report on 'student indiscipline' in 1964. It says that out of 261 strikes—the highest since independence—207 were in colleges, 43 in schools and 11 in universities. It is significant that students of the universities and schools are less prone to be drawn into the vortex of student disturbance. The number of incidents affecting professional and technical institutions such as medical, engineering and agricultural, was 58 (roughly 29 per cent). Analysing the figures Statewise, the chronic trouble spots are said to be Andhra Pradesh, Assam, Bihar, Kerala, Orissa, Uttar Pradesh and West Bengal.

41. Among the upheavals of student disturbance in recent years, the first of its kind was the anti-Hindi agitation. On the announcement of the Central Government on the Republic Day, that is January 26, 1965, that Hindi should be the official language of India, anti-Hindi agitation broke out first in Madras. Though in the South, quite a large section of the public had full sympathy for and co-operation with this agitation, nevertheless, it was pioneered mainly by the students. However, gradually from the South it spread to other places, even to West Bengal, giving rise to law and order problem in many of the States in India. The agitation far from being peaceful, degenerated into some sort of a leaderless campaign with manifestations and demonstrations of righteous indignation in the nature of self-immolation by four people burning themselves to death and the resignation of some Ministers at the Centre. Buses and Government properties were either sitoned, burnt or attacked giving rise to law and order problem. Some police personnel while on duty, were chased and burnt alive. Properties of certain individuals were also raided and damaged. Even Pondichery Ashram was not spared by the angry mob. It calmed down on the assurance given by the Central Government that Hindi should not be thrust on anybody hastily and that English will be retained as an official language in addition to Hindi. It is said that again the students in Madras were on then war-path with their linguistic demand that English should be the only official language. Consequently, the students of Madras on March 11, 1965 threatened another strike on the same issue which, however, did not materialise.

42. On April 25, 1965 the Aligarh University students—an unruly crowd of about 1,000 students—raided the hall and assaulted the Vice-Chancellor and some other members of the

University. It is said that the students armed with lathis and empty bottles gathered near the University Hall where the annual meeting of the University Chancellor was in progress. The students assembled to protest against the University Academic Council's decision of allowing more seats in the technical institutions of the University to outside students. The crowd, which continued to swell, forced entry into the meeting room and assaulted the Vice-Chancellor and other members of the Council. They hurled brickbats and empty bottles breaking the window panes. The police party finding itself in danger opened fire in self-defence. Orders under Section 144 Criminal Procedure Code were promulgated in the University campus and thus the situation was brought under control. Its repercussion and aftermath are too well-known to be repeated. The unfortunate Vice-Chancellor who was very nearly assassinated in his own words indicated the presence of "communal fascists" and "violent and untrustworthy men" at different levels of the University to be responsible for the same.

43. In this context it is of interest to note that Sir C. P. Ramaswami Aiyar, Vice-Chancellor of Annamalai University said and expressed regret over the conduct of students. He said that a certain number of students of his university were responsible for circulation of controversial notices and that a large proportion of students abstained from attending classes by way of protest against the arrest of students in Palayam Kottli and elsewhere. The Vice-Chancellor was so much upset over this situation that he made a statement that unless the students' strike in the university was immediately terminated, there would be no point in his continuing as the Vice-Chancellor of the University.

44. In West Bengal, the students started a movement against the rising tram fare which is popularly known as "Tram Fare Agitation". In July 1965 this movement took a violent turn after a demonstration by leftist Students' Union. The law and order situation became grave in Calcutta. This agitation, though organised as a protest against the tram fare rise by different students' associations, gradually passed into the hands of unruly elements who took active interest in the field in spite of attempts by several student leaders to restrain them. Two trams were set on fire, and stones, shoes and soda-water bottles were thrown at the police and passing vehicles. Attempts to set up barricades in the streets were also made, normal life in Calcutta was completely

disrupted, the situation worsened and a call for Hartal was given by nine leftist parties. The movement had also its effect outside Calcutta. In Siliguri a large number of students – both boys and girls – stayed away from their classes in support of the strike call given by Calcutta students against the rise of train fare.

45. In Indore there was student unrest in August 1965. Students numbering 300 forcibly attempted to release 300 strikers taken into preventive custody from the local college. In order to call off their strike, the hunger-strikers along with 22 other students were taken into custody. After lathi charge the students moved away from the college gate and collected in large numbers – a furlong away – and started pelting stones at the police. The police with steel-helmets cordoned an organised crowd of 1,500 students in the disturbed areas with the result that there was great commotion in the locality.

46. Similarly, in Jullunder at about the same time there was disturbance in the wake of a clash between local students and railway employees. As a result of heavy stone throwing by the students, as many as 10 buses were badly damaged. A procession was taken in the town by the students against alleged indifferent attitude of police heading towards the Circuit House where the Chief Minister and other authorities were holding discussion with the Principals of the local colleges and on the way the students stoned buses.

47. Sometimes the movement by the students takes a very ugly form. For instance, at Benaras the feelings of the students against the Benaras Hindu University Amendment Bill proposing to delete the word 'Hindu' from the name of the University were conveyed to the authorities, but when the students did not get any satisfactory response, they started demonstration and ultimately it ended in violence with several alleged casualties in course of student-police clash.

48. At about the same time when this chapter was being written, the students in Kerala were reported to have joined the Food Agitation against the reduction in rice ration in the State. Students of some of the schools and colleges in Trivandrum boycotted their classes and took out processions shouting slogans demanding increase in rice ration. Police used teargas near the University students' hostel to disperse a crowd of unruly students. The students barricaded the road with tar-drums, threw stones and damaged two fire engines.

which had arrived to put out a fire. The Governor of the State tried his utmost to avert trouble. He was understood to have instructed college Principals to be taken to the studios of the All India Radio for recording their appeals to the students not to join the agitation. At the same time he issued instructions to the police to deal firmly with the students who indulged in picketing. In spite of all attempts to control the situation, indefinite strike by the students got into a violent state with the burning of a bus, cutting of telephone wires, damaging of railway tracks and interruption of transport services in some towns. The students planned to picket Central and State Government offices, but many preferred instead to come out to the streets to attack police vehicles and to put up barricades. Police fired several teargas shells to repel a crowd of students which resorted to stoning in front of the University students' hostel. The students also put up barricade along major thoroughfares with tar-drums and set them on fire. It was reported that lathi swinging police charged the students who melted away into side lanes to escape arrests. It was also reported that students removed fishplates and ripped off portions of the track near Kundara about seven miles from Quilon; a police outpost was also attacked by a crowd of striking students. The unruly students were also reported to have deflated bus tyres and damaged police vans and buses. The police resorted to lathi charge and several students were arrested.

49. It is to be noticed that in student movements on issues in which politicians are involved, such movements are not confined to mere peaceful picketing, demonstrations and processions with slogans but they ultimately degenerate into violent activities which on no account can have anybody's support in the context of a student movement. In this context the politicians are blamed for instigating the students; the eruption of violence is partly attributed to the lack of control on the part of the politicians who initially instigate such movement and then lose control—it becomes a *frankenstein* of their own creation.

50. It is not that the student movement is always on political issues. The students are also used to movement on academic issues against the decision of the university authorities purporting to interfere with the internal administration of the university in matters of policy. Thus some students of Calcutta University started their hunger-strike till death on the groundfloor of the Darbhanga Building on their demand that

the two-year degree course be continued. The old degree course was done away with. The students warned the authorities that if nothing was done by a certain time, a mass hunger-strike would follow. The University, however, could not meet the demand as the Academic Council rejected it twice.

51. On similar issues, in Orissa also the students moved against educational authorities. Burla medical students launched a strike on their demand for redress of their grievances in having more hostel accommodation, more teachers and equipments in the newly instituted college. It was said that three students went on hunger-strike to death and later on, three others joined them. The condition of one of the students on hunger-strike became critical and he had to be removed to the hospital. It was on the intervention of some Ministers and leading public men that the students withdrew the hunger-strike but they continued the strike till their demands were fulfilled. The students launched the strike after a decision was taken by the students and approved by the Students' Association Committee.

52. At about the same time Berhampur medical students of Orissa went on strike. They went round the town in a procession protesting against the bad accommodation in the hostel, want of seats in the college, inadequacy of staff and necessary equipments in the college. It is said that a memorial was presented to the Health Minister containing 19 demands but without any satisfactory response. So the students continued the strike. The point of the students was that the Berhampur Medical College which had not been approved by the Medical Board would not make them qualified registered doctors. Their demands included construction of a 700-bed hospital, a new hostel for students and increase of stipends to Rs. 1,200 per annum. It is reported that the strike was called off after assurance was given by the authorities that the students' grievances would be redressed.

53. Sometimes, students take their own decision with regard to the internal administration of the educational institutions to the extent of demanding for removal of the executive managing the institution. It is of significance that in such movement by the students, they are encouraged and instigated by some sections of the teachers who foment the students. Thus the students of a certain village High English School in Orissa went on strike as a protest against the newly formed managing committee after dissolution of the old one.

The complaint of the students was that the new committee acted whimsically against the students and the teachers alike. It was reported that the students refrained from attending the school for two days, went in a procession round the village giving slogans against the school Secretary and demanding his resignation within 24 hours and that if the Secretary did not resign, the teachers and students together would boycott classes for an indefinite period. The fact that in such movement the teachers also join the students is a telling circumstance—an ugly phenomenon—indicating that there is something basically wrong with the entire system.

54. The question then is : Why should the students be so dissatisfied, so restless and so excitable? This is the fundamental problem. Only when we have considered this, can we begin to treat seriously the causes of both the political and non-political directions of this state of agitation—student indiscipline.

PART III

STUDENTS' DISQUIETUDE IN ORISSA

CHAPTER V

BACKGROUND AND CAUSE OF STUDENTS' DISQUIETUDE IN ORISSA

	Paragraph		Paragraph
Introduction ..	1-5	CBI investigation freely talked about at public meetings and given wide publicity in the press	47-51
A. Version of the students and the public:	6-20	How the young student mind was affected by the alleged CBI report: extent of its publication	52-54
Majority students, middle class families	7 (a)	How the students got the unpublished CBI report: what it meant to them	55-60
Unfavourable social conditions ..	7 (b)	F. College Unions: elections on party lines: political affiliation	61-65
Atmosphere inside the educational institutions	7 (c)	G. Attempt at building political leadership from the student leaders	66-68
Unemployment ..	7 (d)	H. Administrative leniency: its effect on discipline	69-75
Corrupt administrative machinery	7 (e)	I. Disciplinary measures under the Education Code apparently not enforced in the educational institutions	76-79
Revengeful police ..	7 (f)	J. Want of adequate amenities in educational institutions	80-84
Immediate cause ..	7 (g)	K. Other factors: ..	85-107
Political background, alleged corrupt Orissa Ministers since 1961: alleged interference by the Chief Minister with educational institutions	8-9	Mushroom growth of schools and colleges: overcrowding	86-88
Atmosphere of distrust ..	10	Social and political factors ..	89-94
Alleged impact on education ..	11-12	Economic factors ..	95
Orissa Ministerial leadership hostile to the students	13-15	Psychological factor ..	96
General argument on behalf of the public and the students	16-20	Educational factors: defects in our educational system: their impact on student discipline	97-100
B. Version of the administration ..	21-24	Environmental factors ..	101-102
C. General background: past instances ..	25-36	Indifference of parents, guardians and teachers to student welfare	103
D. Political atmosphere: background and cause of students' disquietude	37-42	Low status of teachers: effect on student psychology	104-107
E. CBI report: Open talk in public: free references in the Press to the vet unpublished report: their effect on the public and the students:	43-60	L. Findings of the Commission ..	108
CBI investigation referred to in affidavits on both sides	44-46		

INTRODUCTION

Under the first term of the reference the Commission is required to enquire into and report on the background, cause, nature and extent of students' disquietude in the State during the period, commencing from the 26th September, 1964 and ending with the 24th November, 1964. This chapter deals with the background and cause while the next chapter deals with the nature and extent.

2. The Commission dealt with these aspects incidentally in the course of its dealing with each incident which took place at different places in Orissa. In this chapter the Commission proposes to deal with the general features of the background and cause of students' disquietude in the State during the period in question.

3. Students' disquietude manifested by the sporadic and organised acts of indiscipline and lawlessness in Orissa may be viewed from the broader perspective of the world and all-India background. Throughout the world growing numbers of young people are being gripped with alarming fervour of hooliganism, recklessness, disrespect for authority and moral anarchy. The age-limit of the group involved in such activities generally vary from the age of 14 to 22 - known as 'Teen-agers'. While in other countries many of the young persons of this age-group finish schooling and earn their living, in our country the vast majority of this age-group are still students in the High Schools and Universities. The phenomenon of youth indiscipline has been worrying social reformers, educationists, the police and the administrators all over the civilised world. Endeavours are being made to find causes for this. For several years since independence there have been student troubles all over the country, particularly in the cities where there are large congregations of students. One common feature of the students' agitation all over India is disregard for authority inside and outside the educational institutions. Most often trivial incidents and issues of no significance are origins of organised indiscipline on the part of students.

4. There have been series of acts of indiscipline and violence by students in different parts of Orissa prior to September 26, 1964. On an analysis of the past instances of student indiscipline it appears that all of them originated from petty quarrels and insignificant issues. What happened on September 26, 1964, the date of commencement of the period, with which the Commission is concerned, was a petty personal quarrel between a student and a radio shop dealer in the vicinity of the Ravenshaw College campus, Cuttack.

5. With regard to the background and cause of the students' disquietude different versions have been given on behalf of the students and public on the one hand and on behalf of the administration on the other from their respective points of view as discussed hereunder.

A. Version of the students and the public:

6. The two student leaders Mr. Prafulla Kumar Mohanty and Mr. Promode Chandra Samantarai in their respective affidavits indicated their points of view. The version of the public appears from the affidavit of Mr. Nisamani Khuntia, Secretary, Orissa Citizens' Committee.

7. According to the student leaders, the background and cause of students' disquietude in Orissa were in substance these:

- (a) *Majority students : middle class families:* A vast majority of the students coming from middle class families with average income below Rs. 150 a month hardly get two square meals a day and no tiffin throughout the day. A large number of students have themselves to earn for meeting the expenses of study. Because of rising prices of essential and basic requirements the students can hardly meet their needs with the result that they mostly suffer from lack of enthusiasm and find no hope for the future. It is under such economic conditions that the students have to prosecute their studies.
- (b) *Unfavourable social conditions:* According to them the picture is ghastly; it is a society full of hatred, suspicion, nepotism, corruption, black-marketing, black-money, utter inefficiency, acute indifference, indignity and humiliation.
- (c) *Atmosphere inside the educational Institutions:* It is painful and disappointing that there is no sanctimonial relationship between the teachers and the students. In the language of the student leader Mr. Prafulla Kumar Mohanty, General Secretary, All-Utkal Students' Federation in his affidavit, the picture of an educational institution is this:

“ In most of the institutions the number of teachers is merely an apology for a proper staff and educational facilities are a mere misnomer. Teaching is not an intellectual pursuit for a teacher nor studying an intellectual attainment for a student. The teachers do not teach for the purpose of imparting knowledge or elevating their moral standard but for the sole purpose of getting his remuneration at the end of the month nor a student expects a teacher to assist him in their development of his ethical standard.”

The students' regret is that the educational authorities have throughout been negligent in redressing the grievances of the students, particularly with regard to their accommodation both in the colleges and hostels, adequate provision for teaching, appointment of qualified teachers and other facilities for proper education.

- (d) *Unemployment*: The fear of unemployment after the educational career is over constantly haunts the student mind ; there is a general feeling of despondency in that to him the whole life after completion of his studies is a 'big gamble'.
- (e) *Corrupt administrative machinery* : The root cause is stated to be the present set-up of the administrative machinery which consists of people who are not only inefficient and unworthy but who are hopelessly corrupt and naked self-seekers. It is said that there were various acts of mal-administration by the authorities in dealing with students and their problems. There were instances of high Government dignitaries interfering with the day-to-day administration of educational institutions. Such instances shook the confidence of the students in the fairness of the administration and contributed to the undermining of the prestige of teachers. There were clear cases of favouritism on the part of the authorities concerned and there was serious disaffection among the students. Cases of interference in admission matters, in the matter of election of College Union officials also contributed to the student unrest.
- (f) *Revengeful police* : There is a feeling among the students that the police are revengeful. With particular reference to the Assembly incident it was expressed on behalf of the students that it was extremely unfortunate and that the entire student community expressed their disapproval of the happenings in the Legislative Assembly and expressed their unqualified regret for the same. The students' point is that even after expression of regret by the students, the police force having felt great humiliation and dishonour for them in the Assembly incident are said to have taken the vow to teach the students a lesson and show them what a police force means and what police repression is like. The students' further point is that this revengeful attitude of the police was the cause of the subsequent happenings in the State.
- (g) *Immediate cause* : Apart from the general causes mentioned above, the immediate cause of students' disquietude all over Orissa was the police excess

at the radio shop at Cuttack on September 26, 1964.

8. The public point of view about the background and cause of students' disquietude as stated by Mr. Nisamani Khuntia is presented thus.

9. *Political background : alleged corrupt Orissa Ministries since 1961, alleged interference by the Chief Minister with educational institutions :*

- (i) The Orissa Ministries in the State since 1961,— initially formed by Mr. Biju Patnaik as Chief Minister in 1961 and thereafter by Mr. Biren Mitra in the beginning of 1964 in place of Mr. Biju Patnaik — are said to have indulged in various corrupt activities which ultimately led to a CBI investigation and a decision by the Central Cabinet. The Ministers were very corrupt and they tried to utilise the officers in nefarious activities. In this respect even, the Education Department was not also spared. Some innocent students were also attempted to be utilised for their purposes.
- (ii) There was interference by the Ministers in the administration of various colleges including the Ravenshaw College, Cuttack; so much so that the Chief Minister Mr. Biren Mitra insisted illegally on the admission of a student who was not entitled to such admission in the Ravenshaw College on the plea that the student would be his candidate for the Presidentship of the College Union in the beginning of the current session of the college.
- (iii) These activities of the Chief Minister are said to have led to a peaceful student strike to undo the undue interference by the Chief Minister.

10. *Atmosphere of distrust :* There developed an atmosphere of distrust in the mind of the students against the administrative machinery of the State. It is said that it was natural for the students to feel that only peaceful strike could undo such wrongs committed and that normal appeals would not bear any fruit. In this context, it was also mentioned that the Police Department was not also spared in that to serve the ulterior ends of the ministry, the IG who was a man of reputation and experience, was replaced by a junior officer who is a close relation of the Chief Minister Mr. Biren Mitra.

11. *Alleged impact on education* : The education of the State is also said to have greatly suffered under the administration of the said ministries. It is said that in order to divert money, for the purpose of schemes where corrupt money could be made by the Ministers, a policy was declared not to open new schools, not to open new colleges in the State. Since the Ministers were out to encourage only such schemes which would make corrupt money, no attention was given to education and during this period there was no amelioration of the conditions of the people who were being educated and who were imparting education. The condition in which the students in the State lived in hostels was horrible; they had to house themselves in garages, in the verandahs of some friends and some of them had to move from place to place. A large body of students were living in conditions of starvation and half-fed; thus the food problem for the students also became very acute.

12. The oppression by the Government officials without caring for the fundamental rights was bound to make the students feel that unless they made peaceful protests, the Government machinery would not do anything to see that justice was done.

13. *Orissa ministerial leadership hostile to the students* : To add to all this, it is said that the ministerial leadership in Orissa was extremely hostile to the youth and the students, since youth in their hearts were hostile to the ministerial corruption in the State; the students felt that such corrupt Government would only lead the entire nation to ruin.

14. The ministerialists, wherever they found an occasion are said to have mishandled and misbehaved with the students; only a few days before the student trouble occurred, some supporters of the then Chief Minister Mr. Biren Mitra who were moving in a car along with Mr Biren Mitra found some students going with a loudspeaker, announcing a meeting to protest against the Ministerial corruption in the State and excessive rise in the price of consumers' goods; supporters of Mr. Biren Mitra are said to have come down from the car and some of them assaulted a student. The said assault on the student developed into a tense situation in Cuttack town and a body of about five thousand people marched to the residence of Mr. Biren Mitra who was then constrained to apologise to the people for the highhanded action; thereupon the people quietly dispersed.

15. Apart from these versions stated on affidavit, in course of hearing before the Commission it was suggested and submitted on behalf of the students and the public that the immediate main cause of the student movement which spread all over Orissa was the corrupt protection that the police gave to the radio shop dealer who is alleged to have assaulted the student of the Engineering School. In fact in course of cross-examination of the ADM Mr. S. N. Rath (C. W. 3), it was suggested to him that there was a feeling that police was really concealing the accused Umashankar Lal and the ADM replied that there might be a feeling like that as was presumed (C. W. 3 S. N. Rath Q. 148). It was also commented by reference to evidence that the Chief Minister himself was in contact with the ADM on the night of September 26, enquiring about the situation at Cuttack on the telephone (C. W. 3 S. N. Rath Q. 50). The suggestion was that it was not that the matter was entirely left with the police and the magistracy to deal with the situation; the Chief Minister himself was in touch; the public point of view is that the whole movement could have been avoided if the Chief Minister ordered the police to arrest Umashankar Lal and did not give him the protection he is alleged to have given to Umashankar Lal.

16. *General argument on behalf of the public and the students*: Apart from this immediate cause, it was submitted that there were deep-rooted causes of the movement in that the modern youth wanted to assert themselves; it was not merely indiscipline; the magnitude it assumed and the increasing strength with which the movement went on and took its course showed that it was not without some purpose; it was an expression of deep indignation against the administration due to frustration.

17. It was generally submitted that the background consisted of a corrupt atmosphere in the State, with grave allegations of corruption, nepotism and favouritism, openly made against the Ministers said to have been enquired into by the Central Government through the CBI; people lost confidence in the ministry and the entire Governmental machinery was viewed with suspicion for the dishonest activities of the Ministers, their stooges and the supporters. In that context it was also said that there was general deterioration of moral standards amongst the Ministers and officials; this resulted in inefficiency, corruption, nepotism and favouritism in the administration; as a consequence, for every little favour people

started looking to the Ministers for interference; even the officials were referring matters to the Ministers without taking independent action.

18. In course of argument it was also submitted that the reasons why the students reacted in the manner they did to the radio shop incident were these: failure of the police to take action on the complaint of the students on September 26; dishonest attempt by the police and the administrators to suppress the students' complaint and to protect the radio dealer from any action being taken; failure of the administrative machinery as a whole on that date in taking necessary action; ministerial interference in a petty matter relating to police investigation into a crime; revengeful attitude of the State authorities after the students had exposed their inaction.

19. The reason for the continuation of the movement after it started was the callous disregard of the State Government in not acceding to the just demands of the students for a judicial probe. In that context, it was also said that the inherent tendency among the students to revolt against injustice, to fight evil and to show a spirit of chivalry, courage and sacrifice was in a way responsible for their organising protest by demonstrations in various forms against Government's failure to take action against police excesses; the students' demonstrations generally against the ministry condemned their corrupt activities; these showed a spirit of vindication of the students' determination to condemn oppression and inefficient administration.

20. It was further submitted that there was spontaneous protest everywhere resulting in the spreading of the movement throughout the State; the entire State was involved—not a school or college was left unaffected; people actually participated in the demonstrations supporting the students and condemning the ministry; this assumed the shape of a mass movement against the corrupt administration; the upsurge had reminiscence of our national struggle for freedom and the combined actions of all parties in Kerala against the Communist regime—all as argued by the learned counsel for the students and the public.

B. Version of the administration :

21. As regards the background and causes of students' disquietude in Orissa, those directly in touch with the administration in different parts of the State including the State's DPI,

the Principals and Professors of different colleges, Revenue Divisional Commissioners, DIGs and SP, Special Branch, filed affidavits stating their views based on direct knowledge and experience of the situation in course of their work in their respective offices. They having been in direct touch with the students and the public generally were sufficiently competent to speak about what they stated in their affidavits.

22. It is not possible to deal with all these affidavits in details separately. The broad points they indicated about the background and causes of students' disquietude are in substance on these lines. Past instances of successive acts of student indiscipline both inside and outside the educational institutions throughout the State; the political atmosphere prevailing in the State immediately before the student movement; the political affiliation of students—elections to the College Unions fought on party lines; administrative leniency in dealing with student indiscipline and its impact thereon; attempt at building political leadership from among the student leaders; inadequate amenities and staff in educational institutions; lack of effective control of educational authorities; non-enforcement of disciplinary measures against students and other general factors

23. In course of argument it was submitted by the learned State Counsel that for some time prior to September 26, the atmosphere in Orissa was surcharged with allegations against particular Ministers which were being persistently, day in and day out, published in the local newspapers very prominently; there were also publications about the enquiry by the CBI and allegations on the floor of the Legislature and Parliament as published in the press; in this background the student leadership was all the more susceptible to political exploitation.

24. In this context, the learned counsel for the State also submitted that publication of allegations of corruption against individual Ministers and publications about the investigation by the CBI with regard to the matter, publication of proceedings of the Legislature and Parliament alleging corruption against Ministers had created an undesirable and unhealthy atmosphere in the State; the continuance of this atmosphere and the pendency of the allegations without any final decisions for a long time had created political uncertainty, bewilderment and confusion in the public mind; that in this atmosphere and background it is no wonder

at student leadership was exploited by the interested political parties and personalities for the purpose of overthrowing the then ministry; that in fact, at later stages of the student movement there were demands and slogans for resignation of the ministry. In support of his submissions the learned counsel for the State relied on an affidavit made by the then Revenue Divisional Commissioner, Central Division Mr. P. K. Chakravarti who stated this :

“ In this context, it may be mentioned that for quite sometime prior to 26-9-46 1964 allegations were being repeatedly published in newspapers against particular Ministers of the State. There was publication about the enquiry by Central Bureau of Investigation and allegations on the floor of the Legislature and Parliament.”

C. General background : past instances :

25. During the pre-independence days the leaders of the country made particular effort amongst students to resort to concerted action as a method of agitation against the foreign rule. Gradually it so happened that for any individual grievance a group of students used to begin taking 'recourse to mass action. After independence no attempt was made to check this sort of agitation and it continued to be used by the students on any flimsy ground which is embarrassing to the educational authorities. If there was any individual act of indiscipline it could not be remedied as a large number of students got interested in the matter.

26. At the same time the social order began changing with the impact of two great world wars, specially the second one. People without much or no education began to possess more money and could enjoy a more comfortable life. Their children could afford to spend more and thus a contempt for the educated but poor people gradually grew up. At the same time among such rich people a craze for degree with least amount of effort brought their children to the educational institutions.

27 Side by side there was the glamour of political career. It became a fun for students without much interest in education to flout the poorly paid teachers, disobey them openly and buy them off as their private tutors to help in passing the examinations. Some of such students took up leadership in creating a general cause of a trifling individual matter and set the agitation to build up their future career. Political life in a country like ours has a great advantage in getting

things done according to one's desire. The students therefore got more attracted in that direction and got themselves trained up in starting agitation in schools and colleges.

28. After independence there has been a rapid expansion in the establishment of educational institutions. Most of these institutions lack qualified staff, library facilities, proper equipment and other amenities. In an atmosphere of this nature the teachers tried to produce best results in order to gain Government grant and thus success in examination is achieved by mal-practices. In such an institution there is leniency in every respect. When the students of such an institution come to a properly managed institution a sort of resentment is generated in them when they find various sorts of restrictions in their actions. A spirit of revolt thus creeps in them. Moreover, due to the establishment of a large number of educational institutions students who are not suitable for higher education are admitted to such institutions. Instead of getting interested in acquiring knowledge they create all sorts of disturbances.

29. The College Unions which were established to give necessary training to students in managing meetings and organising cultural affairs under the guidance of teachers, have degenerated to political forum of different parties. Candidates having affiliation to different political parties are set up as candidates for the various offices of the Union. It is said that political parties finance them in their campaign. Thus political parties guide the actions of the College Unions.

30. Another unfortunate phenomenon is that students gain direct access to the Ministers ignoring the college authorities. A sense of superiority is developed in them and they do not care very much for the discipline of the college.

31. With this background for the last several years, the educational institutions have been working. Somehow or other a feeling has been created among the students that they are above law and order. Certain incidents which happened in recent years lend support to this view. For instance, as stated by the Principal of the Ravenshaw College, some students successfully forced a local hotel to close for a pretty long time as the hotel proprietor enhanced the price of certain food articles; it is said that the hotel proprietor could not get much help and out of fear of student agitation did not probably go to the police. It is also stated that the student who organised this became a President of the College Union.

32. As further evidence of such attitude of the students, as stated by the then Principal, Ravenshaw College Dr. B. S. mantarai (at present State's DPI), he gave other instances :

“ Two students went to visit the Kaliaboda religious place . There some trouble happened between the ascetics and the two boys but a strike was organised by the Ravenshaw College students who went to Bhubaneswar and entered Assembly area and created troubles. No action was taken. On September 2, 1964 no action was taken for the incident in the Orissa Legislative Assembly. Sporadic acts of indiscipline in Sambalpur, Burla and Rairangpur I understand went without any disciplinary action. These events emboldened the student community and they thought that they were above law and order.”

33. There have been similar occasions when the students as a body got themselves involved in incidents and disputes concerning individual students. The general trend appears to be that when a student gets involved in a quarrel or dispute, it ceases to be an individual matter and students act as an organised body or unit, as if in a Trade Union, creating difficult problems of law and order ; intervention and even the presence of the police and the magistracy are resented by the students. This undoubtedly is an unhealthy trend.

34. It is clear that the students were not satisfied with the old order of things and wanted a change. They were somewhat disillusioned as a result of the events that are taking place among the older generation of the modern society. The students by experience came to realise that agitation succeeds ; they were somewhat encouraged by politicians who provided them with the lead.

35. It is also common knowledge that in the colleges in the cities there has been over-dominance of students from the rural areas ; they do not have much of civic sense and cultural background which could serve as a check to emotional outbursts ; most students are conscious of their rights but have little knowledge of their obligations and duties.

36. It is also evident that for years prior to the movement the teachers ceased to have any control nor did they command any respect of their students. The teachers do not appear to have that sense of devotion in them ; they take it as a job rather than as a mission ; sense of values has changed ; old standards have been discarded and new ideals have not yet taken root.

D. Political atmosphere : background and cause of students' disquietude:

37. For the past few years student indiscipline has been on the increase in Orissa. The prevailing indiscipline among the students was primarily in the form of high-handedness, scant respect for law and authority. The students exhibited this trend of indiscipline by flagrant violation of law and order during the widespread student agitation in the State.

38. The political tempo prevailing in the State before the student movement in 1964 was apparent from the activities of the political parties. The then SSP is said to have observed "Corrupt Ministry Quit" week in the State from August 9 to 15, 1964. It was reported that in course of observance of this week the SSP leaders held public meetings in the different districts in Orissa—Puri, Cuttack, Balasore, Ganjam, Mayurbhanj, Dhenkanal, Keonjhar and Kalahandi—and levelled various charges of alleged corruption and mal-administration against the Congress Ministry in the State. In this connection some students—at least at Puri—participated in the observance of this week organised by the SSP.

39. Thereafter from August 24 to 28, 1964 the said SSP agitation was soon followed by the CPI sponsored agitations over food scarcity and price rise at several places in the State. In about the same time during "Corrupt Ministry Quit" week of the SSP, a memorandum containing allegations of corruption and misuse of power against the Congress Ministry was submitted by the non-Communist Opposition Parties to the President of India demanding institution of a Commission to enquire into the same.

40. During the first two weeks of September 1964, the SSP and CPI held a number of public meetings in the districts of Puri and Ganjam and highlighted the current issues such as high prices of foodstuff, food scarcity, corruption in the administration, etc. In the public meetings at Puri on September 9, 1964 some local students are said to have participated and spoken on corruption in the ministry, police zoolum and other matters.

41. On September 25, just the day before the radio shop incident at Cuttack, a "Bharat Bandh" agitation was launched in the State jointly by the CPI and the SSP with the

moral support of the Swatantra Party and the Janasangha. In connection with this agitation, both the SSP and the CPI gave an open call to the students to take active part in their demonstrations, meetings, etc.; the CPI circulated a pamphlet and the Secretary of the State SSP issued a circular letter and a pamphlet. In course of the observance of "Bharat Bundh" agitation on September 25, groups of students are said to have abstained from their classes and participated in processions and public meetings at a number of places in the State.

42. Thus the political atmosphere prevailing during the months August and September, that is to say on the eve of the student agitation, was surcharged with propaganda against the then Congress Ministry. The political parties referred to above are said to have been wielding considerable influence among the students in various College Unions in the State and the SSP is said to have exploited the student agitation no sooner than it started on September 26/27, 1964.

**E. CBI report: open talk in public : free references
in the Press to the yet unpublished report:
their effect on the public and the students :**

43. It appears that the interested political parties made a capital out of the yet unpublished CBI report. In these proceedings also there is ample reference to it both in affidavits and in evidence.

44. *CBI investigation referred to in affidavits on both sides:* Mr. Nisamani Khuntia, Secretary, Orissa Citizens, Committee, made reference to CBI investigation in his affidavit thus:

" 2. That the aforesaid ministries (referring to ministries of Mr. Biju Patnaik and Mr. Biren Mitra) indulged in various corrupt activities which ultimately led to a CBI investigation and a decision by the Central Cabinet. The Ministers were very corrupt and in their corrupt activities they tried to utilise the officers in their nefarious activities.... "

" 32.... The mal-treatment by the police and the attempt for mass killing of the students was the result of the gross corruption of ministry leading to a CBI investigation which caused frustration in them and that has reflected in their barbaric instinct to oppress the young so as to kill the future of the country or in the alternative to persuade the youth to support their corruption."

It is thus clear that the political move to overthrow the then ministry and the student movement were both against the

ministry; the target of attack of both the movements—which were simultaneous—was the ministry in office. However, the quotations from the affidavit speak for themselves.

45. In the affidavits filed on behalf of the administration there were also references to the investigation by the CBI. What the Revenue Divisional Commissioner Mr. P. K. Chakravarti in his affidavit said has been quoted in paragraph 24 of this chapter. There is also similar reference in the affidavit of the DIG Mr. B. K. Roy, who in paragraph 14 stated this:

“ 14.Continued publication of allegations of corruption and mal-administration in the newspapers against the present ministry and reports about Central Bureau of Investigation probing into some corrupt practices of the ministers had to a certain extent its impact on the juvenile minds a section of which was made to believe by politicians that by launching an agitation against the present ministry they would be serving the larger interests of the society.”

46. It is, therefore, the common case both on the side of the public and the administration that the CBI investigation into the alleged corrupt practices of the Ministers—was very much in the picture long prior to and during the students' agitation.

47. *CBI investigation freely talked about at public meetings and given wide publicity in the press*: Apart from the affidavits, with references to CBI investigation it also appears from the reports of the proceedings of the public meetings held on different dates at different places—all filed in this proceeding—that leaders of the political parties openly spoke about the investigation by the CBI.

48. At a public meeting held at Gopabandhu Park Cuttack town, on October 29, one of the speakers, a prominent public leader, in course of the speech stated that even though the Delhi Police Establishment seized some files from the Secretariat regarding the allegations of corruption against them, the Ministers were shamelessly clinging to power.

49. On October 31, 1964 at a public meeting said to have been sponsored by the ITUC at Chandanpada, Cuttack, in connection with the current students' agitation, a public leader, while referring to the alleged corruption charges against the Ministers, stated to the effect that no concerned Ministers against whom the Central CID had

submitted report would resign within a week or so; that if judicial enquiry was instituted, many high officials would be entangled.

50. At a public meeting held on November 6, 1964 at Chandanpada, Cuttack, said to have been sponsored by the SSP, a leader of that party in course of his speech, while citing the instances of Pratapsingh Kairon and Buxi Gollam Mahammad, who were removed from power, said that the CBI submitted their findings on their enquiry against the Orissa Chief Minister Mr. Biren Mitra and Mr. Biju Patnaik in which they were found guilty for corruption and mal-practice in the administration. At the same meeting another prominent leader of the SSP congratulated the officers of the CBI for conducting their investigation properly into the charges of corruption against the Orissa Ministers and Mr. Biju Patnaik. The speaker openly made reference to other details of the CBI investigation at the public meeting.

51. On November 18, 1964 at a public meeting a Jagatpur—on the other side of the Mahanadi near Cuttack town—a public leader while speaking at the meeting denounced the policy of the Congress High Command in delaying the decision over the enquiry of corruption against the Orissa Ministry and also about the role of Mr. Biju Patnaik in the matter of compromise with the students; the speaker also said that the Orissa Ministry would soon change, strongly criticised the assault and lathi charge by the police in the college hostels, in public meetings, imposition of 144 orders and expressed surprise how the Government at the Centre was silent over the matter.

52. *How the young student mind was affected by the alleged CBI report : extent of its publication :* In this context the evidence is that the elderly section of the student community conscious of their political rights as citizens of the State are said to have been affected by the CBI report.

53 The evidence of P. W. 30 Mr. Radha Ballav Misra, an Advocate of Bargarh, is to the effect that the CBI report which dealt with the acts of some prominent persons in power against whom some memoranda had been presented to the President by some leading personalities of the State, naturally had some importance for at least those sections of the students who were to elect the Government in the

General Elections. Such students had the right of franchise; naturally they took interest in what the Government in power were doing, how they were conducting the affairs of the Government; it was not that the entire mass of students were capable of understanding the implications of the CBI report; at least in higher classes in colleges and definitely the post-graduate students of our Universities would be normally able to form broad ideas about the CBI report. As regards the extent to which the CBI report got currency, the witness said that it was fairly published in the daily Oriya newspapers sometime immediately prior to October 1964—maybe June or July 1964. In any event, it was before the student movement started in Orissa. Apart from the publication in the newspapers this report was published in a book form which got currency. He further said that he had seen a book containing the CBI report. He had not read that particular book although he read the CBI report as it was published in different newspapers (P. W. 30 Radha Ballav Misra, Qq. 177 to 186).

54. The case of the administration, as suggested by the learned State Counsel in cross-examination, was that by the date of the commencement of the student movement—September 26/27, 1964—or even as late as October 28/29, 1964 no CBI report in the form of a book or otherwise had seen the light of the day. This suggestion, however, was not admitted by Mr. Radha Ballav Misra. The question put to him and the answer thereto are these :

“Q. 199 I put it to you that by the date of commencement of the student movement, that is 26th-27th September 1964 or by the dates of 28th-29th October 1964, no CBI report in the form of a book or otherwise had seen the light of the day.

A. It might not have seen the light of the day in the form of a book. Whether actually it was published is a matter of great political controversy..... matters which were embodied in the CBI report were being publicised for months together in newspapers and extracts from the CBI report were available to the ordinary people through newspapers and that must be before the last students' agitation.”

This piece of evidence is a clear proof that the alleged unauthorised CBI report or the contents thereof were freely distributed among the public.

55. *How the students got the unpublished CBI report : what it meant to them :* The way the alleged CBI report got into the hands of the students and what effect it had on

their mind appears from the evidence of the two student leaders P. W. 22 Mr. Murarilal Seth of Sambalpur and P. W. 27 Mr. Madhusudan Patnaik of Bargarh.

56. The evidence of P. W. 22 Mr. Murarilal Seth who was the Secretary of the Gangadhar Meher College Union was that the students of his college came to know from the CBI report and the publications in connection therewith in the newspapers that the Government was corrupt (Q. 378).

57. P. W. 27 Mr. Madhusudan Patnaik who was the Convener, Students' Action Committee, Bargarh, while explaining what he meant by his statement in paragraph 10 of his affidavit "the country may be governed by the rule of law and not by the whimsical words of selfish politicians" stated that in the present administration the leaders that are there, for example Mr. Biju Patnaik, Mr. Pabitra Mohan Pradhan and others, are fighting with each other on trifling things; that in the Government (Sarkar) also there are two factions.

58. Mr. Madhusudan Patnaik also said that the Government is corrupt as evident from the CBI report. The student leader further said that he read the report in English in parts in a book (within 60 to 70 pages) published for sale about 3 to 4 months prior to the students' agitation. When asked as to what impression did he form from the CBI report which he read, he said that the gist of the report was that the Government of Mr. Biju Patnaik is involved in various forms of "injustice and corruption". While further questioned about the details of "injustice and corruption" referred to by him, he gave details by reference to Kalinga Paper Mill, Chowduar OTM, Mines and others; that he (Mr. Biju Patnaik) had taken leases in the name of his wife and in some other cases utilised the administrative machinery. Then the witness was questioned about further details of "injustice and corruption" which he mentioned. The witness answered that when Mr. Biju Patnaik was the Chief Minister he had taken mining lease in the name of his wife; that he did not remember anything else. Evidently the impression that this young man formed about the former Congress Chief Minister of the State was all based on the alleged unpublished CBI report that he came across and read.

59. As regards the source from which P. W. 27 Mr. Madhusudan Patnaik got the alleged report was that the SSP leader came to Sambalpur and gave the book. The

witness then added that he (SSP leader) did not give the book but the book was being sold ; one of his friends purchased it. The young man's knowledge of what the CBI stands for is that he believed it to be an organisation set up to enquire if there were allegations of misconduct or corruption against highly placed persons like Ministers and politicians.

60. Evidently the students claimed to have seen the alleged unauthorised CBI report not yet published. In fact, P. W 27 Mr. Madhusudan Patnaik denied the suggestion that he had not seen the alleged CBI report as will appear from his answer to Q. 222 in cross-examination which was this :

“ Q. 222 I put it to you that by the date the students' agitation started on 26th and 27th September, 1964 at Cuttack there was no CBI report. You have not seen any authorised or unauthorised version of the CBI report by that date referred to by you.

A. Yes I have seen.”

It is not understandable how the alleged CBI report not yet officially published could reach the hands of the students and the public. However, the political atmosphere created by the alleged unauthorised use of the yet unpublished CBI report was one of the main causes and formed a background off the Orissa students' disquietude in September-November 1964.

F. College Unions : elections on party lines : political affiliation :

61. A glamour for politics, political life and prominence is there in the minds of the students who usually take prominent role in the College elections and organisations. It is said that members of the political parties keep touch with the leading students with the object of having support from a political and partisan point of view from the student community.

62. Usually a student is not amenable to dictation from any quarters but a student is very much amenable and susceptible to subtle influence. A student leader may be thinking that in a particular matter he is operating on his own and is vindicating the cause of the students but he might be acting as a mere agent of some scheming and unscrupulous persons. Some students develop avowed and active sympathy for and affiliate themselves with particular political parties and personalities; such students are utilised

for fulfilment of political purposes of the persons to whom they are attached. This is an important element in the life of the students which contributes to organised student action involving indiscipline and some times acts of violence.

63. The entire student community is now divided into groups having leanings towards different political parties in the country. These groups fight among themselves exactly in the same manner the political parties do. Election to the College Union is fought on party lines. In College Union election, different groups are actively aided with funds and advice by the respective parties. This is quite a dangerous source of student indiscipline. There is a strong feeling among the educationists—with which the Commission however does not agree—that College Union should be abolished now.

64. Throughout the strike period close contact was kept with the local political party leaders and guardians who were from time to time apprised of developments ; their advice and co-operation were sought to bring about an improvement in the situation.

65. Student indiscipline in the country has taken an alarming shape during the last few years and has become a cause of great anxiety to teachers, parents, administrators and our leaders. One of the main causes of such indiscipline is that College Unions function like a Trade Union creating a feeling of friction between the teachers and the taught. Elections to the College Unions are being run like political elections. These elections cause dissensions even among students. There is often outside support in such elections. It is said that student organisations in Orissa have their party or ideological leanings to or affiliations with the political parties.

G. Attempt at building political leadership from the student leaders :

66. It is a significant phenomenon in India including Orissa that some of the political leaders of the present day reached their present leadership through student movements. From the time of organised movement for independence, initially the leaders got their ability tested in organising the student movement. It was from this that the student community came to be organised politically and such an organisation had indeed a great importance in our struggle for freedom from foreign rule. Unfortunately even after independence the student organisation as a political unit is still continuing

although it has outlived its utility which it had before independence. The student community is conscious of their importance in the political life of the country. That apart, there is a section of the student community who are anxious to build political career through this process. After all, leadership will have to emerge from educated masses equipped with purposeful education through disciplined academic life. But if instead political career is sought to be built up through a process of organised resistance to discipline in educational institutions, the leadership may eventually prove to be poor in quality and attainment.

67. Nevertheless, it is now a fact that attempt at building political leadership among the leaders of the student community has been a factor responsible for occasional student movement throughout the country. In an underdeveloped economy, political career provides great thrill in social life and secures a high position from the point of view of social value. It is from this attitude that young men and women with flare for art, literature, science, drawing, painting, dancing and other faculties consider pursuits in such directions as of inferior social significance and turn to build up political career. This does not operate in Western countries, where excellence in any particular direction—art, literature, science and any other sphere—receives almost the same social recognition as a political leader. So in a society with such relative values, very often we find legitimate academic pursuits are sacrificed in preference to pursuits for political career which opens out attractive prospects and positions in life.

68. A few students who probably have some political ambitions and who by way of inhibiting the social and political influences which operated on them outside the institutions, develop an outlook on life—considered by some educationists as distorted—which finds an expression in attempting to come into prominence and to dominate the average student community; they generally contest for different office bearers of College Union, Hostel Union, and try to dominate over the majority of the student mass by virtue of their success in election. The development of educational institutions through cultural pursuits is never uppermost in their mind. There is however a redeeming feature that the saner sections of the student community have no aptitude for politics, not for demonstrations, processions and agitations for redress of individual wrongs; they however do not matter much in the life of the student community.

II. Administrative leniency : its effect on discipline :

69. There is a general view among the administrators of the State, which is also shared by some of the educationists, that the administration has been too conciliatory and soft in dealing with the students indulging in acts of lawlessness in different parts of Orissa ; this attitude of the administration is not properly appreciated by the students ; it is misconstrued as weakness of the administration. It is said that until September 26 (radio shop incident) students were more or less under the impression that whatever wrong they might commit they would not be dealt with like other citizens of the State. It was because of this attitude of leniency, tolerance and conciliation on the part of the administration that the students lost the fear for law and regard for constituted authority including the heads of their own educational institutions.

70. The attention of the Commission was drawn to several instances of student misbehaviour at different places in the State as only illustrative of the student indiscipline long prior to the student disquietude since September 1964. There was also citation of numerous instances of gross indiscipline within the campus over such issues as admissions, examinations, promotions and also about sporadic cases of organised lawlessness on the part of the students on slightest pretext. Students are under the impression that whatever they do they are not amenable to discipline or rule of law. It is said by some of the administrators on affidavit that the impression gained ground due to the fact that a number of criminal cases instituted against the students by the police for commission of offences under the ordinary law of the land prior to and unconnected with the agitation in issue in 1964 were not pursued to their logical conclusion as a result of which students developed disregard for law and authority and even on occasions are said to have thrown challenge at the police that they are not subject to the process of law.

71. The latest manifestation of this psychology was the student disquietude all over Orissa resulting in violation of law on mass scale, arson, assault, destruction of property, and attempt at disrupting the life of the community and paralysing the administrative machinery.

72. In this context it is suggested that unless this tendency in our youth towards lawlessness and disregard for law and authority is curbed, a generation will grow without moorings; so the attitude of undue softness, sympathy and leniency has

to be given up ; the administration has to be firm, otherwise it will be doing injustice to the community and to the future of the country.

73. The Assembly incident on September 2, 1964 amply demonstrated the psychology of the students. They do not appear to have appreciated the friendly gesture of the Chief Minister in not allowing the police to deal with the students by use of force. The leniency and forbearance which the administration showed during the incident emboldened the student community in thinking that they could do whatever they liked, so much so that they could even go to the extent of attacking the State's Parliament with impunity. Presumably the students mistook this attitude of the authorities as weakness of the administration ; this attitude in any section of the community must not be allowed to grow in the interest of the security of the State.

74. The administrative inaction, however well-intentioned, strengthened the belief of the students that normal process of law will not be applied against them. This undoubtedly had its effect on students all over Orissa and made them conscious of their destructive potentialities.

75. Thus prior to the radio shop incident on September 26 the students were dealt with very leniently and they almost always got away with whatever they did. In this background of administrative leniency throughout, the student resented the very presence of the police at the radio shop when the police and the magistracy arrived there for investigation. Until the radio shop incident the students were not accustomed to being dealt like any other citizen in the State according to law.

I. Disciplinary measures under the Education Code apparently not enforced in the educational institutions :

76. Another important factor which is responsible for the growing indiscipline among the students is that effective disciplinary control over the students in spite of the stringent provisions in the Orissa Education Code against indisciplined acts is not being enforced. This is perhaps due to the fact that the educational authorities are afraid of punishing delinquent students as such actions might ultimately result in strike, picketing and other undesirable demonstration. Unfortunately indiscipline and lack of morals have assumed such proportion that teachers are sometimes assaulted if they

enforce discipline. So, to be on the safe side, the authorities in charge of maintenance of discipline in the educational institutions overlook whatever the students do outside the campus and compromise what they do inside. The result is that unlawful and objectionable activities are very often planned inside the educational institutions including the hostels. Thus, unseemly behaviour of the students outside the campus has become a frequent occurrence with very little check on it.

77. That apart, the heads of educational institutions are afraid of enforcing discipline as they do not have a free hand to proceed as they like; disciplinary action against an individual student is often made a big issue resulting in strike, demonstration and at times in personal violence on the educational authorities. So, the heads of institutions do not hazard the risk of enforcing discipline among the students.

78. When the students violate the law outside the campus, the normal repressive measures of law enforcement are not taken perhaps out of indulgent attitude. Ultimately no steps are taken which could make them respectful towards the law. In the result, society is left with a vast array of young persons full of energy and exuberance; the students do not hesitate to do anything when their passions are roused; they do not care for the consequences of their activities because at no point of their life they were ever subjected to restraint or felt the consequence of violation of the law of the land.

79. It is unfortunate that the College Unions or some of their office bearers or some body of students collectively by way of threat or strike or by any other form of demonstration interfere with the disciplinary action taken by the educational authorities against students for misconduct. To a certain extent such situations are provided for in the Orissa Education Code justifying expulsion or rustication as the case may be.

J. Want of adequate amenities in educational institutions :

80. Most of the educational institutions are very poor in the different amenities provided to the students. For example, there is no good library with sitting accommodation for at least 50 per cent of the total strength of students and teachers; no students' common rooms to accommodate during any one period at least 50 per cent of the total number of students; no good playgrounds, gymnasiums and other facilities for games and sports. The Commission regrets that none of the five tennis courts in the Ravenshaw College are

attended; these tennis courts are said to have been laid in 1928; games used to be played in all the courts and they used to be so popular that a number of students had to wait to get their turn.

81. In progressive countries like USA, UK and Japan ample recreational and creative opportunities are provided in educational institutions for effective canalisation of the developmental needs and energies of young adolescents; restaurants, cafeterias, reading halls, gymnasiums, clubs and other such facilities are regular features of the educational institutions of those countries as a result of which the students have a very pleasant and enjoyable time in schools and colleges.

82. It is almost a common feature of our educational institutions that opportunities of such nature are very scanty in our schools and colleges. The hours in schools and colleges are long, monotonous and drab, consisting of dull and stereotyped lectures and routine programmes with no pleasant diversion; as a result of this our students welcome a situation such as a strike as it affords them a little excitement and thrill.

83. Inadequate library and reading room facilities, lack of recreational facilities and absence of a co-ordinated system of student activities, leave the students with a large amount of spare time during which they have nothing to do. In the absence of healthy avenues of enjoyment in school and college campuses, students invariably frequent cinema halls and take to the reading of sexy cheap romances and detective fictions. This habit of visiting sensuous pictures as well as reading of cheap pornographic literature has greatly affected the personality and behaviour pattern of our students. It is also said that colleges have sprung up without adequate provision of facilities, especially in science teaching.

84. Thus it is throughout regretted in the several affidavits filed by the educationists of the State including the State's DPI, Principals and Professors of colleges to the effect that as a result of want of basic amenities in the educational institutions there has grown among the students a sense of frustration and resentment; a large number of colleges have grown all over the country, some of which cannot provide the elementary requirements of the student community and which are ill-staffed and ill-managed, with inadequate amenities to students to utilise their unlimited energies in constructive channels.

K. Other factors :

85. The students' disquietude which occurred in Orissa was not an isolated event. In the past there were also student disturbances but the last agitation was different from the others because of its magnitude and duration. The underlying causes of students' disquietude are many— social, psychological, economic, political, educational and environmental.

86. *Mushroom growth of schools and colleges : overcrowding* : The manner and extent of educational expansion since the attainment of independence have also created conditions for student unrest ; schools and colleges have been coming up in large numbers ; this process of quantitative expansion has diluted the quality.

87. The overcrowding in the mushroom schools and colleges grew up with inadequate staff, library, hostel and common-room facilities as also facilities for games, sports and other healthy outdoor activities. The colleges were filled up with students drawn from communities who lacked the necessary tradition requisite for higher intellectual pursuits.

88. With the overcrowding, as the teacher-student ratio became less and less, the standard of instruction imparted began to fall and this resulted in a change in the sense of values. The contact with teachers which is vital for the students became less and less and naturally there was a sense of isolation and boredom among students. This sense of isolation and frustration among students also resulted in a feeling of lack of security. That is how agitation for minor causes and even demonstration of mob violence began.

89. *Social and political factors* : Political freedom and economic development produced important social changes in the country. They produced a greater sense of freedom and opened wider economic opportunities. They also brought in a rising spiral of expectations and consequently a more acute sense of frustration in case of their non-fulfilment. All these had their influence on the student community. Moreover, the relaxation of traditional control of the parents over their children and acceptance of democratic values gave the students more freedom without the necessary self-discipline and emotional maturity.

90. After attainment of independence, the students have been infatuated with the sense of equality and freedom. On the basis of the fundamental rights embodied in the Constitution, they claim equality before law, freedom of thought,

speech, expression and association. Due to their adolescence, they are not able to temper this sense of freedom with the sense of restraint and responsibility.

91. Instead of using their College Unions for cultural and academic purposes, they try to take advantage of the description of the College Union as "the sole tribune of the students' opinion inside the college" in order to air their grievances anywhere and everywhere.

92. The formation of the youth wings by political parties has led the students into party affiliations. Men who are at the helm of affairs in the Government and other leaders naturally have sympathy for the students as representing the future generation of the country but the students take advantage of this and voice their grievances before them with a view to seeking redress from them directly.

93. Provision of wider educational facilities, has opened the door of higher education for children of all classes of people with different economic, social and cultural background. But correspondingly there have been no institutional arrangements in educational establishments for assimilation of these student groups and providing them with a common measure of social and cultural values.

94. The attitude towards the role of education in society has also changed. When political and economic opportunities were few, the ideal before the student was scholarship. With greater political and economic opportunities, and with comparatively greater scope for material success in business and other fields, the academic interest has become secondary.

95. *Economic factors* : Economic stress and strain on account of rapid economic development have also been contributory factors. The worries and anxieties of parents are shared by grown-up children and their resentments and bitterness are transmitted to them. Financial assistance to students has increased substantially in recent years and to some extent has been a mitigating factor. But it is far from adequate. According to an estimate, while 75 per cent of the American students receive financial aid, in India it is only 10 per cent.

96. *Psychological factor* : Among the psychological factors which have been responsible for the students' disquietude, one factor is that the average age of entrance to Universities is lower in our Universities than in foreign Universities. This means that they have not the emotional maturity and

ability to meet problems that their counterparts in the West have. When a student leaves the closely knit and personal world of the school and the village and comes to the big and impersonal world of the college and the city, he is bewildered. There he faces the baffling problem of finding residential accommodation in the overcrowded towns. The majority of the students are forced to live in unsuitable and overcrowded lodgings with deplorable living conditions. The main body of them lose contact with the main stream of college life and are unable to utilise whatever facilities are available in the college. The advice and guidance of the teachers and more responsible people are not also available to them. They also become exposed to influences which may not be always for their good. Under the circumstances, they feel isolated and frustrated.

97. *Educational factors : defects in our educational system : their impact on student discipline* : Some of the defects of our present educational system also make the situation worse. The system of admission of students to colleges on the basis of their performance in a public examination rather than on their ability and aptitude for the particular courses is one of them. This results in lack of interest on the part of the students and large scale failures. The system of having examinations at long intervals is another factor. Apart from inadequate library and other amenities already mentioned, there is no integrated system of student welfare services to meet the various needs of the students. Besides, there is among the students a feeling of anxiety and insecurity about the future as there is no relation between the academic training and the needs of the society.

98. There is a section among the educationists who take the view that Pre-University and 3-Year Degree Courses with examination at the end of each year resulted in the lack of continuity and further undermined the sense of tradition which is essential for healthy academic life and higher intellectual pursuit.

99. The lack of adequate and suitable staff has been another important factor in the situation. It is said that there have been colleges without proper financial stability in which lecturers have gone without pay for months together. In such a case teaching must deteriorate. It is also said that in some other colleges there has been internal dissension among the staff resulting, for instance, in the resignation of, say more than 12 members.

100. As most of the colleges today are without the adequate number of qualified personnel and lack of proper amenities, the students fail to receive proper guidance and to breathe the right kind of atmosphere inside the colleges. The need for producing a large number of qualified men—that is, persons with degrees—has led unconsciously to the lowering of examination standards; and the student is almost confident of passing the examination without preparing for it for the whole year. In such a situation whenever a student becomes involved in any act of indiscipline and action is taken against him, he resents it, appeals to the College Union office-bearers as his saviours; and these leaders use him as a symbol of victimisation. This leads to group action on the part of the students. Thus the situation gathers volume like a snowball and escalates into a movement. The students and the forces of law and order come into conflict resulting in many undesirable consequences. The same process also operates when a student gets involved in any situation even outside the college.

101. *Environmental factor* : Every child is a product of the environment in which he is brought up; society, Government and ourselves have failed to give the correct environment to our students and as such we are facing a problem of national magnitude now; we discuss about it, we hold seminars, we feel anxious but as yet we have not been able to lay out any integrated programme to solve this problem. Our students are not getting the education in the real sense of the term nor is there proper atmosphere nor proper psychology which need to be created.

102. In this state of affairs a sense of frustration, boredom, disregard for society and contempt for law and authority has developed. This aspect is also to be understood in the context of poverty, lack of proper home and residential facilities for a large number of students.

103. *Indifference of parents, guardians and teachers to student welfare* : The parents and guardians mostly belonging to middle class society with their heavy pre-occupations for earning livelihood normally do not and cannot devote as much time as they should for their children probably due to heavy stresses and strains of modern life. In fact in most cases it is found that after getting in the children in the schools and colleges they do not take care about the progress of

their studies. The general attitude is that it is the duty of the teachers to look after their studies and general welfare. There is hardly any scope for contact between the guardians and teachers in our educational and social set-up. The teacher thinks that his duty is confined mainly to the study curriculae and not beyond it. Thus having had no guidance from either the parents or guardians at home or from the teachers in the schools and colleges the students fall into the company of the senior students or their classmates just by way of drifting with no moorings as a result of which the students at that tender age are led astray for no fault of their own. The general callousness of the parents and guardians at home and lack of interest of the teacher in his job are responsible for ultimate student indiscipline which is so much condemned.

104. *Low status of teachers : effect on student psychology :* The teachers in the schools and colleges get very low pay compared to those in other avocations—administrative, engineering, medicine, law, agriculture, veterinary and businessmen in general. The low pay that the teachers get does not attract in the educational field the best talents who are most needed for nation-building.

105 It is unfortunate that in this age while there is so much emphasis on the machine in the shape of Plans and Projects, the human factor which is ultimately to run this machine is being neglected and ignored. Nothing is more important than character-building of the country's youth. It is thus the importance of the teachers arises. In the present days the teachers have to strive hard even to make their both ends meet because of their low income.

106. In this country the teachers have no status in society which they deserve even over the head of all others; it is the teacher who prepares the youth ultimately to be fit for all avocations of life: he builds the nation. A teacher is looked down by the majority of the people in society: he has no prestige nor has he any voice in any matter.

107 The effect of such low status of the teachers on student psychology is that the teacher does not command the respect of even the student whom he is to teach. In such a surrounding, the student imbibes a spirit of disobedience and even defiance towards his teachers.

L. Findings of the Commission :

108. As already indicated in the preceding paragraphs, the findings of the Commission are briefly summarised as follows :

(i) Re : General background : past instances :

- (a) that during the pre-independence days the leaders of the country made particular effort amongst students to resort to concerted action as a method of agitation against the foreign rule; gradually it so happened that for any individual grievance a group of students began taking recourse to mass action;
- (b) that after independence no attempt was made to check this sort of agitation and it continued to be used by the students on any flimsy ground which is embarrassing to the educational authorities; if there was any individual act of indiscipline it could not be remedied as a large number of students got interested in the matter;
- (c) that at the same time the social order began changing ; people without much or no education began to possess more money and could enjoy a more comfortable life; their children could afford to spend more and thus a contempt for the educated but poor people gradually grew up; at the same time among such rich people a craze for degree with the least amount of effort brought their children to the educational institutions;
- (d) that side by side there was the glamour of political career; it became a fun for students without much interest in education to flout the poorly paid teachers, disobey them openly and buy them off as their private tutors to help in passing the examinations;
- (e) that some of such students took up leadership in creating a general cause of a trifling individual matter and set the agitation to build up their future career;
- (f) that political life in a country like ours has a great advantage in getting things done according to one's desire; the students therefore got more

attracted in that direction and got themselves trained up in starting agitation in schools and colleges;

- (g) that since independence there has been a rapid expansion in the establishment of educational institutions; most of these institutions lack qualified staff, library facilities, proper equipment and other amenities; in an atmosphere of this nature the teachers tried to produce best results in order to gain Government grant and thus success in examination is achieved by mal-practices; in such institutions there is leniency in every respect; when the students of such institutions come to a properly managed institution, a sort of resentment is generated in them when they find various sorts of restrictions in their actions; a spirit of revolt thus creeps in them;
- (h) that due to the establishment of a large number of educational institutions, students who are not suitable for higher education are admitted to such institutions; instead of getting interested in acquiring knowledge, they create all sorts of disturbances;
- (i) that the College Unions which were established to give necessary training to students in managing meetings and organising cultural affairs under the guidance of teachers, have degenerated to political forum of different parties;
- (j) that it is an unfortunate phenomenon that the students gain direct access to the Ministers ignoring the college authorities; a sense of superiority is developed in them and they do not care very much for the discipline of the College;
- (k) that with this background for the last several years, the educational institutions have been working; somehow or other a feeling has been created among the students that they are above law and order: instances of such attitude are in evidence as stated on affidavits;
- (l) that the general trend is that when a student gets involved in a quarrel or dispute, it ceases to be an individual matter and students act as an

organised body or unit, as if in a Trade Union, creating difficult problems of law and order ; intervention and even the presence of the police and the magistracy are resented by the students ; this undoubtedly is an unhealthy trend ;

- (m) that the students by experience came to realise that agitation succeeds;
- (n) that it is also common knowledge that in the colleges in the cities there has been overdominance of students from the rural areas; they do not have much of civic sense and cultural background which could serve as a check to emotional outbursts ; most students are conscious of their rights but have little knowledge of their obligations and duties;
- (o) that it is also evident that for years prior to the students' agitation the teachers ceased to have any control nor did they command the respect of their students; the teachers do not appear to have that sense of devotion in them; they take it as a job rather than as a mission; sense of values has changed; old standards have been discarded and new ideals have not yet taken root.

(ii) *Re : Political atmosphere : background and cause of students' disquietude :*

- (a) that evidently for the past few years student indiscipline has been on the increase in Orissa; the prevailing indiscipline among the students was primarily in the form of high-handedness, scant respect for law and authority; the students exhibited this trend of indiscipline by flagrant violation of law and order during the widespread students' agitation in the State;
- (b) that the political tempo prevailing in the State before the student movement in 1964 was apparent from the activities of the political parties; the then SSP is said to have observed "Corrupt Ministry Quit" week in the State from August 9 to 15, 1964; it was reported that in course of observance of this week the SSP leaders held public meetings in the different districts in Orissa

and levelled various charges of alleged corruption and mal-administration against the Congress Ministry in the State; in this connection some students—at least at Puri—participated in the observance of this week organised by the SSP;

- (c) that thereafter there was the SSP agitation for food scarcity and price rise at several places in the State;
- (d) that during the first two weeks of September 1964, the SSP and CPI held a number of public meetings in the districts of Puri and Ganjam and highlighted the current issues, such as, high prices of foodstuff, food scarcity, corruption in the administration; in the public meeting at Puri on September 9, 1964 some local students are said to have participated and spoken on corruption in the ministry, police zoolum and other matters;
- (e) that on September 25, just the day before the Radio Shop incident at Cuttack a “Bharat Bundh” agitation was launched in the State jointly by the CPI and the SSP with the moral support of the Swatantra Party and the Janasangha; in connection with this agitation, both the SSP and the CPI gave an open call to the students to take active part in their demonstrations, meetings, etc.; in course of the observance of “Bharat Bundh” agitation on September 25, groups of students are said to have abstained from their classes and participated in processions and public meetings at a number of places in the State;
- (f) that thus the political atmosphere prevailing during the months of August and September, that is to say, on the eve of the students’ agitation, was surcharged with propaganda against the then Congress Ministry; the political parties are said to have been wielding considerable influence among the students in various College Unions in the State and the SSP is said to have exploited the students’ agitation no sooner than it started on the September 16/27, 1964.

(iii) *Re : Open talk in public about the yet unpublished CBI report : its effect on the public and the students :*

(a) that publication of allegations of corruption against individual Ministers and publications about the investigation by the CBI with regard to the matters had created an undesirable and unhealthy atmosphere in the State; the continuance of this atmosphere and the pendency of the allegations without any final decisions for a long time had created political uncertainty, bewilderment and confusion in the public mind; that in this atmosphere and background the student leadership was exploited by the interested political parties and personalities for the purpose of overthrowing the then Ministry; in fact, at later stages of the students' agitation there were demands and slogans for resignation of the ministry;

(b) that, apart from the publication in the newspapers, the alleged contents of the CBI report were evidently published in a book form which got currency in Orissa; evidently, matters which were stated to have been embodied in the CBI report were being publicised for months together in newspapers, and extracts from the CBI report were available to the public through newspapers 3 to 4 months prior to the students' agitation ;

(c) that it was not understandable how the alleged contents of the CBI report not yet officially published could reach the hands of the students and the public; however, the political atmosphere created by the alleged unauthorised use of the yet unpublished CBI report was one of the main causes and formed a background of the Orissa Students' disquietude in September—November, 1964 ;

(iv) *Re : General causes of student disquietude :*

that the underlying causes of students' disquietude are many—social, psychological, economic, political, educational and environmental ;

(v) *Re : Mushroom growth of schools and colleges : overcrowding : quality suffered : Student-teacher ratio affected :*

(a) that the manner and extent of educational expansion since the attainment of independence have also created conditions for student unrest; schools and colleges have been coming up in large numbers; this process of quantitative expansion has diluted the quality;

(b) that the overcrowding in the mushroom schools and colleges grew up with inadequate staff, library, hostel and common-room facilities as also inadequate facilities for games, sports and other healthy outdoor activities; the colleges were filled up with students drawn from communities who lacked the necessary tradition requisite for higher intellectual pursuits;

(c) that with the overcrowding, as the teacher-student ratio became less and less, the standard of instruction imparted began to fall and this resulted in a change in the sense of values;

(d) that contact with teachers which is vital for the students became less and less and naturally there was a sense of isolation and boredom among students; that this sense of isolation and frustration among students also resulted in a feeling of lack of security; that is, how agitation for minor causes and even demonstration of mob violence began;

(vi) *Re : Social, political, economic and psychological factors :*

that the various social, political, economic and psychological factors contributing to students' disquietude are stated in paragraphs 89, 93 to 96 of this chapter;

(vii) *Re : Effect of the Assembly incident as a contributory cause to subsequent students' disquietude in Orissa :*

(a) that the leniency and forbearance which the administration showed during the Assembly incident emboldened the student community in thinking that they could do whatever they liked, so much so that they could even go to the extent

of attacking the State's Parliament with impunity; presumably the students mistook this attitude of the authorities as weakness of the administration ; this attitude in any section of the community must not be allowed to grow in the interest of the security of the State ;

(b) that the administrative inaction during the incident, however well-intentioned, strengthened the belief of the students that normal process of law will not be applied against them ; this undoubtedly had its effect on students all over Orissa and made them conscious of their destructive potentialities ;

(viii) *Re : Disciplinary measures under the Education Code apparently not enforced in the educational institutions :*

(a) that another important factor which is responsible for the growing indiscipline among the students is that effective disciplinary control over the students, in spite of the stringent provisions in the Orissa Education Code against indiscipline acts, is not being enforced ;

(b) that the normal repressive measures of law enforcement are not taken perhaps out of indulgent attitude ; ultimately no steps are taken which could make them respectful towards the law ; in the result, society is left with a vast array of young persons full of energy and exuberance ; the students do not hesitate to do anything when their passions are roused ; they do not care for the consequences of their activities because at no point of their life they were ever subjected to restraint or felt the consequence of violation of the law of the land ;

(c) that the College Unions or some of their office-bearers or some body of students collectively by way of threat or strike or by any other form of demonstration interfere with the disciplinary action taken by the educational authorities against students for misconduct ; to a certain extent such situations are provided for in the Orissa Education Code—justifying expulsion or rustication, as the case may be ;

(ix) Re : Administrative leniency : its effect on discipline :

that the administration has been too conciliatory and soft in dealing with the students indulging in acts of lawlessness in different parts of Orissa ; it was because of this attitude of leniency, tolerance and conciliation on the part of the administration that the students lost the fear of law and regard for constituted authority including the heads of their own educational institutions ;

(x) Re : Want of adequate amenities in educational institutions :

(a) that there is no good library with sitting accommodation for at least 50 per cent of the total strength of the students and teachers ; no students' common rooms to accommodate at one period at least 50 per cent of the total number of students ; no good playground, gymnasiums and other facilities for games and sports ; it is regrettable that none of the five tennis courts in the Ravenshaw College are attended to ; these tennis courts are said to have been laid in 1928 ; games used to be played in all the courts and they used to be so popular that a number of students had to wait to get their turn ; interest in these games must be revived whatever the cost may be ;

(b) that the hours in schools and colleges are long, monotonous and drab, consisting of dull and stereotyped lectures and routine programmes with no pleasant diversion ; as a result of this, our students welcome a situation such as, a strike as it affords them a little excitement and thrill ;

(c) that in the absence of healthy avenues of enjoyment in school and college campuses, students invariably frequent cinema halls and take to the reading of sexy cheap romances and detective fictions ; this habit of visiting sensuous pictures as well as reading of cheap pornographic literature has greatly affected the personality and behaviour pattern of our students ;

(d) that the colleges have sprung up without adequate provision of facilities, especially in science teaching;

(e) that as a result of want of the basic amenities in the educational institutions there has grown among the students a sense of frustration and resentment; a large number of colleges have grown all over the country, some of which cannot provide the elementary requirements of the student community and which are ill-staffed and ill-managed with inadequate amenities to students to utilise their unlimited energies in constructive channels;

(xi) *Re : Defects in our educational system : their impact on student discipline :*

that the defects in our educational system including the system of admission of students, examination, lack of suitable staff are all factors which contributed to the ultimate growth of student indiscipline—all as stated in paragraphs 97—100 of this chapter;

(xii) *Re : Indifference of parents, guardians and teachers to student welfare :*

(a) that the parents and guardians mostly belonging to middle class society with their heavy pre-occupations for earning livelihood normally do not and cannot devote as much time as they should for their children probably due to heavy stresses and strains of modern life;

(b) that after getting their children in the schools and colleges they do not take care about the progress of their studies;

(c) that the general callousness of the parents and guardians at home and lack of interest of the teacher in his job at schools and colleges are responsible for ultimate student indiscipline which is so much condemned.

CHAPTER VI

NATURE AND EXTENT OF STUDENTS' DISQUIETUDE IN ORISSA

	Paragraph		Paragraph
Introduction ..	1-2	G. Third phase : between November 5 and 11: Agreement; ultimatum by students to Government for release of non-students turned down ; resumption of the movement	89—103
A. Students' view ..	3—9		
B Administration's view ..	10—24		
Local officials' view ..	11—18	H. Fourth phase: between November 12 and 24: directive principles of the Students' State Council of Action: trend towards secrecy	104—111
Educationists' view ..	19—24		
C. First phase : from September 26 to October 21 : preparation for the movement :	25—50	I. Wide features associated with the agitation :	112—149
How in the beginning student leaders used the name of Students' Council of Action which did not exist during the first phase	29—33	Civil disobedience ; object of Students' Council of Action	113—118
How gradually the movement got momentum	34—50	Hunger-strike as part of the programme	119—127
D. Nature of the students' organisation : Central and State Council of Action	51—60	Effigy burning ; mock widowing, mock funeral, ugly slogans	128—132
E. General indifference of an average regular student to political activities ; Impact of "professional" students on them	61—66	Mode of agitation : movement got out of control of students	133—137
F. Second phase : October 22 to November 5 : turmoil and disturbance throughout Orissa	67—88	Spirit of nihilism amongst students: no faith in anybody	138—147
		School students also in the movement	148-149
		J. Findings of the Commission ..	150

INTRODUCTION

The nature and extent of the Orissa students' disquietude during the period in question are within the first term of the reference. While dealing with the incidents at different places the Commission has dealt in details showing the nature and extent of the movement at each particular place of incident. In this chapter the Commission deals with the general features of the movement all over the State and the implications of students' behaviour as demonstrated throughout the State in different forms and manner.

2. The point of view from which the educationists and the administrators interpreted the movement by reference

to its nature and extent is for obvious reasons different from that of the students and certain sections of the public supporting the students. It is because of this difference in outlook that there has been variance in the reading of the implications of the movement. The version as given by the students and the public on the one hand and that given by the administrators and educationists on the other are indicated hereunder for comparative review ultimately for the purpose of future guidance for all concerned.

A. Students' view :

3. It was submitted on behalf of the students that it was a movement of students in general, originally confined to Cuttack; thereafter the students *en masse* of all schools and colleges of the entire State participated in it. The movement represented the revolt of the youth against oppression; it demonstrated the great force of youth.

4. The students showed their confidence and self-reliance in carrying on the movement on their own; it was an indication of general upsurge all over the world against misdeeds of politicians. The approach of the students in the last movement was throughout democratic; demand was made by them by way of meetings, resolutions and representations; the demonstrations were mostly peaceful, generally law-abiding; they made demand for judicial probe.

5. The meetings held by the students were all against police excess; the meetings which were held by the public were against corrupt ministry. Thus the student movement against police excess and the people's movement against corrupt ministry were simultaneous. So there was reciprocity between the public and the students in their respective causes—one against the police excess and the other against the corrupt ministry; both causes were considered just. It was from this feeling of unity that the entire mass—the students and the public—joined the movement.

6. After the first meeting of the students inside the Ravenshaw College campus in the afternoon of September 27 was dispersed, the student community had no opportunity to have any meeting; the only form of expression of their demands was by way of Satyagraha and demonstration. The students organised themselves; they did not allow others

to interfere with the movement; all meetings were attended and addressed by the students alone.

7. At the public meetings addressed by the leaders and the publicmen, the students' cause was supported. At the public meeting organised by the Cuttack Citizens' Committee at Chandanpadia, Cuttack, on October 10, 1964, the public leaders while supporting the students' cause made inciting speeches against the Government. While the public meeting was going on the students who were released from jail went in a procession to the meeting place; after the public meeting was over the students held a meeting there; at the students' meeting the speakers while condemning police atrocities exhorted the students to wear black ribbon in their hands till their demands were fulfilled and stated that if the Government did not accede to their demands by October 22 then a flame of revolution will be spread to all parts of the State. It was at that meeting that a joint resolution was passed by the citizens and students of Cuttack to the effect that the meeting of the citizens and students of Cuttack, while condemning the brutal attack by the police on the students on account of a very minor incident on September 26, urged upon the Government to fulfill their demands including appointment of a judicial Commission according to the Commissions of Enquiry Act. This meeting showed that the interest of the people and the students was common.

8. On September 27 the students formed a Council of Action which directed the movement. In its first phase its activities were confined to Cuttack; later on when the movement spread spontaneously the State Council of Action, with its representatives at various zones and districts, was formed; there was nothing Fascist in these activities; it was all democratic.

9. As regards the ugly slogans, mock-widowing and other forms of demonstrations in course of the movement it was sought to be interpreted and explained that the morals and standards set by the public men, particularly of the party in power, had deteriorated to such a low level that their condemnation took the form of such visual expression. These demonstrations were expressions of feelings of contempt with which they were held in public estimation. According to the students, there was nothing undemocratic about this manner of expressions of public resentment; the people were within their rights to condemn the public activities

B. Administration's view :

10. In the several affidavits filed on behalf of the administration including the educationists and the State officials who had to deal with the movement directly and had the opportunity of taking note of the trend of the movement and the deep implications of the different incidents that occurred within their sight, they stated their respective views about the nature and extent of students' disquietude in the State. It is not possible to deal with each of these affidavits separately. Their views in substance are briefly recorded.

11. *Local officials' view:* The students' disquietude in Orissa during the period in question is a part of the general reaction of the student-police clash at Cuttack. The origin of the students' disquietude at Cuttack was a sporadic act and consequently, chain reactions of student indiscipline were consistent with the pattern of earlier conduct of the students; emotional sympathies of fellow students for students alleged to have been subjected to police excesses played a considerable role in spreading the students' disquietude throughout the State of Orissa. Administration's point of view is that it is no new phenomenon and does not disclose any new trend; it may be appreciated and assessed in the context of a series of acts of lawlessness indulged in by the students in the past; the pattern of student behaviour is said to be the same.

12. The manner in which the students expressed their resentment against the Government was generally by breaking law in mass scale, indulging in dangerous acts of violence, brickbatting at the police and magistracy, attacking police stations, attempting to disrupt normal life of the community, attempting to bring the functioning of the administration to a standstill, indulging in slogans of low taste and culture against individual Ministers, ugly and indecent demonstrations in various forms. The students in violence of this nature were represented in some of the local newspapers as engaged in a noble cause; the political parties also supported the movement openly at public meetings, the students were depicted as heroes and martyres; this attitude encouraged the students in carrying on and continuing the movement.

13. During the second phase of the movement from October 22 to November 5, 1964, the student movement took a dangerous turn; burning of effigies, personal and indecent caricatures of the Ministers in processions and mass demonstrations, widowing of boys represented as girls symbolising

the wives of Ministers, mock funeral wailing at effigy burning, observance of mock 'Sradha', grossly filthy abuses hurled at policemen and magistracy engaged in maintaining law and order and obscene gestures were remarkable and unfortunate phenomena in the students' agitation.

14. In this context it was rightly commented on behalf of the administration that casual or stray acts of violence or misconduct on the part of students is at least understandable because of exuberance of energy and enthusiasm in youth; sometimes it finds outlet in forms not happy and desirable. But misconduct and low taste demonstrated in a mass scale without a voice of protest either from the press or the politicians or the leading public men is a matter of profound concern for society. Indeed it is a social malady; students alone cannot be blamed for the conduct they exhibited in a mass scale; they are products of environment; it shows social decadence, failure of parents, guardians and teachers -- which is our failure.

15. Another remarkable feature noticed during the movement was the spirit of intolerance the students showed in course of their demonstration in the different districts; it is said that issues of the newspaper Kalinga were being forcibly taken and publicly burnt out of resentment that this newspaper did not correctly or adequately give publicity to the activities of the students' agitation or expressed their views which were contrary to the views of the students. Whether the students' impressions or their grievances against this newspaper were correct or justified is another matter but what was surprising was the way they were showing their expressions of resentment in violent form to the extent of burning the newspaper; such violent conduct in that form was not expected of the youth in a democracy. Assuming the Kalinga played down the students' agitation and that the students were justified in having grievances against this newspaper, even so, the conduct of the students in burning copies of newspapers exhibited intolerance and fanaticism. It is apprehended that if the students who are the future of the country grow up with such spirit of intolerance and violence, this country may go the same way as some other countries in South-East Asia. There is no doubt that this is a dangerous trend which must be stopped.

16. In the present context of the nature and extent of the movement, the incident in the Legislative Assembly on

September 2, 1964 in the New Capital has also a deep significance from the point of view of the administration. The violation of the sanctity of the Legislature may be considered from a broader perspective and not merely as an outburst of student indiscipline. Students know and are conscious that they live under a democratic Constitution; they also know about the sanctity of the Legislature in a democratic country. It is unfortunate that on the issue of an alleged assault on a student by a bus conductor, the students went to the length of invading the Legislature, disrupted the functioning of the Assembly, committed unprecedented and unparallel acts of vandalism and assaulted the local officials in charge of maintaining law and order. This conduct reveals a psychology of lawlessness, disregard for the Constitution and a democratic set-up of the country and contempt of law and authority. The students appear to have forgotten that democracy is a way of life which they have to preserve.

17. One significant pattern of behaviour of students as noted by the administration was that individuals offered Satyagraha at places, particularly in the Cuttack Collectorate; they were sitting in front of the office and obstructing the staff from going in and coming out; they attracted groups of students and the public around them and caused tension as a result of which it was not possible for the offices to function; the students occasionally gave speeches and disturbed work. After the Puja vacation the students acted in masses in front of the Collectorate and in the interiors, shouting slogans, trying to break police cordons and smuggling themselves inside the buildings somehow or other.

18. The students also resorted to hunger-strike mainly at Cuttack and Sambalpur with the object of creating a situation to embarrass the administration. The manner in which these cases of hunger-strike were dealt with at different places has been discussed in the chapters dealing with the incidents.

19. *Educationists' view:* Apart from the administrators the educationists—Principals, Professors and teachers of the different colleges of Orissa—who are running the educational institutions form an important part of the administration, also gave their interpretation of the nature and extent of the movement. Indeed the reading by them of the student movement has a great importance as they having to deal with the students directly are more familiar with the working of the student mind in all its different phases.

20. The consistent view of the educationists, as appears from their respective affidavits, is that the students played into the hands of the persons or organisations external to academic life; a large majority of the students is not interested in strikes and other forms of disruption of studies; the students are normally respectful to their teachers and obey the rules of the colleges; when the student movement first started arising out of a quarrel between a student and a radio shop-keeper, a small section of the students took up the leadership and others followed either out of fear, sympathy or simply passive acquiescence; after certain stage when the movement was on, it became a matter of prestige and nobody wished to "betray" the cause and to fall behind; soon the cause of the particular student became the cause of all students generally.

21. It was noted by the educationists that it was only during the second and third phases of the movement that the acts of breach of college discipline occurred; there were large scale abstentions from the classes, crowding in front of the college and violation of Section 144 order; unauthorised meetings were held during this period; by this time the students' disquietude became wider and the situation became emotionally surcharged.

22. One significant feature of the movement, as noted by some educationists, is that in technical institutions ordinarily students are not interested in processions, demonstrations and strikes; their workload is heavy and keep them engaged; technical examinations are stiff and the students cannot afford to waste time. Even so, during the later phases of the movement general tempo of the agitation and the mass hysteria that followed influenced the students of the technical institutions also. It was observed that teachers became more and more ineffective as the tempo of the strike went on increasing. The students were rude and offensive to the teachers; the teachers at one stage even feared to approach students.

23. These, in short, are the rival versions on behalf of the students and the public on the one hand and the administration on the other interpreting the movement from their respective point of view -which, in the very nature of things, must be subjective.

24. It is only a disinterested onlooker, not in the movement, who can dispassionately give an objective view of what exactly happened during the movement. Such a dispassionate

thinker could see from what took place during the period in question—September 26. to November 24, 1964. that the movement had four successive phases—one after the other : the first phase from September 26 when the radio shop incident took place up to October 21 ; the second phase from October 22 when the educational institutions reopened after the Puja vacation till November 5, 1964 when the student leaders called off the movement after the agreement (Ext. 14/1) with the Chief Minister; the third phase from November 6 to November 11 a period of interregnum when students were attending colleges according to the agreement until the movement again flared up ; the fourth phase, the last phase, from 12th November when there was again revival of the movement when the talks of settlement failed until November 24 when ultimately the movement was called off on the intervention of the Union Home Minister who came to Orissa. The events during these different phases are so illuminating that they must be briefly recorded.

**C. First phase : from September 26 to October 21:
preparation for the movement :**

25. In the initial stages from September 26 to October 21 it was one or two individual student leaders,—particularly Mr. Bhagabat Behera, of the Socialist Party,—describing themselves as Council of Action were inciting the students in the name of general mass of students who were susceptible to be exploited by a few student leaders. The reaction, the desire and the resolution of the student community as such were not at all ascertained. The picture presented by the student leader's statement in the newspapers and otherwise was, as if Mr. Bhagabat Behera was a convener of the Council of Action as truly representative body duly representing the students. The fact, however, is that there was no Council of Action in existence before October 22 as admitted by Mr. Promode Chandra Samantarai in his evidence. If at all such a Council of Action existed before that date it was a self-constituted body interested in exploiting the situation

26. It is on record that no sooner the student agitation started on September 26/27, the SSP exploited the situation ; soon after the jeep burning incident on September 27 morning, leading SSP members and sympathisers came into the scene; they went inside the Ravenshaw College campus, the hostels and contacted the students; with their entry into the campus, politics came to be introduced into the student movement.

27. The prominent role initially taken by the politicians is evident from the fact of individual leadership of the student leader Mr. Bhagabat Behera said to be an active socialist. As regards his political status, the evidence of Mr. Promode Chandra Samantarai is that he heard that Mr. Bhagabat Behera was affiliated to Sanjukta Socialist Party; then he said that as far as he remembered Mr. Bhagabat Behera belonged to Praja Socialist Party; he said that among the 26 members of the Central Council of Action, Mr. Bhagabat Behera belonged to PSP; that he knew that in the past Mr. Behera belonged to Utkal Union of Students; he was Secretary of the Orissa Textile Mills Shramika Sangha, Chouduar (Qq. 521, 627, 635, 651, 652). It is not clear from his evidence whether Mr. Bhagabat Behera belonged to PSP or SSP. In any event, it is clear that he was a prominent political leader.

28. It is a significant phenomenon as to how during the first phase the students were gradually being worked up and organised by individual political leaders. On September 27, about 800 to 1,000 students are said to have collected inside the Ravenshaw College campus, held meetings and did propaganda through mike to agitate the students. Political leaders including Mr. Bhagabat Behera, who is said to be an ex-President of the Ravenshaw College Students Union, took active part in the meetings of the students; there was brickbatting from the campus of the Ravenshaw College at the police pickets at the Ravenshaw College crossing at intervals; at about 4-30 P. M. the mob inside the Ravenshaw College campus again turned violent and came towards the college crossing with heavy brick-batting in an organised manner; since the students were using the college campus as a fort and launching attacks at the police at frequent intervals, they had to be dispersed by teargas followed by lathi charge; thereafter the students withdrew to their hostels; the college was declared closed and the Principal asked the hostel students to vacate.

29 *How in the beginning student leaders used the name of Students' Council of Action which did not exist during the first phase:* In answer to Qq. 724, 725, P. W 4 Mr. Promode Chandra Samantarai said that before October 22, 1964 there was no Central Council of Action, nor was there any State Council of Action before that date. He further said that he became active and prominent after

October 22; before that something was certainly happening as a protest against police atrocities which should not be called a movement; he was least informed about any Council of Action whatsoever till October 22, he personally did not recognise any Council of Action from September 26 till October 22; he could not give any opinion as to what the conveners were doing and whether they were approved by the students of the colleges or not; he significantly remained silent about the period from September 26 up to October 22 (Q. 723).

30. Thus although there was no such organisation as Students Committee or Council of Action during the first phase, there were several news items published in the press from the very beginning of October purporting to show that the Students Committee or Council of Action was functioning.

31. In support of this the attention of the Commission was drawn to the several news items published in the press in course of cross-examination of P. W. 4. Mr. Promode Chandra Samantarai who was confronted with these news items. These news items show that although there was no Students Committee or Council of Action during the first phase the individual student leaders were making use of and acting in the name of Students Committee or Council of Action which admittedly did not exist during the first phase. The contents of some of the news items supporting this position are mentioned below as showing the pattern of these publications.

(a) On October 4, in the Prajatantra in col. 8, last page, there was a news item under caption—

“CUTTACKRE CHHATRASABHA KRIYANUS-
THANARA SAMPRASARANA”

(expansion of Students Action Committee at
Cuttack)

This purports to show as if there was such an organisation as Students Action Committee as early as October 4. The fact however was that there was no such organisation known to have been existing at that time (P. W. 4 Promode Chandra Samantarai Q. 718).

- (b) On October 6, there was a news item under the caption—

**“ CHHATRA KRIYANUSTHAN COMMITTEE
KARYAKRAMA”**

(programme of Students Action Committee)

in col. 5, page 2 of the Prajatantra marked P/14 where Mr. Bhagabat Behera was described as one of the conveners and as maker of the statement contained in the said news item (P. W. 4 Promode Chandra Samantarai Qq. 714 to 717). This news item shows that Mr. Bhagabat Behera and another described themselves as joint conveners of Students Action Committee and issued a statement purporting to contain a decision of the Committee or Council of Action the very existence of which at that time was questioned.

- (c) There was a news item under the caption—

**“ CHHATRAMANANKA PAKHYARU BICHARA
BIBHAGIYA TADANTA DABI”**

(demand for Judicial Enquiry from the side
of the students)

in cols. 3 and 4 of the last page in the Prajatantra dated October 12, 1964; the last paragraph of the news item marked P/15 was this :

**“ AJI PURBANHARE BANKA BAZAR DHARMA-
LARE CHHATRA KRIYANUSTHAN COMMITTEERA
BAITHAKA BASI BHABISYATA KARMA PANTHA
SAMPARKARE ALOCHANA HOITHILA”**

(This forenoon there was discussion about future programme at a sitting of Students Action Committee at Banka Bazar Dharmasala)

This also purports to show the alleged activities at the time of the Students Action Committee the very existence of which at that time was questioned (P. W. 4 Promode Chandra Samantarai (Q. 719).

(d) On October 19, there was another item of news under caption—

“DABI PURANA NAHEIE ANDOLANA CHALIBA : SETHIPAIN SARAKARA DAYI RAHIBE : CHHATRA KRIYANUSTHANA COMMITTEE NISPATI”

(movement will continue if demands are not fulfilled : Government will be held responsible for that : decision of Students Action Committee)

in the Prajatantra in cols. 2 and 3 of the last page marked P/16. This news item contained the statement of the said Mr. Bhagabat Behera who subsequently became a member of the Central Council of Action (P. W 4 Promode Chandra Samantarai Qq. 720 to 722).

32. These several items of news published in the press show that although there was no Council of Action prior to October 22, Mr. Bhagabat Behera and his supporters were carrying on the students' agitation describing themselves as conveners or spokesmen of a Students Council of Action as suggested by the learned State Counsel to Mr. Promode Chandra Samantarai (Q. 723). The evidence of Mr. Promode Chandra Samantarai is, in substance, to the effect that he did not know of any such Students Council or Committee of Action before October 22, 1964.

33. The significance of this is that at the initial stage certain student leaders took the initiative to work up the students for a movement in which they ultimately succeeded with the help of the political leaders who came into the picture, carried on and kept up the tempo of the movement.

34. *How gradually the movement got momentum* : Although the students' case came to be initially sponsored by only some individual political leaders, it is an interesting study how gradually the movement got impetus from all the political forces which turned a petty incident at a radio shop, in which a student was involved, into a general cause of the students ending with a general demand by the public on the Government for fulfilling certain conditions including appointment of a Judicial Enquiry Commission. The cumulative effect of all the forces was that the petty radio shop incident escalated into a movement and assumed new dimensions affecting Orissa's political atmosphere. There was a trail of unfortunate events involving life and property in the course of the widespread movement throughout the State.

35. The question is: How this happened and what shape it took, that is the nature and extent of the movement? The answer to this is as hereinafter follows.

36. After the political leaders came into the picture on September 27, the movement took a turn. By that time individual political leaders established contact with the students. At this time when the students started being organised, authorities closed colleges and hostels for the Puja vacation on September 28 prior to the scheduled date as a precautionary measure. In the meantime order under Section 144, Criminal Procedure Code was also promulgated throughout Cuttack municipal limits. There was procession as also violation of Section 144 order; a prominent SSP leader also issued a statement to the press containing highly exaggerated account of police action against the students which was published in the Prajatantra on September 29.

37. On September 29 Cuttack Bar Association passed a resolution demanding judicial enquiry into the alleged police excesses. It is said that somewhat exaggerated accounts of alleged police excesses on the students were published in the press as news items, editorials and statements which created an atmosphere throughout the State that inhuman atrocities were being committed on the students by the police due to alleged revengeful attitude of the Government.

38. It was in view of the growing lawlessness among the students that the Government issued a Press Note denouncing the students' misconduct amounting to what they described as hooliganism and issued instructions to the officers controlling law and order that such hooliganism should be "nipped in the bud". This Government Press Note was resented as an affront to the student community.

39. On the morning of October 1, thirty student representatives met in the Biharibagh premises and decided to launch hunger-strike individually in front of the chamber of the District Magistrate and to demand withdrawal of prohibitory orders under Section 144, judicial enquiry into alleged police excesses and release of all arrested students. Accordingly individual hunger strike by students started from that date. There was also offer of hunger-strike by a limited number of students between October 3 and 9 to obstruct work in the Collectorate; the students used to attract crowd along with them to obstruct work. The individual hunger strike at the Cuttack Collectorate continued till October 9. On October 3,

the students of Jagatsinghpur College also informed the local officers that they would launch hunger-strike in front of the police station.

40. On the same date (October 1) a committee called the Cuttack Citizens' Committee was formed with 24 members with a prominent socialist political leader as its convener ; it was decided that a public meeting would be held on October 4 at Khannagar to decide future line of action.

41. On October 6, at a general meeting of the Cuttack Citizens' Committee and the Students Action Committee held in the Hind Sevad Samaj Office, the members, while reiterating their demands resolved that if by the evening of October 7, orders under Section 144 were not lifted by Government from Cuttack, the order would be violated by four named political leaders on October 8, 9, 10 and 11 respectively. Some leaders of the Swatantra Party also attended this meeting.

42. On the same date (October 6) it is said that the Opposition Members decided to boycott the Assembly from October 26 to November 6, as a protest against the alleged police excesses and Government apathy to students' demands ; the Opposition Members decided to observe those twelve days as "Dozen Black Days". It is also on record that the "Dozen Black Days" were not only observed by the Opposition Political Parties but also by the students throughout the State by holding public meetings, wearing black badges, staging black flag demonstrations and launching Satyagraha before Government offices.

43. On October 10, at a meeting of student leaders, the UUS (Utkal Union of Students) leaders and others are said to have eliminated the student leaders owing allegiance to the Students Federation (Rights) Youth Congress and reconstituted the Students Council of Action with two UUS leaders as Joint Conveners and 13 members most of whom owed allegiance to the UUS.

44. On October 11, at Berhampur at a public meeting of about 150 organised by Students Federation leaders and a few others of Khallikote College the student speakers condemned the alleged police excesses, demanded unconditional release of the arrested students and warned the Government against the State-wide agitation failing redress of their demands; resolutions demanding judicial probe into the alleged police excesses,

payment of compensation to the students who had sustained loss as a result of police action were adopted.

45. It is significant that after the said Berhampur meeting was declared closed, a leading student agitator criticised the President for not having taken up a concrete agitational programme of attacking Government offices, stoppage of train and bus communication, etc., in order to paralyse the administration if the students' demands were not acceded to.

46. In connection with the said meeting at Berhampur printed leaflets issued by the students of Berhampur were earlier circulated in the town; some printed copies of the bulletin purported to have been issued by the student community of Orissa were also circulated at Berhampur and other parts of the district. The bulletin which contained a detailed narration of the incidents which took place at Cuttack and Bhubaneswar brought about a good deal of enthusiasm and adverse reactions among the students, particularly the college students.

47. On October 13, the Students Council of Action at a Press Conference gave exaggerated accounts of alleged repressive measures taken by the Government; they stated that the students' agitation would continue if Government did not concede all their demands by October 22.

48. By this time the students all over Orissa were organised with the help of the students of other districts studying at Cuttack who returned to their respective home districts during the Puja vacation. It was through student leaders deputed from Cuttack that Students Action Committees were organised by the UJS in most of the colleges and schools throughout the State with a view to resume the agitation on the reopening of the educational institutions after the Puja vacation.

49. It so turned out that the very purpose, for which the educational institutions were closed before the scheduled date of the vacation, failed. In fact the student leaders took advantage of the Puja vacation in organising the students through their student agents who went to their home districts during the vacation. It was these students who went from Cuttack who organised the students in their respective districts. It was thus that the whole State was divided into zones almost corresponding to the administrative divisions and the divisions were divided into districts corresponding to the administrative districts with directives from their headquarters at Cuttack,

The Commission warns everybody concerned that there were signs of a student Government as in Indonesia with all its political implications. This trend is dangerous for the democracy we stand for. So the youth force has to be directed through proper channel.

50. On October 22, on the reopening of the colleges about 1,250 students from various colleges in Cuttack town came through the main streets from the Ravenshaw College where they gathered with slogans against the then Chief Minister, the IG of Police, and SP, Cuttack, and terminated at the Killa Maidan where a meeting was held; there the number swelled up to about 1,500, at this meeting the incidents of September 26, 27 and 28 were criticised, resignation of the Chief Minister and withdrawal of the Government Press Communique were demanded. They also expressed that PR bonds executed by them would not be honoured; they demanded unconditional withdrawal of cases, compensation for damages and setting up of a judicial enquiry for alleged police excesses; it was also decided that unless the Government acceded to their demands by the same midnight (October 22) a large scale picketing in the district office at Cuttack in big batches would commence from the following day October 23; violent attitude of the students was manifest at the meeting.

D. Nature of the students' organisation : Central and State Council of Action :

51. The evidence of P. W. 4 Mr Promode Chandra Samantarai is that the Central Council of Action was formed on October 22, at 8-30 p. m. in Cuttack City. The principal object of Council of Action of which he was the President was to see that the basic four demands made before the Government were fulfilled.

52. The nature and extent of the activities of the students through the Council of Action as stated by Mr. Promode Chandra Samantarai were in substance these: There was no written constitution of the Council; as their actions were demonstrations it was impossible to maintain a constitutional procedure of what the students were discussing or what were being put into action by their friends. All the Presidents and Secretaries of the Unions of all the institutions of Cuttack were there when the Council was formed at a meeting which was held in some building situated in Kaligali in Cuttack town. The Student Unions of all the colleges in

the State of Orissa joined the State Council of Action which came into existence on November 13, 1964. The Central Council of Action was only for the leaders of the Cuttack City; the State Council of Action was for the entire State; the Presidents and Secretaries of the College Unions were members of the State Council of Action; the Student Unions were behaving in a federal manner of which the President was the head of the Union.

53. The way the State Council of Action was organised on federal basis was stated to be this : In the State Council of Action there were ten members; the student movement was intended to be widespread all over the State; the machinery by which the Council of Action could keep grip over this movement throughout the State was that for their organisation they divided the student zones of the State into five sectors—Cuttack, Puri, Balasore, Sambalpur and Berhampur; the charge of each was given to the Zonal Council which formed the links between the students and the State Council of Action; the way they used to maintain contact with Zonal Councils was by constantly sending copies of their resolutions to these Councils by special messengers on every alternate days ; thus Zonal Councils of Action were under the control of the State Council of Action at Cuttack (P. W. 4 Promode Chandra Samantarai Qq. 468 to 472).

54. As regards the meetings, Mr. Samantarai said that there was meeting every evening of the Central Council of Action ; the State Council of Action met only twice—once at Puri, for the second time at the SCB Medical College, Cuttack.

55. As regards the way the Council of Action used to operate, Mr. Promode Chandra Samantarai said that the Council of Action issued directives for organising demonstrations and picketings for the purpose of paralysing the functioning of the Government offices and institutions ; their primary object was, however, to restrain the students from being inspired by guardians or Government people who were, from time to time, forcing the students to come into educational institutions and not to join the strike, and also trying to paralyse the efforts of the students to get justice over a point. He also said that in pursuance of such directives, processionists went to the Collectorate and demonstrations at the Cuttack Collectorate were organised ; therefore for a week there used to be demonstrations by thousands of students in front of the Collectorate ; while the students were going out

or marching out in procession to the Collectorate they were carrying black flags. He said that he had no knowledge that during this disquietude the student processionists and demonstrators all over Orissa were generally caricaturing individual members of the Government (Qq. 365 to 367).

56. In course of his evidence Mr. Promode Chandra Samantarai referred to a resolution dated nil said to have been passed by the State Council of Action purporting to show that he issued statements (by way of contradictions) for publication in the newspapers to the effect that the students were not indulging in anti-social activities ; in support of what he said he relied on Ext. 15 as an official resolution condemning anti-social actions ; further that he sent the resolutions to the press through special messengers . he did not remember whether they were published or not. The Commission is unable to accept this part of his evidence in view of the position that nothing has been brought out from the volumes of newspapers placed before the Commission in the course of the hearing to show that either the Council of Action as such or any member of the Council of Action, ever got published in any newspaper any contradiction of these anti-social activities during the students' agitation.

57. However, the significance of the resolution Ext 15 is that the Council of Action was effectively operating inasmuch as it shows that representatives of different zones participated in the meeting where this resolution Ext. 15 is said to have been passed. That apart, it is of great significance that these student organisers of the Council of Action took care to maintain the secrecy of the organisation inasmuch as they used to have a pass word for the members of the State Council of Action in which the students outside would believe ; that too, not general students, but only leaders ; the word 'SCRAB' was "made understood" to other leaders which passed for official correspondence to maintain the secrecy of the organisation (P. W. 4 Promode Chandra Samantarai Qq. 501 to 503).

58. The Governments concerned should take it as a note of warning that this movement was just growing in darkness in secrecy. This is a dangerous trend which is not to be superficially dealt with by the administration. Although it is not that the general student community got indoctrinated to the ideology of the movement and it was only a few leaders who propped up the movement, yet the very fact that such an organisation could come into existence in such a short time

shows the immense potentialities of our youth. If this youth force of the country is given scope and canalised through proper direction, it is an asset.

59. It is hopeful that with all our feeling of despondency over the disorderly behaviour of our youth during the movement it is a redeeming feature that the way our students exhibited their exuberance of energy shows that we are not a dead nation. There are immense potentialities in our youth. Any investment in this direction would produce equally good, if not better results than any of the industrial projects that the country has launched upon on which crores are being spent.

60. We have yet to realise that nothing is more important for the ultimate good of the country than the youth which form the national wealth on which we have ultimately to depend to run the country on democratic ideals.

E. General indifference of an average regular student to political activities : impact of "professional" students on them :

61. Coming back to the movement, although it was some individual leaders who organised the movement, the attitude of the average student was one of general indifference—an aspect which needs special treatment.

62. As recorded earlier, the majority of the student community are not movement loving. It is only a few who take the lead and prop up a movement on some issue which attracts them.

63. Among the students who deposed before the Commission P. W. 8 Mr. Sarat Chandra Jena, then reading in the sixth year M. A. Class in Economics, represents the type of an average regular student not interested in political activities. The material portion of his evidence on this aspect is this: He does not take any interest in the activities of the Students' Union nor can he say whether the Students' Union in the Ravenshaw College takes interest in politics; he is least interested in the College Union itself inasmuch as in the last Ravenshaw College election he did not even go to cast his vote. His answers to some of the questions put by the Commission are of some significance as representing the average regular student mind. What he said was this :

“Q. 326 Does the Students' Union in Ravenshaw College take interest in politics.

A. I cannot say.

Q. 327 You are a member of the Union. Why you should not know.

A. I am least interested about the Union. In the last Ravenshaw College Election I did not go to cast my vote even.

Q. 328 What according to you is the reason for your lack of interest in the activities of the Students' Union.

A. I do not take interest ; why, I do not know ; I do not like the things.

Q. 329 What are the things that you do not like in the activities of the Students' Union in the College.

(Question explained and repeated)

A. It will take my time. There are people to organise ; my business is to study.

Q. 330 May I take it that this attitude you have towards the Union is the majority attitude of the students in the College.

A. I cannot say that. This is my personal attitude.

* * * * *

Q. 339 What is your information with regard to the students taking part in College Union Elections. Do they all cast votes or majority of them are indifferent as you are.

A. I have not gone to cast my vote. How can I know about them.

Q. 340 Therefore you are also indifferent in keeping information whether others have cast votes or not.

A. Yes.

Q. 341 Do you keep any information about political views of the Students' Union in Ravenshaw College.

A. I do not keep that information.

* * * * *

Q. 351 Should students take part in active politics.

A. They should not

Q. 352 Why do you think so.

A. They have to learn politics ; they should not play any role in political field during student career."

64. This is the attitude of an average regular student in our educational institutions; they form the majority.

65. The process by which the average students in our country are worked up by the few student leaders for a movement is described in an interesting article "Indian Students" by Edward Shils published in an issue of a British Journal "Encounter". His study of the Indian students reveals

the working of this process. The elements who influence the average students are normally those who won't leave the college, either because they have not taken their degrees or because they just like hanging about the college. As the writer of the article puts it:

“ One comes, from time to time, across these cases reminiscent of 19th century Russia, of “eternal students:” men in their late twenties and thirties who—because they fear the vengeance of their examiners, or because they fear the outside world, or for worse motives—live on in the university or college hostels, not registered, not studying, having nothing academic about them except their residence and their associates. Older, tougher, more ingenious, often seductively attractive, these “professional” students are often the catalysts who agitate lambs into lions.”

The author of the article then proceeds on to state that the regular students are not simply victims of this odd breed of men; there are always a few of the regular students who are more desperate, more excitable, more daring, more aggressive than most of the rest. It is said that it is they who often take the lead in walking out of the examination hall in protest against difficult questions, who attempt to pull the others out with them as they go, who take the initiative in upsetting or breaking benches, and even setting the premises on fire; they are the more inflammatory, the first to denounce their teachers, to express grievances against the order prevailing inside and outside their college or university; their example resounds in many a tender young heart.

66. In the present context of our study of the nature and extent of the student movement in Orissa, it is a fact that initially it was only a few individual students who took up the lead in inciting the general students for the movement on an issue arising out of a petty incident in which there was student-police clash in the market area outside the college campus. Apart from the political forces which propped up this movement, individual student leaders of the more dominant aggressive type were responsible for giving a turn to the movement in an organised form ultimately in the shape of the country-wide agitation under the leadership of the Councils of Action. Therefore, although the average students of Orissa were not generally in favour of a movement as such which assumed political colour, it is this dominant element in the student community who exploited the average regular students in the educational institutions to their use for carrying on the movement in such organised form throughout Orissa. It is in evidence that student leaders representing this dominant

element went out to different places such as Bhubaneswar, Sambalpur, Berhampur and other places and organised the students to carry on the movement

F. Second Phase : October 22 to November 5 : turmoil and disturbance throughout Orissa :

67. This brings us to the second phase of the movement; it was the most troublesome period through which the State passed. While dealing with the incidents at different places the nature and extent of the movement were discussed in details. In this chapter the Commission proposes to deal with certain general features of the movement with particular reference only to certain general aspects which may be said generally of all places in the State. For future guidance the contemporaneous impressions of this general nature and extent of the movement are necessary to be recorded because public memory is short.

68. In the City of Cuttack, the centre of student organisation with "branches" of the Students Council of Action all over Orissa, the movement had its greatest impact mainly in the forms of demonstration, procession, picketing, strike, hunger-strike and all such methods as they termed Satyagraha — civil disobedience with all its political implications.

69. It was from this spirit of civil disobedience that Cuttack Collectorate was chosen as the site for demonstration by mass of students on working days; the students brought out procession from various educational institutions with black flags and bottles containing liquid representing "drunkard" government; the demonstrators held up traffic at various places, burnt effigies of the then Chief Minister Mr. Biren Mitra, Home Minister Mr. Nilamani Routray; jeered at policemen and tried to break police cordon making every endeavour for police to be provoked into action; the procession converged at the Collectorate where slogans were given in frenzy; the people were advised over microphone by Government officers that only those who had legal business would enter inside, others should not enter; but to little effect.

70. After October 23, these methods of the movement were also followed up in the interiors all over the State; the pattern of behaviour of the students was the same everywhere; it was apparent that they were making every effort to provoke the police going into action so that public sympathy in favour of the agitators would be generated; the student agitators wanted to court arrest in large scale and fill up the jails.

71. On October 26, the first day of the "Dozen Black Days" complete Hartal initiated by the Students Council of Action was observed at Cuttack. On the same date the Communists organised a public meeting at Cuttack where the Government was condemned and asked the Government to concede all the demands advanced by the students; it was also decided that the 26th would be observed every month in memory of the alleged brutal assault made by the police on the students. This shows the role of the political parties behind the student movement which aspect has been fully dealt with in a separate chapter. Apparently the student movement and the people's movement were both against the then Government and simultaneously carried on with the common object.

72. On October 27, the SSP leaders who were supporting the students' agitation were arrested. On that date a prominent political leader at the time of his arrest gave a statement that the arrest of a few SSP leaders would not stop students' agitation; on the other hand the students would burn all Government offices and loot different places and it would be beyond the control of the present administration; it was also observed that as long as the present ministry would be in power this agitation would be in full swing. It is also a somewhat intriguing circumstance that during this time some student leaders who were searched for by the local police could not be traced and evidently they went underground.

73. It is significant that from the very next day after the said statement was made by the prominent political leader at the time of his arrest, violent activities including arson and loot started at Bhubaneswar, Jagatsinghpur, Berhampur, Bargarh, Binjharpur, Sambalpur, Bhawanipatna and other places; local officers of the administration were manhandled, police family quarters burnt, telephone and telegraph wires were cut off, culverts on the roads removed at places including Jagatsinghpur. It is said that these violent activities were mostly noticed in the strongholds of the opposition political parties, mainly of the SSP. The students took out processions and offered Satyagraha at Government offices following methods similar to that of the SSP and CPI which they adopted during food and price rise agitations and labour agitations; the violent activities and lawlessness committed by the students during the movement in different parts of the State were of the same pattern.

74. At Baripada the SSP held a public meeting on October 27 where the leaders delivered speeches describing the cause and origin of the student movement, its stage and the demands of the students. These speeches gave sufficient strength to the local students there. As a result of this incitement, while the school children were going to attend the classes, some students of the local schools and colleges assembled at different gates and dissuaded the willing students from attending classes; the students went back; they did not listen to the persuasion of the Headmaster; attendance in the schools was miserably thin; undoubtedly the movement affected even the school children.

75. At Puri on October 27 the strike continued both at the schools and the colleges; about 300 students went in a procession to the Collectorate and picketed there. As a security measure order under Section 144, Criminal Procedure Code was promulgated in the court premises; the agitators were warned to clear out; 31 agitators were arrested for violating the order and were sent to Jail.

76. The same day--October 27--strike in all colleges at Bhubaneswar continued. 300 students in a procession violated order under Section 144; they had to be dispersed by teargas behind the Chief Minister's residence; 19 students were arrested for violating the 144 order. Picketing at the Night College continued; 300 students held a meeting at old Bhubaneswar in the evening.

77. On October 28 there was violent demonstration near SDO's office and New Capital police station; mob were teargassed, lathi charged and there was firing; there was also attack on the residence of the Chief Minister and others causing loss and damage—all as fully described in the chapter on Bhubaneswar incident.

78. The student movement also got impetus from labour organisations. This is a new feature which was noticed in the last movement. At an INTUC labour organisation meeting held at Gopabandhu Park, Cuttack, on October 28 in the evening in protest against the arrest of students and SSP leaders in connection with the students' agitation, there were a large number of students, factory workers and members of the Service Unions—Cuttack Municipal Workers' Union; Cuttack Electrical Workers' Union; Cuttack Grade IV PWD Workers' Union; Cuttack Grade IV Medical Workers' Union—and of other labour organisations. At the meeting

the speaker severely criticised the ministry for alleged excesses committed by the police on the students, for police firing at Bhubaneswar and for not conceding the reasonable demands advanced by the students; a resolution was passed demanding immediate resignation of the ministry, urging people to observe "Black Days", advising labourers to launch strike from October 29 and eulogising student-labour-public unity.

79. In fact, at the instigation of the labour leaders, the workers of a certain Mill and Power Loom launched a strike on the following day October 29 sympathising with the students' cause; at another public meeting of 300 students held at Gopabandhu Bag a prominent labour leader, while congratulating the students for their bold stand, condemned the Government for repressive measures and alleged false statements; he urged upon the public to support the students' cause unequivocally and to bring pressure on the Government to concede to the students' demands.

80. In another meeting on the same date, at the same venue towards the evening, the leaders including a prominent labour leader criticised the Government's Press Communique, condemned the Chief Minister, Home Minister and the Chairman of the Planning Board for inhuman police atrocities, firings and urged upon the public to demand the resignation of the ministry unless the students' demands were conceded; they incited the audience to face the challenge of the Government without fear of life.

81. The spirit of trade unionism, recently noticed among the students and their activities for pressing demands not only on the Government but also on their teachers, appears to be based on the principle of collective bargaining which the workers resort to in their demands against their employers. This is an unfortunate phenomenon which has polluted the educational institutions of the country for which the labour leaders generally are responsible.

82. On October 28 at Parlakimedi (Ganjam) the students of the KCG College and the local boys High School resorted to complete strike. At the instance of the President of the College Union and another student, a procession of about 200 students started from the college with two donkeys symbolising Mr. Biren Mitra, Chief Minister and Mr. Nilamanl Routray, Home Minister. The processionists moved in the town shouting abusive and

defamatory slogans against the Chief Minister and Home Minister of the State as also the police. Earlier some of the students burnt three copies of the newspaper Kalinga on the public road. In the evening a public meeting was held where speakers criticised the alleged police excesses and exhorted the students to continue their agitation until fulfilment of their demands. Instigated by the students of Parlakimedi College and a student of Berhampur Engineering Institute, the students of Kasinagar High School (P. S. Parlakimedi) observed strike and 40 of them paraded the town in a procession shouting anti-police slogans and demanding immediate fulfilment of their demands.

83. What happened at Bargarh (Sambalpur district) on October 28 has been fully described in a separate chapter on the Bargarh incident.

84. October 29 was the most troublesome day in Orissa during the students' agitation. There was violence simultaneously at Jagatsinghpur, Banki, Berhampur, Bhawanipatna, Bargarh and Baripada. There was mob frenzy at Jagatsinghpur and the police station was attacked; police quarters were burnt and properties looted; there had to be use of force, lathi charge, teargassing and firing. Similarly at Banki there was violence in that the offices of the Tahasildar and the Judicial Magistrate were burnt; police personnel assaulted, Magistrate humiliated. At Berhampur, police family quarters were burnt, traffic outpost and Police Information Bureau were attacked; there was use of teargas, lathi charge and firing. At Bhawanipatna also there was violent mob in front of the District Magistrate's residential office; serious mob violence was apprehended and the mob had to be dispersed by firing of two rounds with no casualty. At Bargarh on the same day there was mob demonstration in front of the SDO's office. There was apprehension of serious breach of peace; the mob had to be lathi charged and teargassed. This is the general picture of what had happened throughout Orissa on one particular day—October 29— which have all been described separately under different chapters showing the nature and extent of the movement in each of these places as found on evidence by the Commission.

85. In the midst of such tense situation throughout the State, it was sought to be further aggravated by instigation made on behalf of the State Branch of the CPI which issued a press statement as published in the Prajatantra dated October 30 where it was stated that if the students' demands

were not fulfilled and arrested persons including the students and outsiders were not released very soon, then the CPI would take active part in the agitation and the party leaders would start Satyagraha from November 2.

86. At a public meeting of about 2,000 sponsored by the students on October 30 at Gopabandhu Park, Cuttack, some members of the Citizens' Committee and some students criticised the Government for not conceding to the demands advanced by the students and for alleged repressive measures taken to suppress the students' agitation; a resolution was adopted urging upon the student mass, the labourers and the public to agitate unitedly until all the demands of the students were fulfilled or the ministry was dislodged. It shows that the students joined hands with the labourers, politicians and the public generally in pressing their demands against the Government.

87. The position that the student movement took the shape of a labour movement supported by the labour organisations is further confirmed by the fact that at an INTUC sponsored meeting on November 1 at Gopabandhu Park, Cuttack, the speakers at the meeting, while severely criticising the Government for alleged atrocities committed on the students, said that the students' agitation was a democratic demonstration against the Goonda Administration; they challenged that if the Goondas at the helm of affairs would face the public they would be severely assaulted till death; they further said that people would not tolerate the misrule any longer and would come forward to join the students' agitation without fearing for their lives. It was said that persons who lost their lives due to police firing would be treated as 'Sahids'; they encouraged the students to continue the agitation until all their demands were fulfilled. Such activities of the political parties, accompanied by inciting speeches made by the political leaders at the public meetings and elsewhere in the State, encouraged the students to continue their agitation more vigorously and the public to join hands with the students in their agitation all over the State.

88. The student movement was still getting impetus from the political leaders as a result of which there were further incidents in different places including mob attack on November 2 on Binjharpur police station resulting in firing as a result of which one person was killed; the details of the incident are fully discussed in a separate chapter dealing with Binjharpur incident.

**G. Third phase: between November 5 and 11: agreement:
ultimatum by students to Government for
release of non-students turned down :
resumption of the movement :**

89. On the night of November 4 student representatives along with members of the Guardians Committee and Bhoodan leader Sm. Rama Devi met the Chief Minister and arrived at a settlement following which the students' agitation was called off on November 5. The terms as recorded in the agreement, dated November 5 (Ext. 14/1) were—

- (1) appointment of Judicial Commission ;
- (2) compensation for loss and damages to life and property ;
- (3) no victimisation of students connected with the movement ;
- (4) no false or baseless proceeding against students.

90. After the agreement the strike was called off ; students were attending colleges ; it is said that student prisoners were released in terms of the agreement. There was temporarily resumption of normalcy in the atmosphere.

91. Ultimately, however, the agreement fell through and the agitation was renewed on the issue of release of non-students arrested in connection with the students' agitation. In fact, on the very date the agreement was signed, some student leaders at a public meeting on that date said that the agitation will be renewed if non-students arrested in connection with the students' agitation were not released very soon.

92. It appears from records that the SSP leaders were not happy about this agreement. Evidently some SSP leaders who were utilising the students' agitation for ousting the then ministry did not feel happy over the termination of the students' agitation. At a public meeting organised by the SSP on November 6 at Cuttack, a prominent SSP leader severely criticised the police for alleged atrocities committed by the police during the students' agitation ; while apparently expressing satisfaction with the settlement between the students and the Government, he, however, expressed doubt on the *bona fides* of the agreement as no press statement was issued by the Government ; he called upon the student mass, citizens and labourers

to agitate for putting an early end to the sufferings of the people of the State by dislodging the ministry ; he welcomed the decision to renew the agitation and keep it alive until the non-students arrested under the DIR were also released from jail.

93. The leaders of other opposition parties also made press statements demanding the release of the political leaders and clarification of doubts and fears of the students without which there would be further disturbance. Such speeches and press statements by the leaders influenced the student leaders both at Cuttack and in other parts of the State and created a tempo among the students to resume the agitation.

94. On November 9, student leaders from various parts of the State met at Cuttack and gave an ultimatum to the Chief Minister threatening to resume the strike. In this context the evidence of P. W. 4 Mr. Promode Chandra Samantarai is that one ultimatum was given to the Government which was passed in a general body meeting of student leaders of Cuttack City about 100 in number and a few other student leaders under the Presidentship of Mr. Bhagabat Behera ; the Central Council of Action approved of the said decision at the said meeting , this meeting was called to discuss the students' agitation ; the meeting continued for about three hours ; the ultimatum included a demand that all cases against all arrested persons, meaning and including non-students, should be withdrawn by the Government ; it also included a demand that the students and the public who were convicted and sentenced to simple and rigorous imprisonment should be quickly released (P. W. 4 Promode Chandra Samantarai Qq. 538, 545, 559, 560, 575, 561, 562).

95. It was sought to be argued by the learned State Counsel that this ultimatum making fresh demands was given by some individual student leaders purported to be (not actually) on behalf of the State Council of Action which did not come into existence until November 13. His point is that the decision which was published as a news item in the local newspapers was not passed at any meeting of the Students Council of Action as such. The point of the learned State Counsel was that individual student leaders utilised the name of a representative student body and got published statements alleged to have been made by the State Council of Action, got the students involved in another agitation, and he

further submitted that the press and students were thus misled to think that it was a decision of a representative body of students ; that there was no decision of the State Council or Central Council of Action for renewal of the agitation ; that on November 10 or thereafter the Central Council of Action though in existence did not meet, that the State Council of Action came into existence for the first time on November 13.

96 There is not much force in these submissions made by the learned State Council. The fact remains that there was already in existence the Central Council of Action since October 21 as an active students' organisation. It is clear from the evidence of Mr Promode Chandra Samantarai that the ultimatum was given by a general body of students both of Cuttack and other parts of the State who had gathered at a meeting. That apart, he also said in answer to Q. 545 that the Central Council of Action approved of this decision at the meeting over which Mr. Bhagabat Behera presided. It is no use minimising the depth of the student movement. The Commission is convinced that it was not that only certain individual students were in the movement; there are reasons to believe that the student movement was well organised and the decisions they took represented the views of the general body of the students organised as such.

97. The ultimatum is said to have been turned down by the Chief Minister; thereupon the students decided to resume the agitation from November 12. It is said that the Students Council of Action was reconstituted predominantly with UUS leaders; decision was made to form Action Committee in every college and school and constitute four Zonal Committees to carry on the State-wise students' agitation in an organised way.

98. At this stage, before decision to resume the movement, it appears that there was difference of opinion among the students as to whether the agitation should be resumed; some student leaders expressed their opinion that resumption of the strike would constitute disrespect to the terms of the agreement; most of the student leaders at Cuttack expressed opinion against resumption of agitation and also expressed that by agitation studies will be disturbed (P W 4 Promode Chandra Samantarai Qq. 607, 608).

99. It is clear from evidence that the students though divided in their views on this question whether the movement

should be resumed, they ultimately came to the decision to do so, after careful consideration.

100. We get only a glimpse of what happened at the meeting where this decision to resume the movement was taken from the evidence of Mr. Promode Chandra Samantarai. What he stated was this : On November 11 at the Law College premises there was a general meeting of the student leaders of which Mr. Samantarai was the Chairman ; the meeting started at 9-30 A. M. and came to an end at 9-30 P. M. at night the same day. He said that he only gave his verdict ; there was discussion for long 12 hours with the student leaders who came from all parts of Orissa ; in the beginning of the meeting his opinion was never to resort to strike again but during the discussions for twelve hours when he was apprised of the fact that oppressive measures were being taken in a large scale throughout the State, he gave his verdict at 9-30 P. M. that night to continue the strike. He further said that the decision which was taken at the meeting was kept a secret. (P. W. 4 Promode Chandra Samantarai Qq. 611, 612, 617).

101. So ultimately the Agreement of November 5 (Ext. 14/1) fell through and the movement was resumed. The main causes for resumption of the movement were these : massive arrests throughout the State in spite of the Agreement ; the Judicial Enquiry Commission was not yet set up at an early date ; according to students' point of view there was enough proof on which they came to the conclusion that the terms of the Agreement were not being attended to, that is to say, all the students had not been released ; the students demanded the release of " ABHIYUKTA BYAKTI " meaning students and non-students including thereby persons detained under the DIR, in connection with the students' agitation (P. W. 4 Promode Chandra Samantarai Qq. 164-169, 589-593). Thus the students also demanded release of persons other than students arrested in connection with the students' agitation during the period.

102. On the issue of resumption of the movement there was evidently a split in the student leadership Mr. Abhoy Chandra Mohapatra, President of the Ravenshaw College Union who was also a member of the Central Council of Action and a signatory to the Agreement, in the issue of the Matrubhumi of November 13 (M/4) published a statement expressing his opinion that students should not resume strike ; that some interested students were beginning the agitation

after normal conditions were restored ; that resumption of agitation will do considerable harm to the student community ; the Agreement did not contain any condition for release of non-students or for release of the students unconditionally. This prominent student leader also issued a printed pamphlet dated November 11, 1964 (Ext. J) in which he strongly expressed his view against resumption of the movement. This student leader was one of the pioneers of the movement when it started. In fact, he was arrested and was behind the prison bar for more than four days during the agitation ; he was also on hunger-strike for more than four days inside the jail. Even he could not support the move by certain sections of the student leaders to resume the movement. In fact he opposed the continuance of the agitation, accordingly made a statement and issued a pamphlet expressing his views.

103. Thus, in spite of all opposition from the sober section, the dominating section among the student leaders decided to resume the movement. The shape the movement took, after the resumption in a more organised form, has great importance from the point of view of the study of the ultimate nature and extent of the movement in its organised form. This aspect has great importance in the history of the student movement which should be recorded.

**H. Fourth phase : between November 12 and 24 :
directive principles of the Students' State Council
of Action : trend towards secrecy :**

104. In course of giving evidence the student leader Mr. Promode Chandra Samantarai (P. W. 4) produced the minutes of the proceedings of the first meeting of the State Council of Action at Puri on November 13. There were 11 members who gathered as representatives of students representing the different zones all over the State - Sambalpur Zone, Puri Zone, Berhampur Zone and Cuttack Zone. The meeting was held in one of the rooms of the hostel attached to Samanta Chandra Sekhar College at Puri. Among those present at the meeting were the Presidents of the Students' Unions of different Colleges —the SCB Medical College Students' Union; Khallikote College Students' Union, Berhampur; SKCG College Students' Union, Parlakimedi; Science College, Nirakarpur and Burla Medical College Students' Union. There were also the Secretaries of the College Unions of SCS College Union, Puri; MS Law College Union, Cuttack and Fakir Mohan College Union, Balasora.

Mr. Promode Chandra Samantarai was the Chairman of the meeting.

105. The object of calling the student leaders to assemble at the meeting was for the purpose of discussing whether the terms of the Agreement were being executed in their localities, whether all the students arrested during the movement were released and whether they were "going to read peacefully" in their respective institutions or not. It was at the Puri meeting of the State Council of Action of which Ext. 15 was the minutes of the proceedings that a decision was finally taken to resume the students' agitation (P. W. 4 Promode Chandra Samantarai Qq. 510, 511).

106. Mr. Promode Chandra Samantarai referred to the minutes of the meeting Ext. 15 to show what were the directive principles of the State Council of Action to launch the agitation in a violent way or non-violent way. This document reveals certain matters which are of great significance. It must be said that it shows that by November 13 the student leaders by experience, which they acquired during the movement, were acting with confidence in laying out their programme as disclosed in the minutes of the proceedings. It shows that students were prepared for an All-India movement.

107. The implications of some of the proposals of the Students' State Council of Action at their Puri meeting on November 13 as recorded in the minutes Ext. 15 speak for themselves. They may be summarised thus :

- (a) The Chairman of the meeting after congratulating the Berhampur delegates made review of the last All-Orissa meeting ; he said that the State Council would be responsible for future programme of the movement ; negotiation to be done by the Council of Action and not by the Zonal Councils ; request to different zonal members about their plan.
- (b) The member from Berhampur Zone while welcoming the State Council of Action, suggested plan for meeting the Central Ministers at Delhi and some others ; no violence, the strike should continue in non-violent way.
- (c) The member from Sambalpur Zone made a proposal for meeting the Central Secretary and Director of CBI.

- (d) The member from Puri Zone proposed a resolution for strike in sympathy at other places and suggested plan for public meeting for creating public opinion in order to make the people understand ; to plan the way to paralyse the Government ; to do picketing near offices.
- (e) The member from Balasore Zone also suggested ways of creating public opinion, picketing ; and finance for State Council.
- (f) The member from Cuttack Zone with the observation that the Government was in an oppressive mood suggested to wait 2-3 days for picketing and complete non-violence; approach to Central body at Bhubaneswar; for public opinion pamphlets with all facts should be sent to all places by the following day; when public in large scale will be supporting, then meeting and picketing, etc. will, be done.
- (g) The minutes purport to show that Mr. Bhagabat Behera suggested to chalk out all procedure about course of action; 'NIRAB PRARTHANA' (silent prayer); course of action —peaceful agitation.
- (h) Everybody present proposed All-India strike; intimation to Andhra and all other places of India other than Orissa.
- (i) Proposals at the meeting were these :
- (1) All Universities will be issued a press note in the name of State Council of Action with individual letters but specially in papers—
- | | | |
|---------------------|----|---|
| Southern India Zone | .. | Satpathy |
| Central India | .. | Cuttack Zone |
| Northern India | .. | Balasore |
| Cuttack | .. | Bombay,
Madhyapradesh,
Maharashtra. |
| Balasore | .. | Northern India |
| Berhampur | .. | Southern India |
- (2) To meet BBS Central delegates, Cuttack Zone will meet,

(3) Entire Council of Action will meet the delegates from Central Government of India at Bhubaneswar.

(4) Strike—non-violence way, meeting, procession, leafleting.

(i) The resolutions passed at the meeting were these :

(1) Intimation to be given immediately to all parts of India by Cuttack Zone; later on the other zones will co-operate according to the above said proposal.

(2) We will not resort to any sort of violent means. If the police provokes the Government will be responsible for that.

(3) Peaceful procession and meetings will be carried on till public opinion is sympathetic (The Zones will take up and decide when and whether to start civil disobedience and picketing, etc.).

(4) Unless and until invited by the Government authorities, we are not going to even talk with the Government. In case of talk it is the Council as a whole to do it. No individual opinion or statement can be given.

(5) In case of emergencies the head office will be responsible for immediate communication to the zones.

(6) Zones will afford 10 per cent of their collection for maintenance of the SSCA (Students' State Council of Action).

(7) Mr. Murty will remain as the permanent convener. He will call the meeting in consultation with the previous Chairman.

(8) State Council Headquarters will be at Cuttack.

(9) Till next meeting sittings proceedings will be flashed under the authority of the acting Chairman.

108 The significance of the minutes of the proceedings of the State Council of Action at Puri (Ext. 15) lies in the fact that the students were organising themselves for a movement

on an All-India basis. Evidently, the students had imagination as is natural at that stage of life with the natural psychological bent towards what is called the "movement".

109. On November 13 at a public meeting in Cuttack the student leaders and others, reiterating the students' demands, gave a call to intensify the agitation until the ministry was dislodged. Some student leaders while severely criticising the then Chief Minister and the then Chairman, Planning Board, said that they wanted violence to be met with by violence and blood for blood. Denouncing the policy of the Government in effecting arrest of the student leaders, it was said that each student was a leader and Government should be prepared to arrest all the students, as leaders would be coming out daily and at every moment. the agitation which spread throughout the State was going to extend to other States on an All-India basis and could never be curbed by lathi charge, teargassing, mass scale arrests, detentions and victimisations; finally at the meeting the Chief Minister was called upon to honour his written Agreement and withdraw all cases of arrests and detentions until the result of the Judicial Enquiry was known.

110. On November 14, there was an incident at Chandanpada where there was use of tearsmoke and lathi charge in the circumstances—all as fully described in details in a separate chapter dealing with the incident.

111. On November 22, the Union Home Minister, Mr. G. L. Nanda arrived at Bhubaneswar; his advice to the students became effective; ultimately the student agitation was called off on November 24.

I. Wide features associated with the agitation :

112. Although the student leaders professed that it was a non-violent movement based on the wholesome principles of Satyagraha, it is unfortunate that the way the agitators—students and non-students—behaved was far from the very ideal which was preached.

113. *Civil disobedience . object of Students' Council of Action :* As the student leader Mr. Promode Chandra Samantarai said in evidence, the Council of Action gave a call to carry on the civil disobedience movement which was their objective; the ideology behind the movement was to persistently stick to the principle which was adopted by the general students of Orissa to restore the democratic pattern of society

which, according to him, was severed by the police atrocities on September 26 and 27; the principle of the movement was Satyagraha for the democratic rights of the students; he said that the first democratic right was hampered on September 26 (P. W. 4 Promode Chandra Samantarai Qq. 726—729).

114. There is no doubt that there was a deliberate attempt by the students and the public, who joined the movement, to paralyse the administration. The students were organising meetings and they were going on peaceful demonstration throughout Cuttack City and they were doing picketing in the Collectorate premises; the demonstrators more than 2,000 in number everyday usually came, met together and they came in procession to the Collectorate because that was the administrative headquarters where the students offered their grievances. According to them, they did peaceful picketing in that they were standing peacefully, going and meeting the authorities to express their demands that they were dissatisfied with the action of the policemen and therefore the students submitted before them that steps might kindly be taken so that justice will be done to them.

115. The Council of Action issued directives for organising demonstrations and picketings for the purpose of paralysing the functioning of the Government offices and institutions; the primary object, however, was to restrain the students from being inspired by guardians or Government people who were from time to time forcing the students to come into educational institutions and not to join the strike and also trying to paralyse the efforts of the students to get justice over an issue. In pursuance of such directives of the Council of Action, the processionists were organised and went to the Collectorate and demonstrated at the Collectorate; for several days there used to be demonstrations by thousands of students in front of the Collectorate (P. W. 4 Promode Chandra Samantarai Qq 365—367).

116. There was also picketing in large number in schools and colleges during the period of agitation. Among the picketers, most of them were students of Christ College, a few were the students of the Ravenshaw College and a few of them were lady students of the SCB Medical College; the lady picketers of the SCB Medical College did not go outside the premises but inside the premises; the picketers in batches were instigating the students not to enter the

educational institutions; they obstructed the normal running of the institutions or the offices in front of which they were sitting by which they expressed their grievances.

117. One more noticeable method of demonstration was the hoisting of black flags. With reference to a news item under caption "DPI OFFICE GHARA OOPARE KALAPATAKA" published in columns 7 and 8 of the front page of the Prajatantra, dated October 31 marked P/17A, Mr. Promode Chandra Samantarai was asked as to whether such activities of the students mentioned in the news item or similar activities were sanctioned and directed by the Council of Action. He conceded that the Council denounced such activities; he however did not remember whether he published such denunciation in any newspapers nor was he aware of the same (P. W. 4 Promode Chandra Samantarai Qq. 812 to 817).

118. But while the attention of Mr. Promode Chandra Samantarai was drawn to another news item under the caption "ZILLA MAGISTRATE OFFICE RI PASI CHHATRAMANE KALAPATAKA OODAIIE" published in columns 4 and 5 of the front page of the Prajatantra, dated October 1 marked P/21, he admitted that the activities of the students mentioned in the news item were true, and that they were sanctioned by the Council of Action. His explanation in support of hoisting a black flag over the office of the District Magistrate was that the sanction of the Council of Action was to carry on demonstration with black flags as the insignia of undemocratic attitude of the Government; it was also sanctioned that students would go to as many administrative offices as possible and make the administrators aware about the students' grievances; the event described in the news item under the caption mentioned above was merely to show the students' grievances in front of the administrative offices; he further clarified it by saying that because all the administrators were not standing in front of the buildings, the students had to go inside the buildings and demonstrate their grievances in front of the offices; and while coming back from the highest floor of the building, people standing below might have observed the existence of black flag on the Collectorate building; the students could not be taken as hoisting the black flag over the Collectorate which was really a place for the National Flag to be hoisted; in fact physically the black flag was there at the top of the building (P. W. 4 Promode Chandra Samantarai Qq. 818 and 821).

119. *Hunger-strike as part of the programme* : The student leaders also included hunger-strike as a part of the programme of their movement. The students went on hunger-strike as a protest against police excess and the Government indifference to their demands. In pursuance of this policy, the students launched hunger-strike at different places during the movement.

120. Mr. Promode Chandra Samantarai in his affidavit said that the students had no other alternative but to resort to hunger-strike when the Government was not acceding to their demands. The students' point was that because, in spite of repeated demands by the students and the public all over the State, the Government paid a deaf ear to their demands and began arresting students and public at random either under the DIR or on allegations of offences under the Penal Code, the students went on strike everyday, batches of students went on hunger-strike and some of them even announced hunger-strike till death. The nature and the extent of hunger-strike to which the students resorted to are referred to in the affidavits of the District Officer who were in direct touch with the movement from day to day.

121. At Cuttack, on October 1, a student of Ravenshaw College Mr. Banambar Martha started hunger-strike inside the Cuttack Jail. The following day on October 2, Mr. Abhoy Chandra Mohapatra, the President of the Ravenshaw College Students' Union also went on hunger-strike inside the Cuttack Jail. Two more students of the Ravenshaw College offered to go on hunger-strike on road on November 20.

122. On October 6, a student of SCB Medical College resorted to fasting in front of the Students' Union Office inside the Medical College campus from the morning to persuade the Medical College students to participate in the agitation; subsequently however, the hunger-strike was called off.

123. A limited number of students also offered to go on hunger-strike and obstruct work in the Collectorate between October 3 and 9 during the working days; the students used to attract crowds around them and obstruct work; they had no legal business in the Collectorate. It was also reported that on November 2, ten students resorted to fasting in the Cuttack Collectorate premises. After revival of the movement in November the students at a meeting held on November 11, intended to boycott the educational institutions, launched hunger-strike in Cuttack Collectorate and sought support of the public and industrial workers.

124. It was not only in Cuttack town but also in the interior that students went on hunger-strike at different places. On October 3, some students of Jagatsinghpur College informed the Officer-in-charge of the police station that they would launch hunger-strike in front of the police station on the following morning. There were reports of students and non-students having resorted to hunger-strike at Banki and Athgarh.

125. There were also reports from Sambalpur about students having gone on hunger-strike on October 1 on which day at 11 A. M. 3 students of the Gangadhar Meher College started hunger strike in front of the college demanding unconditional release of the arrested students at Cuttack and judicial enquiry into the incident. The hunger-strike is said to have been called off after 24 hours the following day, as there was no public support. Four students of Gangadhar Meher College and one student of Burla Medical College started hunger-strike in front of the Collectorate at Sambalpur and this batch of hunger-strikers was replaced by fresh batches daily, until November 3. On October 24 the student demonstrators insisted on being allowed to go into the District Magistrate's residential office to stage a hunger-strike. When they were adamant the District Magistrate Mr. Kukreja allotted a place under a banyan tree in the Collectorate premises where five students could stage the hunger-strike. The District Magistrate also offered them a bench and water—he did all these with a view not to provoke the students (C. W. 33 Kukreja Qq. 11-14). On October 31, one Gourchandra Panda styling himself as a Shanti Saynik (Bhoodanist) started hunger-strike in support of the students' cause and broke his fast on November 2.

126. At Burla (Sambalpur) also there was hunger-strike by students. A batch of 50 Medical College students started hunger-strike at Burla where attempt was made to block the road with stones which were removed; 18 Engineering College students also wanted to start hunger strike at Burla.

127. In the ultimate analysis of the nature and extent of the hunger-strike which was resorted to during the movement, it appears that the students took to hunger-strike very lightly as a part of their programme; the hunger-strike resorted to by them was only a show.

128. *Effigy burning : mock widowing : mock funeral, ugly slogans* : As it would appear from the evidence of Mr. Promode Chandra Samantarai, the student leaders were conscious that

such things were not correct, proper or decent. Although attempt was made by him to disown responsibility, his evidence to that extent cannot be accepted. In fact, the learned counsel appearing for the students and the public in course of his argument supported such methods of demonstration on the ground that, according to him, morals and standards set by publicmen, particularly of the party-in-power, deteriorated to such a low level that their condemnation took the form of much visual expressions—though ugly; that these demonstrations were expressions of feeling of contempt with which they were held in public estimation; that there was nothing undemocratic about such demonstrations and that the public were within their right to condemn the public activities of the people in power in the manner it was done during the movement.

129. Apart from this, the other student leaders P. W. 32 Mr. Govinda Chandra Rath and P. W. 16 Mr. Gopal Chandra Satpathy approved of burning effigies of Ministers and the other ugly methods of demonstration. P. W. 32 Mr. Govinda Chandra Rath, student leader of Bhawanipatna, stated that he approved of the burning of effigies of Ministers because the officers and those people who are in the administration are not correct in their day-to-day work; he said that the Council of Action at Cuttack might have discouraged the same but the students in Bhawanipatna appreciated this thing—effigy burning, etc., according to him, the reason why they were shouting slogans against the ministry and burning effigies of Ministers, was that when the incident happened at Cuttack the students personally requested the Ministers to look into the matter but they kept silent; they did not listen to the students; the purpose which he (P. W. 32 Mr. Rath) thought would be served by burning effigies or shouting slogans against individual Ministers was that at least they (Ministers) would feel shame that students of their own country do not like them; it was the duty of the students that they should look for the betterment of their country and to remove corruption (P. W. 32 Gobind Chandra Rath Qq. 82—115).

130. Similarly the student leader of Berhampur P. W. 16 Mr. Gopal Chandra Satpathy said that the students at Berhampur took out a dog in the procession symbolising the Panchayati Raj Minister Mr. Brundaban Naik for the reasons as stated by him in evidence; Mr. Satpathy said to the effect that he did not find any impropriety in that because students garland other people but they (students) demonstrate against

only a few persons like dogs. As regards burning of effigies of Ministers, Mr. Gopal Chandra Satpathy said that if the Ministers are corrupt and if they are not doing things properly or not doing justice towards the people, then they are not doing their duty or justice to the people, so it is the students' duty to get them (Ministers) down as they are demoralised; students will ask them to leave their places and good people will go in their place (P. W. 16 Gopal Chandra Satpathy Qq. 228—231, 233, 234).

131. Besides, the student leaders did not get any contradiction published in the newspapers to the effect that the students were not indulging in the anti-social activities. It was, however, said that certain contradiction notes were sent to the Press for publication. Mr. Promode Chandra Samantarai, when questioned about this, said that he issued statements and as such he could not say whether or not any contradiction under his name was published in any paper condemning these anti-social activities. He admitted that he may not be able to point out that either the Central or the State Council of Action or any member thereof ever published in any newspaper any contradiction to the effect that students were not indulging in these anti-social activities (P. W. 4 Promode Chandra Samantarai Qq. 474—480).

132. It is clear from the evidence, as fully discussed in the chapters dealing with the incidents at different places, that from one end of Orissa to the other including villages the pattern of conduct of the demonstrators during the movement was the same: evidently the students were deliberately indulging in such activities. This reveals the thoughtlessness, lowering of moral standards and anti-democratic approach. Assuming it was conceded that the students were justified in taking direct action or agitating for fulfilment of their demands, even so, there cannot be any justification for exhibition of such low taste on a mass scale as they did during the movement.

133. *Mode of agitation : movement got out of control of students :* According to the directions of the Council of Action, no student member was to go beyond decency, by which it was meant offending the political people or MLAs as published in some newspapers or burning of papers and official documents in the offices or calling the members of the Cabinet by bad names. According to the evidence of Mr. Promode Chandra Samantarai, these things were considered as indecent acts; there was the limit up to which the students were to act according to the decision of the Council of Action.

The limits on the positive side, which the Council of Action permitted the movement to go, were that students could go on procession, break the 144 order, carry on black flag demonstration and take resort to picketing in front of the administrative offices without blocking anybody to go in or come out; accordingly, brickbattling or any act of violence on the part of the students, as Mr. Promode Chandra Samantarai said, was not permissible. He further said that demonstrations, abstention from classes, violation of order under Section 144, picketing in offices and institutions were the modes prescribed by the student leaders and the Council of Action for carrying on the agitation; the directive of the Central Council of Action was that these activities could be carried on till the demands were fulfilled (P. W. 4 Promode Chandra Samantarai Qq. 732, 733, 846-849).

134. It was in pursuance of these directives during the period of student disquietude from October 23 to November 4, the Medical College students at Cuttack violated orders under Section 144 in batches of 8 or 12 who were called Satyagrahis. In fact, it was not only at Cuttack but all over Orissa that the students were deliberately violating orders under Section 144; the decision of the Central Council of Action to break orders under Section 144 was being carried on by all students throughout the State. The student leader Mr. Promode Chandra Samantarai categorically mentioned in his evidence that orders under Section 144 were broken only after the decision was taken by the students in the Council of Action; the principal object of this decision was to see that basic four demands made on the Government were fulfilled. In this context in answer to a question put to Mr. Promode Chandra Samantarai in his capacity as the President of the SCB Medical College Students' Union, the Chairman of the then Council of Action and as a student as to whether it was correct or proper for any group of students or for the student community to force any Government to come to any decision by breaking of law, he said that the answer to this question put to him was the "theme of poetry" (as he put it) of the 1964 student movement (P. W. 4 Promode Chandra Samantarai Qq. 314--319). The student leaders thus had ideology of their own by which they were inspired to carry on the movement.

135. According to the sober section of the student leadership at the time, at stages and at certain places the movement got out of control of the students, inasmuch as the Council of

Action disowned certain happenings during the students' agitation like burning office at Banki, breaking bridge at Jagatsinghpur brickbatting, stoning and other acts of violence. The student leader Mr. Promode Chandra Samantarai said that these things were not according to the directive principles of the Council of Action so far as he was informed. He further said that burning of effigies of individual members of the Government or mock wifing, boys dressed as ladies symbolised as wives of important persons, or obscene slogans, or slogans against a particular member of the Government were certainly not and never the directives of the Council of Action. In evidence he frankly admitted that to that extent the movement got out of control of the students. He also tried to explain that these things mostly were not committed by the students; he said that he was unable to say by whom they were committed because when the procession went on or when a meeting was held, apart from the "learned students" there were innumerable "wayfarers" who took part and uttered things which he as Chairman of the State Council of Action could not reason out; he said that he himself denounced these things at two meetings held in Gopabandhu Park and that he still denounced these things; he further said that non-students and members of the public got mixed up with the students so far as these things were concerned (P. W 4 Promode Chandra Samantarai Qq. 373-379. 384-386).

136. The evidence of Mr. Promode Chandra Samantarai is that the Council of Action and the student leaders denounced the activities, as published in the newspapers, at public meetings they also denounced in all their Council meetings; they were sending official directives to the Zonal Councils not to resort to actions of this sort; he also regretted that unfortunately because "many grievous and big things" (as he put it in evidence) were happening in those days, they could not get these denunciation news printed in local newspapers. He admitted that to the extent these things were happening which, according to him, were denounced by the Council of Action, the movement went out of their control; he said that certainly the antisocial elements were responsible for these activities denounced by the Council of Action (Qq. 828-830).

137. On this aspect in answer to a question put to Mr. Promode Chandra Samantarai whether these things and demonstrations of such nature were politically motivated, his answer was that he could not say they were politically motivated or socially and was unable to give his impression

on these matters; he said that he had no time to think over all these. When this point was further pressed he said that so far as he was concerned he would take a little time to think about this and was "not prepared to think about this now" (as he said in evidence). From the tenor of his evidence he appeared to be hesitant to say that these things were politically motivated (P. W. 4 Promode Chandra Samartarai Qq. 387 -390).

138. *Spirit of nihilism amongst students : no faith in anybody* : The significant features noticed in the last movement were that students generally had no regard for law and authority; it was primarily due to this attitude of mind that they resented the very presence not only of the police but also their teachers—Principals and Professors—at the radio shop to help the students. The undercurrent psychology behind all such behaviour as noticed during the movement was the spirit of nihilism—no faith in anybody. In this context the working of student mind, as expressed by some student leader in evidence, is necessary to be recorded for future guidance of the administrators and educationists who have to deal with them from day to day: this will help them in understanding the student mind and meeting his needs accordingly.

139. The students generally have no regard for educational authorities including the Principal and even the DPI. One student witness said that he did not consider the Principal of a certain college in Cuttack as a competent man in the administration or even of his College Union; so he expressed the opinion that the Principal could not have helped the students in any way.

140. As regards the role which the Principals of the Colleges or the Vice-Chancellor of the University could have played to help the students during the movement, the evidence is that the student leaders had no confidence in them; neither the student leaders nor their Council of Action approached any of them nor placed their grievances and demands before them nor sought their assistance in the matter of fulfilment thereof. The feelings of the student leaders were so strong on this aspect that one of the student witnesses expressed in evidence to the effect that, even if there would have been any such proposal for approaching the Principals or the Vice-Chancellor, he would have been the first man to object to it because in his opinion neither the Vice-Chancellor nor the DPI nor the Principal of any college has got any

hold or any power to convince the Government which is completely corrupt; there was so much mal-administration that they could not fulfil the demands of the students.

141. That apart, the students have also a general grievance against the authorities in the educational field. It is the evidence of the student leader that in more than one case the highest man in bureaucracy (as he put it) and Government interfered with the administration of educational system which has, according to him, lost all the sanctity of the educational institutions; that the students experienced that with "motivated intention" (as the student leader put it), Government transferred efficient lecturers from one college to another; thereby the students suffered in not getting good education from good teachers; he also said that in some cases there is also partiality in giving scholarships, allotting seats in institutions outside the State, giving National Research Scholarship and some other grants (P. W. 6 P. K. Mohanti Qq. 437, 595, 596).

142. This spirit of nihilism, as found during the movement, developed from the students' dislike towards Government generally for, among other reasons, absence of proper academic atmosphere in the colleges and schools, — want of proper library facilities, want of proper facilities in research work, — the present set-up of administration by reason of which the students feel completely bored and their mind always disturbed about their future and employment.

143. It is unfortunate that the student leaders have no confidence in the University authorities. The reasoning, on which this attitude developed in them as appears from evidence, is this: The University being an autonomous body has no relation with Government except finance; the students' point of view is that there is absolutely no relation between the police and the University administration; their view is that the University authorities including the Vice-Chancellor, even if convinced of the students' demands, could not have taken up the case of the students to the Government.

144. In other words, the students have scant regard for their University; their attitude is that their University cannot and does not do anything for them. One of their grievances was that the students wanted to have more Universities — one at Berhampur, one at Cuttack and the third one at Sambalpur — in addition to the existing Utkal University and Utkal Agricultural University. But, as one of the students said, some high-powered men in the University knowingly discouraged

the idea of having more Universities; yet (at the time of hearing before the Commission) the students had not achieved at least one University after independence apart from Utkal University whereas in other States, for instance Bihar has got seven Universities; their grievance is that the students in Orissa are having the same Utkal University from the beginning till now.

145. The student community appeared to be very bitter inasmuch as it was expressed that the present men in the administration of the Utkal University do not want to distribute the administration and thereby to create more Universities; these men in administration :

“are very much interested to keep all the colleges throughout the State in their own clutches for their own benefit because every month one finds in newspapers some news about University relating to misappropriation of money, mal-administration and non-fulfilment of promises by the University authorities from time to time in their Senate meetings” (P. W. 6 P K Mohanty (2,600).

It was further commented by the student leader that every man from top to bottom in the State administration are complete self-seekers, they do not want that the State should prosper or the younger generation should prosper, they are interested in themselves only. This young student leader also gave out that this state of things is one of the underlying reasons of the students' agitation in Orissa.

146. The above reveals the underlying psychology of the student leaders in the movement representing the general sense of the student community about their University and its administration. Right or wrong, the fact remains that our students are not happy even with the way the educational institutions are being run by the administration.

147. The above discussion only shows the depth of the feelings by which the students were roused in having the movement in the shape and manner they did. This general attitude of want of respect and apathy accounts for the nature and extent of the movement to which it developed.

148. *School students also in the movement* The pertinent question often raised was : Did the leaders of the movement intend the school students to join it ? The evidence of the Chairman of the Council of Action Mr. Promode Chandra Samantarai is that their Council also wished and intended the students of the schools and colleges throughout Orissa to join the movement as a protest for the students' cause; the total number of school and college students in Orissa in

September, 1964 was round about 10,000 college students and 20,000 school students; so, in all 30,000 students were in the movement (P. W. 4 Promode Chandra Samantarai Qq. 851-854).

149. In view of this large number of students, as many as 30,000, the question arises. How did the student leaders let this large number know about the directives which they expected these 30,000 students to follow during the movement? The answer as given by the Chairman of the Council of Action Mr. Promode Chandra Samantarai was this: The machinery responsible for this was through the Zonal Councils and other agencies as was vividly described by him in his evidence. The directive principles decided by the Council of Action were being sent to the five Zonal Councils; the members of the Zonal Councils in their turn passed on the directives to the College Councils, then the College Councils appointed responsible students—about 50 or 100 of them—to go into the interior of the areas in which the schools were situated; they conveyed the directives to the school students. During the movement the co-operation of these students who went to the interior to explain the directives to the boys was up to the satisfaction of the Council—all as explained in evidence by the leader (P. W. 4 Promode Chandra Samantarai Q. 855).

J. Findings of the Commission :

150. On a consideration of the evidence placed before the Commission and in the light of the foregoing discussion the Commission finds :

- (a) that in the ultimate analysis though the incidents in Orissa during the students' agitation have been compendiously described as students' disquietude, it would not be correct to say that there was from the beginning any general disquietude among the student community;
- (b) that the general average regular students were not initially interested in the politics which played some role in the students' agitation, in the prolonged continuance of the agitation and particularly in abstentions from the educational institutions: it is only a section of the student community who were able to exploit the situation; this would be evident from the necessity of heavy picketing—obstructing the willing students from going to and attending classes—in front of the educational institutions;

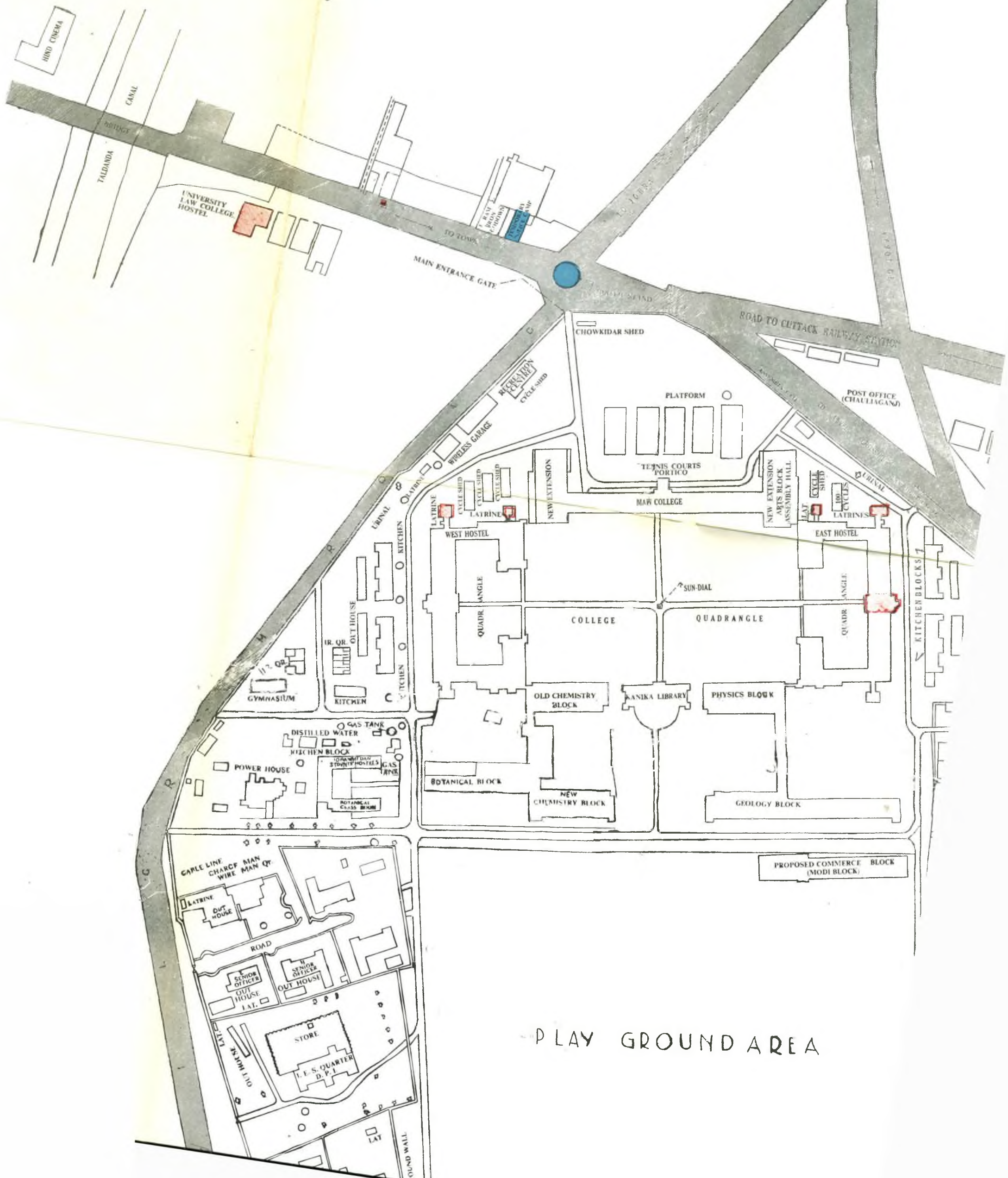
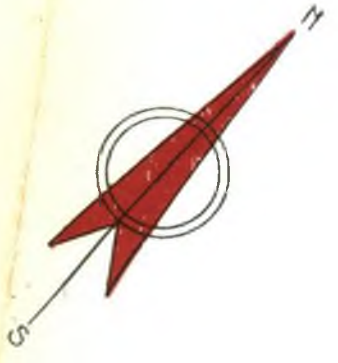
- (c) that in a situation like this, the average regular students felt helpless and bewildered; they remained apathetic, indifferent and cynical: it was some student leaders who dominated over the other students and gave the movement the shape they liked;
- (d) that in due course the students were to a great extent worked up and emotionally affected when they read or heard about the alleged police excess on fellow students; emotional tension among the students was more particularly perceptible after some students were killed by police firing;
- (e) that the nature and extent, including the depth, of the students' disquietude in Orissa during the period in question cannot be ignored or minimised; it was not that only certain individual students were in the agitation; there are reasons to believe that the students' agitation was well organised and the decisions they took represented the views of the general body of the students who were in due course organised under the leadership of the students' Central and State Council of Action;
- (f) that the pattern of the conduct of the demonstrators—effigy burning, mock widowing, mock funeral, ugly slogans—during the movement was the same; evidently the students were deliberately indulging in such activities; this reveals the thoughtlessness, lowering of moral standards and anti-democratic approach; assuming it was conceded that the students were justified in taking direct action or agitating for fulfilment of their demands, even so, there cannot be any justification for exhibition of such low taste on a mass scale as they did during the movement ;
- (g) that, in the result, even though the agitation was started initially by a few students of the dominating type, the agitation, however, in later phases was highly organised by the student leaders; it was growing in darkness in secrecy: the agitation was just taking a dangerous turn when it was fortunately called off.

PART IV

ALLEGED EXCESS : INCIDENTS

SITE PLAN OF RAVENSHAW COLLEGE

Ex-C/98








PLAY GROUND AREA

LAW COLLEGE COMPOUND, CUTTACK

Ex-C/98

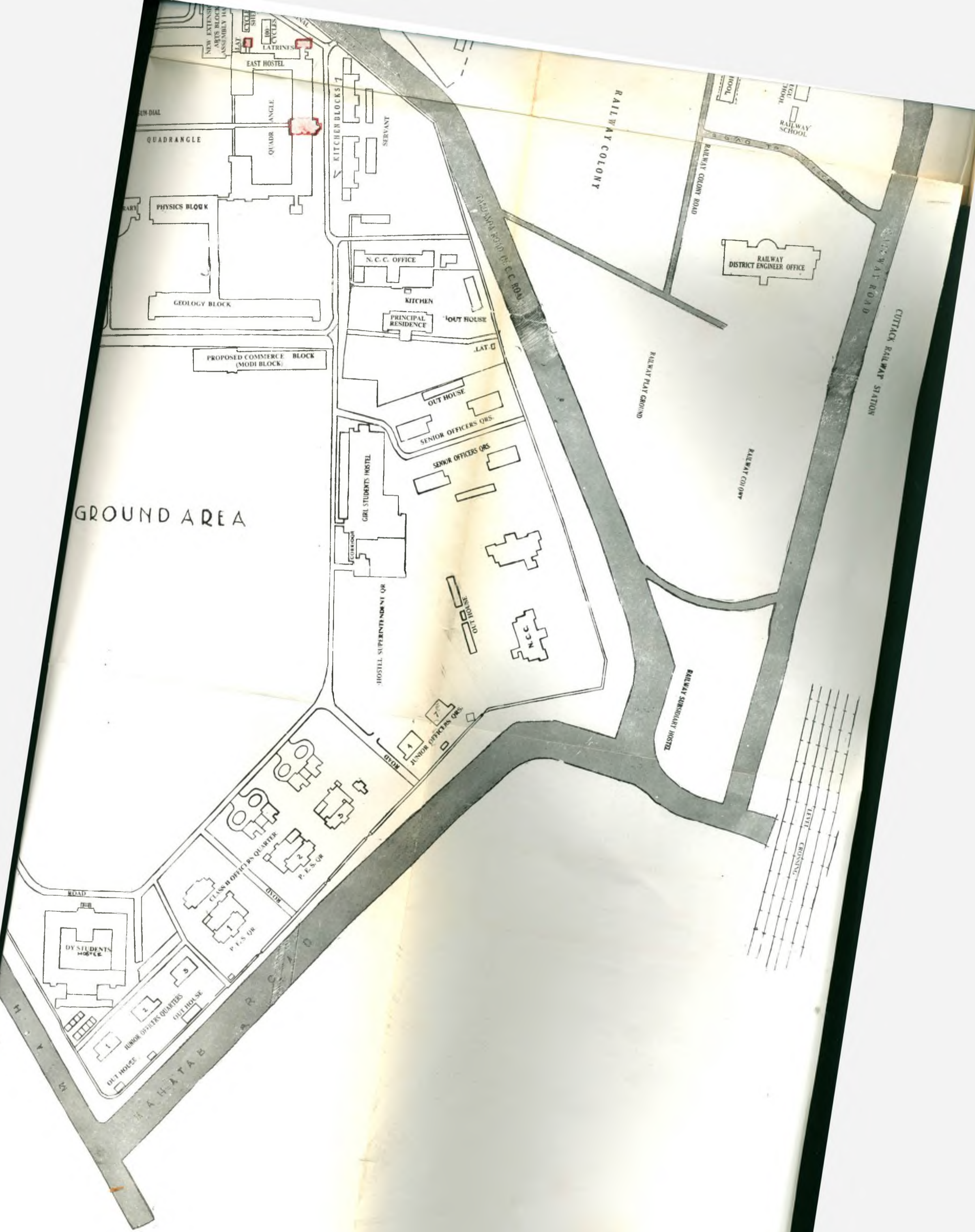
INDEX.

TRAFFIC ISLAND	
POLICE CAMP	
ROADS	
JEEP BURNING PLACE	
MAJESTIC RADIO SHOP	}
LAW COLLEGE HOSTEL	
ENTRANCE TO EAST HOSTEL	
LATRINES	



GROUND AREA

GROUND AREA



CHAPTER VII

CUTTACK ON THE NIGHT OF SEPTEMBER 26

	Paragraph		Paragraph
A. College Square area the scene of occurrence	1-9	H. Use of force in handling the situation on the night of September 26 : was it uncontrolled :	61-89
B. Allegations against the police : case of the administration	10-13	Allegations against the police : case of the administration	61-63
C. Genesis : how the trouble started : radio shop incident	14-19	General picture	64-74
D. How the authorities tried to pacify the students before the initial lathi charge	20-24	Near the main gate of Ravenshaw College at College Square	75-80
E. What was the situation immediately before the lathi charge : order for dispersal of mob by tearsmoke and lathi charge	25-34	At Law College Hostel area on the main road	81-89
F. What possibly could have been done by the police at the radio shop to satisfy the students	35-49	I. Alleged assault on Mr. Manmohan Das and Mr. Harihar Panda, students of Ravenshaw College :	90-107
G. Alleged extortion by police of F. I. R. Ext. C/11 from the aggrieved student Sasankadhar Das	50-60	Charge against the police	90-93
		Case of the administration	94
		Is the story of police assault on the two students acceptable	95-99
		Is the story as stated in the affidavits of Mr. Manmohan Das and Mr. Harihar Panda acceptable	100-107
		J. Allegations of police excess by Mr. Bibhuti Bhusan Sarangi	108-114
		K. Findings of the Commission	115

A. College Square area—the scene of occurrence :

What happened at Cuttack on the 26th and 27th of September, 1964 leading to a widespread agitation throughout Orissa was mostly in the vicinity of College Square with the traffic island in front of the main gate of the Ravenshaw College. The college campus covers beautiful open grounds with four tennis courts facing the magnificent red building with its two gorgeous wings on both sides—East Hostel and West Hostel. The Madhusudan Law College and its hostel in a separate building are also on the same road leading from Cuttack railway station towards the city over the Ranihat bridge. The radio shop at Station Bazar from where the trouble started is only about 100 yards from College Square. Without the temporary squatters' shops and without the wayside hawkers' stalls on Station Bazar side, the atmosphere at College Square in a cold winter night can be well compared to a street in the University town of Oxford or at Berkley in California. For foreign readers, Ravenshaw College and Madhusudan Law College after which the road is named College Square—require a little introduction.

2. Ravenshaw College which is now the premier educational institution in Orissa was established in the year 1841. It had then an humble beginning with only 86 boys on the rolls. For the first two years, it was held in a rented house. In 1843, it was transferred to a portion of new Government Offices. In January 1863, it was raised to the status of a High School with the college classes added to it. In 1866, it became a first-rate college. In 1878, it was named after T. E. Ravenshaw, the then Commissioner of Orissa to commemorate his services to the cause of education. In 1881, B. L. (Bachelor of Law) classes were opened. In 1912, the school classes were removed and thus the accommodation for college classes increased. The foundation stone of the present building of Ravenshaw College at Chauliaganj was laid on November 12, 1919 and the buildings were formally opened in April, 1922. At present, it is undoubtedly the leading college in the State with magnificent dignified buildings.

3. Forty members of the staff live within the College premises. The college celebrated its diamond jubilee on January 1, 1936. Though originally started by the Bengal Government, it got its present buildings constructed by Bihar Government and now managed by the Orissa Government.

4. The hostels known as East Hostel and West Hostel attached to the college accommodate 440 boarders, two Superintendents and Assistant Superintendents. Besides, there is a post-graduate hostel in Mayurbhanj House which is detached from the main block by half a mile or so. Now, other hostels have come up accommodating 240 men students and 100 lady students since 1961.

5. The number of students which had only been 100 in 1890 rose to 183 in 1906 and now there are 2,500 students on the rolls. The teaching staff in 1876 consisted of a Principal, a professor and lecturers—in all 18 in number. At present, there are 150 members of the teaching staff for 2,500 students.

6. Ravenshaw College campus, in front of the railway station, lies almost at the gateway to Cuttack city—the biggest city of the State—with a population of more than two lakhs. The Ravenshaw College campus (hereinafter referred to as the College campus) has spacious open grounds all around. The two hostels are attached to the main building as its wings on the east and west, on the southern side is the College Library known as Kanika Library named after the Raja of Kanika.

Each hostel has a garden in its quadrangle. Apart from the hostel quadrangles, the College itself has a quadrangle which is a grassy lawn with a sun-dial at the centre. The last hostel is nearer the railway station and is adjacent to what is known as N. C. C. road.

7. The main road of the city is in front of the main gate of the College. The compound wall around the College is rather low with a height of about two and half feet. In between the compound wall and the main buildings of the College, there are wide open grounds in the front with four tennis courts as are seen in the spot map Ext C/98. The main entrance into the College is from the north which is at a junction of four roads with a traffic island at the centre—it is College Square.

8. Madhusudan Law College (hereinafter referred to as M. S. Law College) originally formed a part of Ravenshaw College. In 1949, Utkal University took over the Law College and renamed it as 'Madhusudan Law College' in memory of the late Mr. M. S. Das, an eminent lawyer and publicman. The college classes are held in a building known as Burdwan palace at Station Bazar. The Law College has a hostel located in a separate building which is a private rented building belonging to Bhutia family of Dhenkanal. This hostel is near Ranihat bridge about two furlongs from M. S. Law College. Principal of M. S. Law College is Superintendent of the hostel—a two-storeyed building facing the main road.

9. With this brief introduction begins the story of what happened at Cuttack on the night of September 26.

B. Allegations against the police : case of the administration :

10. In support of the students' case of alleged police excess on the night of September 26, Mr. Sukumar Nanda (P. W. 3), President of the Orissa School of Engineering Students' Union filed an affidavit and also gave evidence before the Commission. In his affidavit and in evidence, while giving his version of the incident at the radio shop at Station Bazar almost adjacent to the Ravenshaw College campus, he said in evidence (not in affidavit) to the effect that the aggrieved student Sasankadhar Das (P. W. 1) told him that he had handed over the F. I. R. to DSP at the spot but the police did not take any action against the radio shop-keeper. In his

affidavit Mr. Sukumar Nanda also narrated the manner in which the police are alleged to have indulged in excess thus :

“I was arrested and put in a Jeep.....no sooner I enquired why I am arrested, I found military police have started chasing and beating the people mercilessly. The people were screaming and running away helter and skelter in fear of life. The police chased the fleeing public in all the direction and beat them brutally and trampled over the body of the people fell down. Along with the lathi charge teargassing was started.”

He also described how he was ill-treated by the police in a room near the radio shop where he was kept and thereafter in the OMP Barracks where he, along with others, was removed, all in the manner as stated in the affidavit.

11. Mr. Sasankadhar Das (P. W. 1), a student of the Orissa School of Engineering, - from whom the whole trouble is said to have originated,- filed an affidavit Ext. 12 as late as May 24, 1965 when the proceedings before the Commission had already started. He also gave evidence before the Commission. In his affidavit and in evidence, while purporting to narrate the circumstances in which he had a quarrel with the radio shop-keeper Umashankar Lal, Sasanka said to the effect that he himself and his friends asked the DSP to take steps against the radio shop-keeper, narrated the whole incident, put it in writing and handed it over to the DSP; but the police did not take any action. He also described the alleged police excess as stated therein. The relevant portion of his affidavit is this :

“ I found some pebbles and brickbats thrown at the public from the top of Umasankar Lal's house and the two persons who were present when Shri Lal extorted the pronote from me throwing two Radio Cabinets at the dispersing public. At that time I had almost entered the Railway Colony towards the north. All on a sudden I heard whistles and the police charged the people with lathis in both directions and arrested Shri Sukumar Nanda. When the people tried to run away their passage was blocked by the Military Police standing on both ends of the road and the public were assaulted by the Military Police with lathis. As lathi charge and teargassing was indiscriminate I concealed myself in my lodge.”

12. Apart from them, Mr. Harihar Panda and Mr. Manmohan Das, both students of Ravenshaw College, also filed affidavits about alleged assault on them by police in the circumstances stated therein. In support of this charge Mr. Banambar Martha, a fellow student of Ravenshaw College, also filed an affidavit to the same effect

13. The case of the administration is that use of force—lathi charge and teargassing— was necessary in the circumstances in which they had to handle the situation that night. As regards the F. I. R., the State officials deny that Sasankadhar Das or anybody on his behalf filed any F. I. R. or gave anything in writing to any police officer at the spot on the night of September 26 as alleged. In support of their case the ADM Mr Rath (C. W. 3), SIDO Mr. U. C. Padhi (C. W. 5), Principal of Ravenshaw College Mr. B. Samantarai (C. W. 2), Superintendent of East Hostel Mr. Trilochan Misra (C. W. 1) and Inspector Anam Charan Mohanty (C. W. 11) all filed affidavits and also gave evidence. That apart, supporting affidavits were also filed by, among others, Mr. B. B. Patnaik, Principal, Orissa School of Engineering and Mr. Dinabandhu Misra, their Lecturer. The sequence in which the situation is said to have developed from stage to stage since evening till late at night up to early hours of the morning beyond midnight which is said to have necessitated the use of force in the manner and to the extent it was used by the administration is discussed hereunder.

C. Genesis : how the trouble started : radio shop incident :

14. The unprecedented students' agitation in Orissa in September—November, 1964 sparked off from a trifling incident at a certain radio shop known as 'Majestic Radio Shop' at Station Bazar in the heart of Cuttack city within only a few yards from the campus of Ravenshaw College as appears from the spot map Ext. C/98. On September 26, 1964 one Mr. Sasankadhar Das (P. W. 1), a student of Cuttack Engineering School, went to the said radio shop belonging to one Umashankar Lai. It was then about 11 A. M. in the morning. There was some hot exchange of words between the radio shop proprietor and Mr. Sasankadhar Das over non-payment of some old dues for repairing a radio set. In course of the quarrel, it is alleged, that the proprietor of the shop assaulted Sasankadhar Das and forced him to write a pronote. It is said that until this incident, both were on friendly terms. So, at this conduct of the radio shop proprietor, Sasankadhar took offence and left the shop in an angry mood.

15. In the meantime, the incident was reported to Mr. Sukumar Nanda, P. W. 3, President of the Orissa School of Engineering Students' Union through their Vice-President. Evidently, Students' Union took up the cause of Sasankadhar Das. Later, in the afternoon, Sasankadhar with some of his friends, all of the Executive of their respective Students

Union, went to the radio shop to confront Umashankar for his alleged misconduct. In the meantime, Umashankar, apprehending trouble had informed the local police station at Mangalabag seeking protection. Sasanka and his friends did not find Umashankar in the radio shop and presumed that he was concealing himself. They demanded that Umashankar be produced before them and make amends for what he had done. But Umashankar had disappeared. They found only Umashankar's younger brother, a boy of 14. Apparently, there were some heated altercation; this drew a crowd including students of the Ravenshaw College hostels which are very near the radio shop. In the meanwhile some more students got information about this. They all joined the crowd. All these developed at the radio shop which is within a distance of about one mile from the local police station, Cuttack Engineering School and only a few yards from Ravenshaw College and the Railway hostel where Sasanka is said to have been staying at that time.

16. The complaint of Umashankar at Mangalabag Police Station was lodged sometime at 7-30 P. M. Apprehending trouble, Inspector Anam Charan Mohanty C. W. 11 of Mangalabag P. S. deputed Sub-Inspectors, Chaturbhuj Kalia, Ramchandra Naik, a Head Constable Premanand Mohanty and another constable to go to the spot. After half an hour, a telephone message was received at the Mangalabag Police Station from Sub-Inspector Ramchandra Naik that a huge crowd had gathered in front of the radio shop and that serious breach of peace was apprehended; the presence of Inspector Anam Charan Mohanty was required at the spot. Accordingly, Inspector Anam Charan Mohanty left for the spot with one section of armed reserve police then available at the police station after intimating about the situation to the SP over phone.

17. After his arrival at the spot, Inspector Anam Charan Mohanty found the Officers already deputed on the verandah of the radio shop, and a crowd of about 300 persons, mostly of students shouting and creating noise. It was then about 8-10 or 8 15 P. M. at night. The students were shouting and demanding that police should not interfere and should withdraw. The police, however, tried to pacify them and pleaded to allow them to investigate into the matter. The students demanded that the radio shop-keeper Umashankar be produced immediately and should be made to beg apology for his misbehaviour towards Sasanka, their fellow student.

18. The situation simply put was this : Umashankar could not be found. The students, however, presumed that police had secreted him. Sasanka did not come out from the crowd. In fact, Sasanka had not made any complaint about the alleged misconduct of Umashankar to the police either at the spot or at the police station up-till then. Sasanka did never make his appearance before police until October 12, 1964 when he was brought under arrest in the circumstances hereinafter stated.

19. When thus the situation further deteriorated, the ADM Mr. Rath, the SDO Mr. Padhi, the Principal Mr. B. B. Patnaik and Mr. Dinabandhu Misra, Lecturer of the Cuttack Engineering School of which Sasanka was a student—all came to the spot. Other senior police officers also arrived. In the meantime, Principal of Ravenshaw College had also arrived at the spot. The Principals, the Lecturer, the Magistrates and the police officers—all present there—tried to pacify the students.

D. How the authorities tried to pacify the students before the initial lathi charge :

20. The evidence of the ADM Mr. Rath C. W. 3 is that the students were demanding that the radio shop-keeper should appear before them to beg apology and that it should be left to the students to deal with the shop-keeper without any intervention by the police. The SP and the ADM Mr. Rath explained to the students to be peaceful and leave the matter to them so that the culprit could be booked lawfully. The Principal of the Engineering School Mr. B. B. Patnaik, who had by then arrived at the spot, also explained to the students not to agitate over such small matter in the bazar area and that he would take up the matter with the authorities for necessary redress. In spite of their efforts to persuade the students to be peaceful, the students were not in a mood to listen. Mr. Rath's evidence is supported by the SDO Mr. U. C. Padhi C. W. 5 who filed affidavit and also deposed before the Commission. Mr. Padhi also joined in appealing to the students to be calm and assured them that everything would be done to redress their grievances. Mr. Padhi repeatedly told :

“ I am the Subdivisional Officer, bring the boy who has been assaulted by the radio shop-keeper, I will immediately arrest the shop-keeper, be quiet, do not be excited.”

The boys were not prepared to listen to any advice and assurance. On the other hand, they were retorting :

“ Why the police has come, arrest the police, your policemen have concealed the wrong-doer.”

The Subdivisional Officer Mr. Padhi repeatedly asked for the aggrieved student to come forward and to give his complaint but nobody came forward.

21. Apart from the ADM and the SDO who tried their best to pacify the students at the spot, the Principal of the Engineering School Mr. B. B Patnaik and one of the Lecturers of the school Mr. Dinabandhu Misra also tried to pacify the students. After receiving a phone message from the school to the effect that an engineering student had been assaulted and the students of the hostels were at Station Bazar and that there was some trouble, the Principal Mr. Patnaik proceeded towards Station Bazar in a jeep. By the time he reached the radio shop, he found the crowd in an excited mood. He traced out the President of the Students' Union of the School with some other students. They told him that one of their fellow students had been assaulted by the radio shop-keeper and they wanted him to be produced. The Principal tried to pacify the students saying :

“ I am just like your father, I do not like this sort of disturbance, you should not have done this without my permission, I will manage to produce the radio shop owner and he will apologise to you, you be calm and ask your students to leave the place at once.”

When the situation further deteriorated the Principal, in his anxiety to save the boys from trouble and possible lathi charge, shouted at the top of his voice that the SDO was there; he would hear the grievances of the students and make the position clear.

22. Similar efforts were also made by the Lecturer Mr. Dinabandhu Misra. He said that by the time he reached the spot the crowd had become very noisy and turbulent; various persons were shouting at the same time. At this time quite a number of the crowd began shouting “Why the police has come”. The boys were saying :

“ We were discussing, we would have solved it Sir, what business have the policemen to come where we are.”

Then their School Lecturer Mr Dinabandhu Misra explained to them saying:

“ Why do you resent the coming of the police ? They are doing their duty. If you were in charge of law and order, you have to maintain public safety when there is such a large agitating crowd.”

He also told the students :

“ Let us give the police at least one night time so that they can arrest the offender. I shall see that the offender is brought to the Orissa Engineering School to our Principal. The aggrieved boy must be there also. There the radio man will apologise in presence of the representatives of the College Union of Ravenshaw College, Law College and other colleges, if any.”

By then the situation was getting out of control as narrated by him in his affidavit. All efforts to pacify the students ultimately failed.

23. The Principal of Ravenshaw College Mr. Banshidhar Samantarai C. W. 2 had also gone to the spot. He said that he requested the students of different institutions present there to go back to their places of residence and that the matter would be enquired into and settled; they did not listen to him, then he loudly called for the students of Ravenshaw College who came round him. He asked them to come away with him; in fact about 60 students are stated to have come back with him to his residence, he took them with him to their hostels. He, however, did not know if some other students were left in the crowd. In his evidence what the Principal Mr. Samantarai said was this:

“ I also explained “somebody might do mischief and you may be blamed for that”. At that time some other people who were along with the students said “Why the police have come with lathis”. I told them when there was trouble, the police had to come to keep law and order. It was their duty. Anyway, nobody listened to what I said. Then I called the students of the Ravenshaw College “better come along with me”. About 60 students came with me and I took them with me to my compound. I was leaving them out at the other gate of the compound when I saw a great crowd gathered at the gate of the East Hostel.”

He further said that he enquired from the students about alleged misbehaviour by a radio shop dealer towards a certain student. He explained that whatever might be the reason whether the students were right or somebody else was right, the matter could not be settled in a crowd. The Principal went to the extent of offering his services in solving the problem if the students left the place. The appeal of the Principal to the students was not to get involved in the affair. In this way the Principal of Ravenshaw College could persuade to bring back to the hostels only 60 students out of the huge crowd which had gathered in front of the radio shop.

24. It is quite clear that the authorities including the teachers, magistrates and policemen failed to pacify the crowd; the students were up for trouble

E. What was the situation immediately before the lathi charge: order for dispersal of mob by tearsmoke and lathi charge:

25. There is ample evidence to show that the students resented the very presence of the police at the radio shop. They demanded withdrawal of the police. The attitude of the students was that they must be left alone to deal with the situation. What the students insisted on was that Umashankar must be produced with the object of extracting from him an apology to the students. The evidence of the ADM Mr. Rath (C. W. 3) is :

“ Q. 147 Why the students grudged police intervention—can you say ?

A. They were in a mood, as I guessed, to take the law into their own hands.”

This attitude of the students to take the law into their own hands is also evident from what the SDO Mr. Padhi, said in his affidavit where it is stated that the students were shouting :

“ You would not do anything, you cannot do anything, you have concealed the radio dealer, your police people have concealed the Budmas radio dealer, we shall set him right, you go away.”

This indeed reveals a psychology which worked in the minds of the boys. This shows want of respect for authority—disregard for law and order—a completely nihilistic approach.

26. Apparently the students had no regard for constituted authority including the magistrates and even their teachers. The students thought that nothing should stand in their way of gaining their objective—production of the radio shop-keeper and extracting from him an apology. It was because this demand for immediate production of the radio shop-keeper, who then was not actually available at the spot, could not be fulfilled by the police, the students did not listen to the appeals made by the magistrates, their teachers and the police officers; they attacked the radio shop and threw brickbats. In such a situation, even if the radio shop-keeper was available, it would not have been wise for the police to produce him before the mob in such angry mood.

27. Then the question is : What was the situation immediately before the initial lathi charge which necessitated the declaration of the assembly as unlawful which resulted in what followed thereafter ? On this point the evidence of the SDO Mr Padhi and the ADM Mr. Rath,

supported by the Principal of the Engineering School Mr. B. B. Patnaik and the Lecturer Mr. Dinabandhu Misra, gives a complete picture of what happened.

28. The picture, consistently given in the evidence and in the affidavits on behalf of the State describing the situation immediately before the initial lathi charge, was this : The crowd started pushing and jostling in front of the radio shop. The SDO Mr. Padhi said that in course of that jostling his shirt was torn, belt snapped, some of the buttons of the trousers got torn and gave way. It is said that subsequently these torn clothes had been seized by the police. The crowd was in a frenzy. A section of the mob violently rushed inside the radio shop; there was brickbatting. It appears from the evidence that the crowd did not consist of students alone; obviously a large number of non-students had got mixed and were aggravating the situation. The ADM, SDO and the SP were repeatedly shouting at the top of their voice to stop looting and hooliganism. By then the hooligans had entered and ransacked the radio shop; they were smashing and throwing the radio cabinets. There was heavy shower of brickbats coming from the mob. It was then the police rushed towards the radio shop. The SDO Mr. Padhi said that immediately before the section of the mob rushed into the radio shop, he had seen some members of the mob snatching bamboo splinters from a thatched structure in front of the radio shop; when the police rushed towards the radio shop, there were attempts to obstruct and constables were pushed and manhandled for a few seconds. There was heavy shower of brickbatting and there was clash between the police and a section of the mob at the radio shop; the rest of the mob was getting more and more violent and shouting.

29. When the situation became tense, the ADM Mr. Rath shouted at the top of his voice twice or thrice to the effect :

“ You are looting and brickbatting; I, Additional District Magistrate, declare you unlawful, disperse at once or else there will be lathi charge.”

He repeatedly warned the crowd. It is said that the SP also shouted—

“ Go away, disperse, there will be lathi charge.”

These warnings apparently had no effect. Having regard to the quick succession of events which were taking place at the moment, it is difficult to give the exact sequence in which

they occurred. In substance, the situation was this : Attack on the radio shop, police clashing with the mob, heavy brickbatting, declaration of the assembly as unlawful and order to disperse passed by the ADM and the SP executing the order to disperse – all these happened in quick succession.

30. In spite of the order of the ADM, the mob did not disperse and heavy brickbatting continued. It was at that stage, the ADM ordered dispersal of the mob by tearsmoke and lathi charge. In this context, the evidence of the SDO Mr. Padhi (C. W. 5) in answer to the questions put to him is this:

“ Q. 8 Then continue.

A. Just by the time I could contact the ADM I found suddenly one group of mob inside the radio shop and there was a thatched house from which bamboo splints were dragged out by the students and then police people rushed to the radio shop. Just then, I contacted ADM for a moment. We discussed that the situation was grave and that the crowd was resorting to violence and that the assembly had to be declared unlawful and steps will have to be taken to disperse the crowd. Just then brickbatting started. When police marched towards the radio shop brickbatting started right from the road side towards the police and the place where we were standing. Just then ADM declared that the assembly was unlawful. He cried out at the pitch of his voice “ You boys, you have resorted to violence, stop looting, go away. I declare you unlawful. If you do not disperse lathi will be charged and force will be used.” Simultaneously I also repeated to the crowd what ADM pronounced. I have also heard SP and one or two senior Police Officers present there announcing to the mob in different directions the same thing.

Q. 375 The students and the public who were in the mob they committed no overt acts before the assembly was declared unlawful.

A. The mob which consisted mostly of students had rushed inside the radio shop and started looting and a section of it dragging out bamboo splints from the neighbourhood and were trying to clash with the police party which was going to protect the radio shop and simultaneously another section of the mob threw brickbats at the police party. This happened before exactly the assembly was declared unlawful and warning was issued and then force was used by the orders of the ADM.

Q. 382 You cannot say what exactly was looted.

A. Belongings from inside the radio shop were looted; some were thrown out and some were carried away.

Q. 383 Whether they were public or policemen you cannot say.

A. A section of the mob which had already entered inside the radio shop did it.

Q. 384 Can you say that no policemen did it.

A. I can definitely say that no policemen did it.

Q. 385 Could they be plain-clothed policemen.

A. There were people who had been inside I cannot say if there were plain-clothed policemen among them.

Q. 386 At what distance were you at the time of alleged looting in the shop.

A. About 10 to 12 feet, I cannot say definitely.

Q. 387 I put it to you that sand and stones were thrown at the mob from the roof of the radio shop when discussions were going on between you, the police and the people assembled there and they were intimidated.

A. No such thing happened to my knowledge.

Q. 727 When the police advanced towards the radio shop, there was a large crowd between the advancing police line and the shop. Is that correct.

A. There was no advancing police line. Only some of the policemen rushed towards the shop to prevent looting and at that time there was crowd all over there at the spot in excited mood.

Q. 728 The brickbatting from inside the radio shop and from the top of the radio shop was on the crowd.

A. There was no such brickbatting as referred to in the question.

Q. 729 From inside was there any brickbatting.

A. No such brickbatting, as far as I recollect.

Q. 730 Please refer to paragraph 2 of your affidavit. (Counsel reads the relevant portion at page 33 of the Paper Book, Vol. VII).

“The hooligans who entered the radio shop were ransacking the radio shop and smashing and throwing radio.”

That throwing - was it outside or inside-

A. Outside.”

31. On this point, the case suggested on behalf of the students, in substance, was this. The police with the predetermined object of giving good beating to the students on account of some previous grudge (as they put it) had staged the entire show. It is alleged that the police got brickbats, sand and stones thrown at the crowd by agent provocateurs with the object of justifying lathi charge; that Umashankar's men threw brickbats from inside and from the roof of the radio shop

brought out radio cabinets from inside the radio shop and threw them outside. According to the students, the gathering was peaceful and there was no occasion for ordering lathi charge. Their further case was that the presence of the police created the tension; that lathi charge was absolutely unprovoked. The charge against the administration was that they were tactless in dealing with the situation.

32. As regards evidence from the side of the students, except P. W. 1 Sasankadhar Das and P. W. 3 Sukumar Nanda, who are said to have seen what actually had happened, there is no other evidence to support the students' version of the case. Mr. Nisamani Khuntia, Secretary, Orissa Citizens' Committee, Cuttack, filed an affidavit on behalf of the Citizens of Orissa generally referring to the incident of the 26th September night; he was not an eye-witness to this incident and was not in a position to say about exactly what had happened. Mr. Gurucharan Patnaik, Secretary, Communist Party of India (Orissa Branch) also filed an affidavit on behalf of the Communist Party of India (Orissa Branch); he also was not an eye-witness; his assessment of the situation from what he heard and believed was that on September 26, 1964 the incident at the radio shop was of a minor nature and did not rouse much excitement at the beginning; the matter could have been settled forthwith at the spot, had the police personnel present there acted tactfully and with restraint. Mr. Prafulla Kumar Mohanty, General Secretary, All-Utkal Students' Federation and Mr. Promode Chandra Samantarai, President, SCB Medical College Union, Cuttack, also filed affidavits and deposed before the Commission. Neither of them were eye-witnesses to the radio shop incident. Mr. Samantarai in paragraph 4 of his affidavits, dated March 24, 1965, while describing the incident of 26th September, 1964 from hearsay, stated that when the police arrived at the radio shop the gathering was peaceful; the students were peacefully awaiting the actions to be taken by the police; some miscreants with the connivance of the police and in collusion with the dealer threw sand and brickbats at the students from the terrace of the radio shop; immediately a large contingent of constables and military police arrived at the spot as if it was by previous arrangement; they fired teargas shells followed by lathi charge and assault with rifle butts. Admittedly Mr. Samantarai was not an eye-witness to the incident in front of the radio shop. As a student leader what he said in his affidavit and in his evidence before the Commission was on the information received by him and not from his

personal knowledge. It is clear that if the student leaders including Mr. Samantarai were correctly informed about the actual situation at Station Bazar, very likely the Students' Council of Action would not have taken up this cause as a good cause for such a movement ultimately spreading throughout the State. Mr. B Samantarai, Principal of Ravenshaw College (C. W. 2), who went to the spot, also spoke about the situation at Station Bazar near the radio shop prior to lathi charge; his evidence does not support the students' version that they were peaceful.

33 Upon weighing the evidence of the students P. W. 1 Sasankadhar Das and P. W. 3 Sukumar Nanda which is contrary to the statements on the affidavit filed by their Principal Mr. B. B. Patnaik and Lecturer Mr. Dinabandhu Misra, the evidence of the ADM, SDO and the police officials all throughout present at the spot, it is difficult to accept the students' version that they were a peaceful crowd. In the ultimate analysis of the entire evidence, one can reasonably come to the conclusion that the situation took such a violent turn at and near the radio shop as discussed above, that there was no other alternative left but to order dispersal of the mob by tearsmoke and lathi charge. This view is further confirmed by the circumstance that apart from the evidence of the magistrates and the policemen, the said two students' own Principal and Lecturer of the Engineering School who both were present at Station Bazar near the radio shop at the relevant time also support the case of the administration. The Lecturer of the Engineering School Mr. Dinabandhu Misra stated that at one stage he found three or four brickbats being thrown at the place where he and others were standing; he apprehended that there would be severe brickbating and serious trouble.

34. After due consideration of the entire evidence, the Commission comes to the conclusion that all that could possibly be done by the magistrates, policemen and even teachers to pacify the students were done but they failed; that the initial use of force—tear-smoke and lathi charge—could not be avoided in the situation that developed; it cannot be found that such use of force was unjustified.

F. What possibly could be done by the police at the radio shop to satisfy the students :

35. As discussed above, the students demanded production and arrest of Umashankar Lal and apology by him before the students but actually Umashankar Lal was not available at the

spot. In fact he was not at his shop from 6 P. M. He was away from his shop before Sasanka, Sukumar Nanda, S. V. Raman Patnaik and Gopal Patnaik had arrived there. It is clear from the Station Diary Ext. C/15 that Umashankar was at Mangalabag police station at about 7-30 P. M. Umashankar was afraid that his shop would be attacked by students. It was natural for him to be afraid and to be away from the shop because of the earlier threat given by Sasanka. The entry in the Station Diary Book Ext. C/15 on the complaint of Umashankar is quoted below:

“ Received on 26-9-1964 at 7-30 P. M. Entered in the S. D., vide S. D. E. No. 1180, dated 26-9-64.

Sd. A. C. Mohanty
Officer-in-charge
26-9-64

STATION DIARY BOOK

(Rule 116)

Mangalabag P. S.

Saturday 26-9-64

* * *

1180--7-30 P.M.
Report One Umashankar Lal, Majestic, Station Bazar, Cuttack-3 appeared at P. S. and produced a written report which reads as follows :—

To

The Officers, Mangalabag P. S., Cuttack-1

Dear Sirs,

I beg to state that Sasankadhar Das, son of ex-Compounder, Cuttack Railway Dispensary, threatened me to destroy my shop which is at Station Bazar, Cuttack-3.

Sasankadhar Das had taken loan from me and when I asked for to give back the amount he threatened me that I will bring some College student and I will destroy your radio shop. So kindly please take immediate help for me and for my shop.

Thanking you.

26-9-64
Cuttack-1

Yours faithfully
Sd. Umashankar Lal
Majestic, Station
Bazar, Cuttack-3

On receipt of this information, when the reporter anticipated serious breach of peace I deputed S. I. C. Kalia, S. I. R. C. Naik, Hl. P. Mohanty and some constables to the spot to see that no breach of peace takes place.

Sd. A. C. Mohanty”

36. Thus Umashankar had come to the police station with a complaint. The question of arresting him, who was the complainant, does not arise. When the police officers came to the radio shop they made attempts, at the spot, to get Umashankar. The students were told by teachers, magistrates and policemen that Umashankar was not available and that he was being searched for. There is no evidence that Umashankar was anywhere there near the spot nor is there any material for suspicion that Umashankar had been hidden by the police. In this context the affidavit of Umashankar Lal filed in this proceeding clearly gives the details of his movement on that date. The explanation that he gives for his staying away from the shop is reasonable.

37. There are certain other aspects of this matter which require careful consideration. Assuming Umashankar was available near about or anywhere and he was arrested and produced by the police before the students who were then in a frenzy, it would have been an improper act on the part of the police because until then there was no complaint against Umashankar and there was no specific information that he had committed any offence as alleged. Even assuming that there was a complaint and police were *prima facie* satisfied that Umashankar had committed an offence and the police had arrested him, then also it would not have been proper for the police to produce Umashankar before a frenzied mob at the time. It is also to be noted that some vague information—that some student or some named student of Engineering School had been assaulted or misbehaved—received from the crowd and not from any specific individual would not constitute sufficient material on the basis of which the police could draw an First Information Report or make enquiry thereon.

38. The circumstance that at no point of time the aggrieved student Sasanka was to be found at the spot although he was looked for by all concerned put the authorities including the police in an embarrassing position. In fact the Principal and Lecturer of the Engineering School, the magistrates and policemen—all looked for and called for the aggrieved student Sasanka with the object of getting information as to what actually had happened but he did not come forward. In this context, the affidavit of the Lecturer of the Engineering School Mr. Dinabandhu Misra is that immediately after he arrived at the spot he asked for the aggrieved boy from the verandah of the radio shop; he further said that some of the students went here and there to look for him but they all came back and

told that the aggrieved boy could not be traced out. So also the Principal of the Engineering School Mr. B. B. Patnaik said in his affidavit that he remembered the SDO Mr. Padhi shouting :

“ Where is the boy who has been assaulted, let him come along, bring him forward to me, I shall take action.”

The SDO Mr. Padhi himself in his affidavit said this:

“ I was also repeatedly telling that ‘I am the Subdivisional Officer, bring the boy who has been assaulted by the Radio shop-keeper. I will immediately arrest the shop-keeper, be quiet, do not be excited.’”

39. The police officers including the officer-in-charge of Mangalabag Police Station Inspector Anam Charan Mohanty also asked for the aggrieved student or for an information by somebody on his behalf on the basis of which the police could take action against the radio shop-keeper. In his affidavit the officer-in-charge said that he also requested the students gathered there either to file a written report or statement before him stating what wrongful acts had been done by Umashankar Lal to the engineering student to enable him to take legal action; but none of the students came forward, much less the student who was alleged to have been man-handled, nor did they submit either a written report or a statement before him. He asked for the aggrieved student but he was not forthcoming. In his evidence Inspector Anam Charan Mohanty (C. W. 11) said that he did not meet Sasanka until sometime in the month of October after his arrest by one of the officers of GRP, Cuttack, who sent Sasanka to Mangalabag PS because he was wanted in one of the cases (Qq. 25 to 28). His further evidence is that Sasanka was among the crowd who made attack on the radio shop on the 26th night; Sasanka was directly concerned in that case, but after the arrival of the police when his whereabouts were enquired he was not found out there. He said that either himself or any of his officers who went to the radio shop on the 26th night for investigation did not find Sasanka at the radio shop (Qq. 33, 34). Inspector Anam Charan Mohanty could not say whether Sasanka was in the crowd but he was enquiring about him; he was requesting the students and others who were shouting for him to produce Sasanka; yet Sasanka did not appear. It is also in evidence that Sasanka did not make any complaint to the other police officers who had been sent to the spot before Inspector Anam Charan Mohanty arrived there. After his arrival the Inspector enquired about the details from Sub-Inspector Chaturbhuj Kalia who told him that there was no such complaint made by Sasanka

40. On this point the affidavit of Sub-Inspector Chaturbhuj Kalia is that after his arrival at the spot he made enquiries. Thereupon one student whom he subsequently (after his arrest) came to know to be the Secretary, Madhusudan Law College Union, told him that police had nothing to do there and also challenged as to why police had come. Sub-Inspector Kalia is said to have requested the students who were standing there on the verandah of the radio shop to tell him the reason of their coming to the shop in such large number and shouting in that manner. He further pursued his request when someone from the crowd informed Sub-Inspector Kalia that the radio shop-keeper had misbehaved with one Engineering School student and as such they were demanding the presence of the radio shop-keeper for the purpose of getting his apology. Sub-Inspector Kalia also told the students that the aggrieved Engineering School student might submit a written complaint or his statement before him to enable him to take legal action against the radio shop-keeper. But the students replied that they themselves would deal with the shop-keeper and no police interference was necessary.

41. The ADM Mr. Rath also enquired from the boys as well as from the public about the cause of the trouble. He also wanted the presence of the persons concerned, namely, the Radio shop-keeper and the aggrieved student who was stated to have been misbehaved by the radio shop-keeper but unfortunately neither of them was available there. He also asked for production of the aggrieved boy so that he could look into the matter but he did not appear also before the ADM Mr. Rath.

42. So, on the evidence as it stands, the story of Sasanka having given an First Information Report or a complaint to the police at the spot in front of the radio shop on 26th night is not acceptable. In fact, there is no evidence that Sasanka had made any complaint to Sub-Inspector Kalia, Inspector Anam Charan Mohanty or the SP or to any policeman nor is there anything in evidence to show that Sasanka had made any complaint to his Principal of the Engineering School Mr. B. B Patnaik who had also gone to the spot.

43. It was not possible for the authorities to take any action upon some mere vague information that some Engineering School student had been misbehaved by a radio shop-keeper. It was vague inasmuch as even the name of Sasanka as the aggrieved student was not disclosed at the

spot; nor was it disclosed to the authorities about the exact nature of the alleged misbehaviour by the radio shop-keeper towards the student; the story of alleged extortion of a pronote was also not stated at the spot nor even the nature of assault to the student—simple or grievous.

44. Even the Principal and Lecturer of the Engineering School of which Sasanka was a student could not get the name of the student who was stated to have been assaulted by the radio shop-keeper. The Lecturer Mr. Dinabandhu Misra in his affidavit stated that he gathered the impression that one engineering student had been assaulted that afternoon by a radio dealer at Station Bazar. Similarly, the Principal Mr. B. B. Patnaik said that the students of his Engineering School had told that one of their fellow students had been assaulted by the radio shop dealer. The SIDO Mr. Padhi also wanted to find out the aggrieved student. Mr. Padhi said in his affidavit that in answer to his query, the Principal of the Engineering School told him that one student was assaulted by the radio shop-keeper. The policemen also tried to find out the aggrieved student but they failed. The SP Mr. B. K. Mohapatra in his affidavit said that from the shouts he came to know that the allegation of the students was that the radio shop-keeper had manhandled a student; nobody could definitely say what was the actual occurrence. Sub-Inspector Kalia, who arrived at the spot first, said that some one from the crowd had informed him that the radio shop-keeper had misbehaved with one Engineering School student.

45. It is not understandable why Sasanka—although he was there at the spot—did not come forward and disclose his identity as the student who was assaulted by the radio shop-keeper.

46. The positive case of Sasankadhar Das before the Commission was that he had filed a complaint in writing to the DSP. In answer to Q. 50 Sasanka said that he wrote the application and handed it over to the DSP. The gist of Sasanka's evidence in this context was this: He arrived at the radio shop in the evening of 26th September along with Gopal Prasad Patnaik, Ramun Murty Patnaik and P. W. 3 Sukumar Nanda, they were with him until the complaint was written. After his friends had left, Sasanka went to the DSP, told him what had happened and made over the application to him. Sasanka also said that he had told P. W. 3 Sukumar Nanda that he had made over a written application to the DSP.

47. The material portion of the evidence of P. W. 3 Sukumar Nanda about Sasanka's alleged complaint to the police at the spot was this :

- “ Q. 14 Near the radio shop what did you do there ?
- A. We enquired from the younger brother of that radio shop proprietor as to where the proprietor had gone and he replied that “he has gone somewhere there and he will come within 10 minutes”.
- Q. 15 Then did you wait ?
- A. Yes. After waiting for a few minutes Sasankadhar Das purchased one piece of paper and wrote down the report to the police narrating the matter.
- Q. 16 Where did you write down this report ?
- A. Just in front of one saloon which was in front of that Majestic radio shop.
- Q. 17 Who wrote that report ?
- A. Sasankadhar Das
- Q. 18 While Sasankadhar Das was writing this report, did anything happen ?
- A. In the meantime Mr. Kalia Babu of Mangalabag P. S. whose name I came to know afterwards arrived there with some police constables.
- Q. 21 How about that report written by Sasankadhar Das ? What did you do with it ?
- A. Only he was going to write narrating the incident that happened with him by the police.
- Q. 22 After that what was done with that report ?
- A. In the meantime we talked to Kalia Babu and when the police came the people had gathered there.
- Q. 23 By that time was the writing of the report complete?
- A. I do not remember whether it was completed or not.
- Q. 24 Then.
- A. Some people had gathered and asking about the matter and in the meantime, the report was complete. When I was talking with a gentleman whom I do not know I enquired from Sasankadhar Das and he told that he had handed over the report to the DSP who was present in civil dress.

- Q. 25 Did Sasanka hand over the report to the DSP in your presence ?
- A. No. At that time I was talking with another gentleman who was asking me about the matter.
- Q. 26 Did you yourself see the contents of the report which was written by Sasankadhar Das ?
- A. No. Only I have seen that he was writing the report.
- Q. 27 What he was writing actually you did not see ?
- A. No. Because he was writing the report and Mr. Murty Patnalk was present there."

Thus P. W. 3 Sukumar Nanda was positive when he said that a complaint was written by Sasanka in his presence and in the presence of the other friends. It is significant that Sukumar Nanda in his affidavit filed on March 24, 1965 did not make any mention whatsoever about any written complaint having been handed over to the police as alleged. The material portion of Sukumar Nanda's affidavit is this :

" At about 8 P. M. the SP Mr. B. Mohapatra and the ADM arrived at the spot. In the meanwhile Principal of Engineering School along with some other lecturers arrived at the spot. We all along told the police to take action against the shop-keeper, but the police did not record any F. I. R. and did not take any action "

This statement of Sukumar Nanda in his affidavit negatives the story of any written complaint or F. I. R. having been filed by Sasanka at the spot on the 26th September.

48. In the absence of any written complaint about the particulars of the alleged offence stated to have been committed by the radio shop-keeper on some student--cognizable or non-cognizable—it was not possible for the local authorities to take any action on the 26th September on mere surmises based on vague information received from the crowd at the spot.

49. This view is further supported by the circumstance that in fact Sasankadhar Das had subsequently on October 12, 1964,—that is to say more than fifteen days after this incident on the 26th September,—filed an F. I. R. Ext. C/11 at Mangalabag P. S. hereinafter dealt with. Ext. C/11 makes it improbable that any complaint in writing was earlier made to the police on the 26th September evening on which any action could be taken against the radio shop-keeper.

G. Alleged extortion by police of F. I. R. Ext. C/11 from the aggrieved student Sasankadhar Das :

50. The question was raised. Did the police extort Ext. C/11 from Sasanka ? On October 12, 1964 at 11 A. M. Sasanka filed a n F. I. R. addressed to the officer-in-charge, Mangalabag Police Station, Cuttack, recorded as GR Case No. 2339/64, which is quoted as follows :

“ To

The Officer-in-charge, Mangalabag P. S., Cuttack-1.

Sir,

With due respect i beg to inform you that the incident of the Dt. 26-9-64 I had got good contact with Mr. Umashankar Lal Gupta who is the owner of MAJESTIC. My father Shri Baikunth Nath Das, Rly. Compounder, Cuttack-3.

When my father was present, he was given a battery set radio (Hind) to Mr. Umashankar Lal Gupta for the repairing of the set. *When my father was present I asked about the set but he told me “you come tomorrow”. When on the next day I reached his house he again told me to come again tomorrow. He repeated such thing so many times.* My father was transferred to Berhampur Rly. Dispensary. My father advised me not to bring the set just now because at our house nobody was present and I stayed at Railway Hostel.

So for a long time I did not ask for the set. On 26-9-64 I was at hair-cutting saloon which was situated in the front of his shop. At about 12 noon he (Umashankar) asked me to come at his house. Suddenly I went to his house because its before I had gone so many times to his house.

When I reached at his house he told me: “Bagu you take your set and pay me my Rs. 54 50 N.P. (Fifty-four rupees and fifty N.P.). Its before I had given a transformer which cost is Rs. 12 (Twelve rupees only). Then he said me “then you give me Rs. 42-50 N.P. (Forty-two rupees and fifty N.P.). I replied him that you don't worry, my father will come (tomorrow) and I will pay your money. *But he did not agree to my proposal. Still I told him “you have kept my radio whose cost is above Rs. 300 (Rupees three hundred), and if you required more then sell that set and take your money, rest give me. But at his replied he said me that your father was taken the money of everybody and lastly you are trying to cheat me. After telling this he called my father's name. I advised him not to say anything to my father. When I became angry he pulled my shirt, tore it, and gave two blows to my chest by which I felt too pain in my chest. But now I am not feeling pain in my chest. I have no injury in my body. This occurrence was not seen by anybody except some small children. Whose name I don't know. I requested him not to say so. But at his reply he told*

me that, if I would not pay his money he would not allow me to go home. I stayed in his house *and told him "let my father come, he will pay it". But I can't pay it.* He replied me if you can write me to pay at 4 O'clock then I will allow to go home. I stayed in his house from 12 noon to 2 P. M. I felt too pain as well as too hungry. I was bound to write on a piece of paper and gave my signature on a revenue stamp. *After that I came to saloon for my hair cutting. After finishing this I proceeded to Railway Hostel. There having my meal by hook or crook I took rest. Not a single day I sleep at morning but that day I slept in the morning. My friends C. V. R. Murty Patnaik and others came to take the hockey sticks from me and asked me to go with them. They told me that "we will go to his house and ask him about the fact". When I heard that all the students mass came to his house at that time I came and I saw the situation and came back to the Railway Hostel and took the rest. This much I know about the fact.*

I remain Sir,

Cuttack-1
Dt. 12-10-64
11 A. M.

Yours faithfully,
Sri Sasankadhar Das.
Mangalabag Police Station.
Cuttack-1."

While deposing before the Commission, Sasanka said that some of the things written by him in Ext. C/11 were false and he underlined those portions of the document (as shown in italics in the quotation above) which, according to him, were false (Qq. 115-117). It is to be noticed that there is no mention whatsoever in this F. J. R. that Sasanka had earlier at any point of time filed any complaint to the police about the incident mentioned in the report.

51. It was not until May 24, 1965, by when the Commission had already commenced the proceedings, that Sasanka had filed a belated affidavit long after the due date by when such affidavits were to be filed as directed by the Commission. This affidavit filed by Sasanka was marked as Ext. 12 in course of hearing when Sasanka deposed before the Commission. In this affidavit for the first time Sasanka alleged that the police had extorted this report from him. In paragraph 8 of his affidavit he stated that he was arrested on 12-10-64 and was taken to Mangalabag Police Station where Shri Chaturbhuj Kalia and one Inspector, Crime Branch, got him surrounded by constables with one bayonet and made him write the statement to their dictation.

52. There are certain telling circumstances which show that Sasanka voluntarily filed this F. J. R. on October 12, 1964 as hereunder discussed.

53. Sasanka was produced before the SDO within two hours after his arrest at 1 P.M. on the same date on October 12, 1964 as appears from the ordersheet dated the 12-10-64 in GR Case No. 2127/1072-T/64 Ext. F. The SDO Mr. U. C. Padhi recorded that Sasanka was produced in custody after being arrested by Mangalabag police ; that he perused the forwarding report of the investigating officer. The SDO also recorded that the accused Sasanka did not complain of any ill-treatment by police and that he (Sasanka) said that he did not feel any chest pain then. In his deposition before the Commission Sasanka admitted having been produced before the Magistrate at 1 P. M. on the same date. If in fact the police had extorted from Sasanka the F. I. R. Ext. C/11 at the point of a bayonet in the manner alleged, he could have told the Magistrate about such extortion ; far from alleging extortion by the police he did not speak of any ill-treatment by the police as recorded by the Magistrate in the ordersheet.

54. Sasanka's evidence is that he told about this for the first time to his advocate Mr. C. V. Murty. Sasanka, however, could not remember when he complained about this to his advocate Mr. C. V. Murty. The manner in which Sasanka deposed in this context makes the story of alleged extortion doubtful inasmuch as he could not say how long after he complained to Mr. Murty about the extortion, whether it is a day after, two days after or three days after or 1, 2, 5 or 10 months after. He also said that after he told Mr. C. V. Murty, he did not tell anybody else. He also did not remember how many times he said about this to Mr. C. V. Murty (Qq. 332-342). In answer to further questions put to him, Sasanka however said that he told that the report Ext. C/11 had been extorted from him by police, to his advocates Mr. Samarendra Kundu and Mr. C. V. Murty within approximately 4 or 5 days after his release. It is on record that Sasanka was released on October 13, 1964 (Qq. 824-832). It is not understandable why this charge of extortion by the police, if it was a fact, was not mentioned at any time earlier anywhere until Sasanka filed this affidavit on May 24, 1965, that is more than seven months after his release from jail.

55. It is significant that the F. I. R. filed by Sasanka Ext. C/11 on October 12, 1964 was accepted by Sasanka and acted upon as such as his report voluntarily given. On December 19, 1964 a notice Ext. E was given to Sasanka as complainant under Section 173 Criminal Procedure Code

by the Mangalabag Police Station that his complaint under Section 384/342/323, I. P. C. had been reported to the SDM Cuttack to be false and that if he wanted to oppose this report he will have to do so before the above magistrate within a week from the date of receipt of the notice. This notice was admitted to have been received by Sasanka on January 20, 1965 (Qq. 812-813). The complaint referred to in the notice Ext. E is Sasanka's F. I. R. Ext. C/11 filed on October 12, 1964 which was recorded as GR No. 2339/64 as aforesaid. After receiving the notice Ext. E Sasanka, through his advocate Mr. A. K. J. Mohapatra, filed a protest petition Ext. B on February 1, 1965. In the said petition it was stated that the F. I. R. and statements recorded during investigation had made out a strong case against the accused Umashankar Lal ; a chargesheet ought to have been submitted; it was prayed that the accused Umashankar be summoned to stand trial for the offences charged. In evidence, at one stage, Sasanka even denied that Mr. A. K. J. Mohapatra was his lawyer. In answer to Q. 418 he said that Mr. Mohapatra was not his lawyer at any time. But when he was confronted with the Vakalatnama Ext. A signed by Sasanka he admitted that he had executed the Vakalatnama in favour of Mr. Mohapatra. Sasanka also said that Mr. Mohapatra was his advocate in the protest petition and whatever this advocate did in connection with the protest petition was under his instruction.

56. This position was sought to be explained on behalf of Sasanka by reference to the order sheets Ext. 13/1 relating to the record of Mangalabag P. S. Case No. 361, dated 12-10-64 in GR Case No. 2339/64 on the file of SDO Sadar, Cuttack. It was sought to be explained that the report referred to in the notice Ext. E and protest petition Ext. B were by reference to the earlier complaint alleged to have been handed over by Sasanka at the spot. Having regard to the evidence and records, this explanation on behalf of Sasanka cannot be accepted.

57. As to who dictated the F. I. R. Ext C/11 to Sasanka, the evidence of Sasanka is discrepant. He said that Inspector Nur Babu and some other Havildar asked him to write what they wanted him to write; they threatened him with lathi strokes; 2 to 3 Havildars pointed their bayonets at him; he became afraid and wrote what they wanted him to write; he put his signature on the paper (Qq. 97-98). Then in answer to Qq 105 and 110 he said that Nur Babu, Inspector of Special Branch, Kalia Babu and nobody else dictated to him.

He further said that the Officer-in-charge Inspector Anam Charan Mohanty did not do anything and was sitting by their side. Sasanka did not mention about any Havildar having participated in the dictation to him of the report as stated by him in answer to Q. 97. As regards Inspector Anam Charan Mohanty (C. W. 11) it was suggested to him (Inspector) in cross-examination that it was he who had dictated the report to Sasanka. The manner in which it was suggested to Inspector Mohanty was this:

“ Q 865 I put it to you that you coerced and induced him to make this statement which is recorded as F. I. R.

A. It is not a fact.

Q. 866 You forced him to write down whatever you dictated to him and in accordance with your choice.

A I deny this.”

These suggestions were made by the learned counsel to the witness presumably on the instruction given by Sasanka. According to these suggestions it was Inspector Anam Charan Mohanty who had forced Sasanka to write whatever he dictated to him. These are patent discrepancies in the evidence of Sasanka.

58. That apart, Sasanka said in the beginning that certain portions of the report Ext. C/11, which he underlined as shown in italics in the quotation above, were false and the rest true. Subsequently, however, he denied the truth of certain statements in the report Ext. C/11 which he had not underlined as false. In answer to Q. 117 Sasanka underlined those portions of the document which according to him were false. Then in answer to the next Q. 118 he said that apart from the portions which he had marked in the document the rest are true. Subsequently, however, in cross-examination he stated that some of the portions, which he stated to be true, were also false (Qq. 326-329 and Qq. 501-502). He conceded that he could not tell why he made such false statements (Q. 329). It is also not intelligible how it was possible for the police officers at Mangalabag Police Station to dictate to Sasanka an F.I.R. (Ext. C/11) portions of which were true and portions untrue as stated by Sasanka.

59. There are also certain other matters affecting Sasanka's general credibility. For instance, he went to the length of stating in answer to Q. 171 that he was not acquainted with the handwriting of his father. Then again, while deposing before the Commission in July 1965, Sasanka said that he

did not remember whether in the previous month in June 1965 he attended classes in the Orissa School of Engineering. In fact, in answer to specific questions put to him as to whether he attended classes in March, April, May and June 1965, he consistently said that he did not remember. Evidently he was evading to answer these questions for reasons best known to him.

60. In these circumstances, Sasanka's story, that the F. I. R. Ext. C/11 was extorted from him by the police, is not acceptable.

II. Use of force in handling the situation on the night of September 26 : was it uncontrolled ?

61. *Allegations against the police : case of the administration :* The case of the students about alleged police excess on the night of September 26, as stated by Mr. Prafulla Kumar Mohanty, General Secretary, All-Utkal Students' Federation in his affidavit is this :

" 21. That the stage having been fully prepared for a big show-down by the police force overt acts by them started in quick succession. Unwarranted lathi charge, shell and tear gas and erratic chasing of peaceful public and sight-seers continued till the late hours of that night.

22. That it was obvious that though they were initially chasing the public sight-seers, their main target was the students inside the Ravenshaw College compound and the students occupying hostels of that college. Therefore, every time their chases were ending with raiding on Ravenshaw College compound up-till the kitchens and main entrance of the hostels."

He also gave evidence before the Commission substantially to the same effect. He was, however, not an eye-witness to any of the incidents on the night of September 26. In fact he did not come into the picture until the following morning. His affidavit and evidence are therefore based on mere hearsay and not on his personal knowledge.

62. Mr. Promode Chandra Samantarai, President of the Shriram Chandra Bhanj Medical College Students' Union in paragraph 5 of his affidavit, also alleged police excess on the night of September 26 thus :

" That the intensiveness of police excess started thereafter. Although the students had dispersed and gone inside their hostels the police force entered the compound of the

Ravenshaw College and fired teargas shells into the hostel without any provocation. Students fleeing from the painful teargas were chased and beaten ruthlessly by policemen. Injured students who wanted to escape were not allowed to do so. Persons who tried to carry the injured and senseless students to the hospital were also mercilessly beaten which resulted in their dropping the injured to be further assaulted by the police. That night the entire area from the Ranihat Bridge to Railway Station was cordoned off by the armed forces and no other citizen was allowed to know the real state of affairs. The street wore a deserted look, shops were closed and it appeared, as it were, the State Government was showing all its might to assault, humiliate and suppress the student population."

In his affidavit, he did not mention that he visited College Square area at any time that night or that he had seen any act of police excess as alleged. In his evidence before the Commission, he said that he heard about the incident only at 12 O'clock that night—and not before that—while he was in the Medical College Hostel; the Principal of the Medical College sent a message directing him to go and see whether there was any Medical College student involved in the trouble that night at Station Bazar area; accordingly he left and could go exactly up to Cuttack Hotel; he could not go beyond because at that time there was police cordon in front of Thacker's shop; he did not like to go any further; it was then approximately 12-30 that night; he waited there for about five minutes and found that there were no Medical College students there; after that he returned to his hostel. His evidence of what he had seen at College Square during the short time of about five minutes that night is discussed hereunder.

63. The case of the administration is to the effect that it was necessary to use force—tear smoke and lathi charge—in the manner it was done, as the situation required in the circumstances, as discussed hereunder; that such use of force by the police was controlled by two Magistrates—the ADM and the SDO—who were at the spot in charge of the law and order situation throughout the night.

64. *General Picture* : Then the questions arise : What were the measures taken by police and magistracy after the initial lathi charge round about 10/10-30 P.M. on the night of September 26, until about 4 A.M. in the morning for dispersal of unlawful assembly and maintenance of law and order on the road commencing from the radio shop up to near about Madhusudan Law College Hostel ? Was such use of

force uncontrolled ? The general, picture as given by the ADM Mr. Rath and the SDO Mr. Padhi who were handling the situation that night, was as hereinafter follows.

65. At round about 10 P.M., after all attempts for pacifying the mob had failed, the assembly was declared unlawful by the ADM. The mob, however, did not disperse. Repeated warnings were given by the ADM personally and through the SDO, the SP and other police officers at the spot. After about five minutes, the ADM directed the SP to disperse the mob by the use of tearsmoke and lathi charge.

66. The ADM gave detailed instructions as to the manner in which force was to be applied ; he directed tearsmoke and lathi to be used to ward off the mob. The entire responsibility of controlling the police force was that of the ADM Mr. Rath as he said in answer to Question 808. Mr. Rath had asked the police to keep an account of the rounds of tearshells fired and grenades used. His evidence is that to his knowledge in all about 24 shells were fired on the 26th night.

67. As a result of lathi charge and tearsmoke, the mob cleared from the front of the radio shop within 15/20 minutes but sections of the mob remained congregated at different places ; there was heavy concentration particularly near the Dak Bungalow and the Railway Colony Road. The mob still continued brickbatting. The SDO Mr. Padhi, under the direction of the ADM Mr. Rath, proceeded through the railway colony with force to disperse the mob. Another batch of policemen dealt with the mob near about the Dak Bungalow, under the command of the ADM and the SP. Heavy brickbatting by the mob was still going on.

68. In the meantime the SDO came up to the NCC Road adjacent to East Hostel ; after proceeding through the same road some distance, he came through the link road up to the main road and there joined the ADM. While coming, SDO was twice hit by brickbats ; his glasses were broken, his head reeled ; he sat down on the main road, he was attended by the ADM and another man. In this connection the evidence of the SDO Mr. Padhi is that he was hit from East Hostel compound side ; that the Ravenshaw College compound near East Hostel was full of crowd ; that the crowd was dispersed

from the road up to the wall point where the police force went (Question 766).

69. In the meantime, while thus the SDO Mr. Padhi after being hit came to the main road, the mob was being chased further and further on the main road towards College Square. Within a few minutes, the SDO and the ADM joined the SP on the main road and went ahead chasing the mob.

70. It is to be noticed that a sizeable section of the mob rushed inside the campus of Ravenshaw College ; another section of the mob ran towards Ranihat bridge and remained congregated on the road between College Square and Madhusudan Law College Hostel. The ADM, who had gone towards College Square, remained there to deal with the situation at the spot. The SDO, with one section of the police force, proceeded towards Ranihat bridge to tackle the mob which had congregated there and were brickbatting. It was then about 11 P. M. at night and the strength of the mob at the time near Ranihat bridge side was about 500.

71. Taking a general view, the position was that the policemen were chasing with lathis, sometimes teargassing, with the result that the mob had retreated a little, again stood and started brickbatting and again retreated. It is said that, except during the initial lathi charge near the radio shop, subsequent police action--act of dispersal through the main road, the railway colony and NCC Road up to College Square and a little distance beyond Ranihat bridge--was mere police chasing with lathis which, however, did not hit any individual member of the mob. The reason why the lathis did not injure or come in contact with the bodies of the persons, who were chased, is that because of heavy brickbatting by the mob the police could not reach the mob; the police could only chase and ward off the mob.

72. From about 11-30 P. M. up to 3 A. M. in the morning there was a mob of about 500/600 persons on the road between College Square and the Law College Hostel. After 3 A. M. it thinned out. During this period between 11-30 P. M. and 3 A. M. there was intense brickbatting by the mob near and from the building of the Law College Hostel. Police had charged and the mob receded; again the police

charged and again the mob receded, this process went on. Police had to throw tearsmoke towards the mob and the Law College Hostel from where brickbats were being hurled at the police.

73. After about 3 A. M. the whole area became calm. It is said police patrol was arranged for and the force was withdrawn.

74. Apart from this general picture, details of what exactly happened during the night at some particular trouble spots in the area, affected by the disturbance, are discussed hereunder.

75. *Near the main gate of Ravenshaw College at College Square* : There is a general allegation that under the order of the Magistrates, police resorted to indiscriminate teargassing inside the Ravenshaw College campus on the 26th night.

76. The situation after 11 P. M. was that under the direction of the ADM two or three teargas shells were fired and were made to explode near the main gate of Ravenshaw College to disperse the brickbatting mob inside the college campus which had taken a stand near a heap of debris (bricks) inside the campus at a distance of about 15/20 yards from the main gate. The evidence is that this gathering continued inside the college campus until 3 A. M.; there was intermittent brickbatting and filthy abuses by them. The ADM Mr. Rath was himself present in direct control of the force at College Square just in front of the main gate of the college. In his affidavit he said that there was brickbatting from Ravenshaw College premises and a few tearsmoke shells were used to disperse the mob from inside the premises. In his deposition before the Commission he made it amply clear under what circumstances he ordered use of tearsmoke to disperse the mob who were brickbatting from inside the college campus. While asked about the details as to what was the incident, where was it, how it happened and from where teargas shells were thrown, he said that the position from where the mob was throwing brickbats was from the area inside the compound behind the main college gate; there was a heap of debris inside the college campus on which a lot of persons were present; they were indulging in throwing brickbats by picking the brickbats from that heap, when this was noticed 2 or 3 teargas shells were fired to ward off the section of the mob

who were near that heap of debris; it had actually the desired effect for some time. The heap of debris was 15/20 yards from the main gate inside the college campus as aforesaid; the strength of the mob at that time inside the premises was about 500 to 600. Then it was about 11 or 11-30 P. M. in the night. The position from which the tearsmoke shells were shot was outside the college premises but the effect of the shells was perceived by the persons inside behind the main college gate who were indulging in brickbattling. It is also quite possible that some of these shells had fallen inside college premises.

77. The circumstances, in which the police had to use tearsmoke, were that while the police was standing near the traffic island at College Square, a lot of brickbats were hurled at them from inside the college campus; it was noticed that the brickbats were being thrown from the heap of debris near the gate as aforesaid; the actual hurling of the brickbats was from inside the college compound. The ADM consistently reiterated throughout his deposition before the Commission that in his opinion the use of teargas in these circumstances was justified. He said that he himself was present at the Chhak (College Square) from where the police was using the tearsmoke shells; they were aimed at the crowd who were indulging in the overt acts; teargas shells were fired from the traffic island area so as to give its effect to the persons present inside the Ravenshaw College premises near the college gate who were indulging in such overt acts.

78. As regards the charge of alleged entry of the police into the college campus on the 26th night, the evidence is that neither the ADM Mr. Rath nor the SDO Mr. Padhi is aware of any such entry by the police. Mr. Rath said that he did not see any policeman entering into the college premises when he was standing near College Square. In answer to Qq. 346 and 347 Mr. Rath said that police did not enter into Ravenshaw College premises on the 26th night nor did he authorise the police to enter the college premises. The evidence of the SDO Mr. Padhi is also to the same effect. In answer to Qq. 394, 400--402 Mr. Padhi said that the police force with him did not pursue the students inside the Ravenshaw College campus; the police did not chase the crowd into the college compound, the crowd was chased up to the gate and the police had to come back with him.

79. The Principal of Ravenshaw College Mr. Banshidhar Samantarai (C. W. 2) however said that the police had entered the compound 20 yards from the gate; he saw from the portico two or three policemen in Khaki dress being chased out at a distance of 20 yards from the gate. Thus, although the ADM Mr. Rath and the SDO Mr. Padhi did not see any policemen having entered the college compound, it is quite possible that some two or three police constables did enter the college campus and were chased away as seen by the Principal of the college; such casual entry by the police while on duty in such a situation does not amount to excess as alleged.

80. On the evidence it is clear that the mob inside the college campus who were brickbating was dispersed with the use of minimum force; the use of tearsmoke was under the direct order of the ADM at the spot within his view and under his control.

81. *At Law College Hostel area on the main road :* It will be remembered that the SDO Mr. Padhi went towards Ranihat bridge side; the Madhusudan Law College Hostel was very near the bridge. The use of force by way of teargassing, lathi charge and chasing was under his orders throughout. The ADM Mr. Rath was also standing at a few yards away at College Square.

82. It is a telling circumstance that the police, commanded by the SDO, had to remain there standing the whole night from 11-30 P. M. to about 4 A. M. which speaks for itself. Throughout this time the police was chasing and trying to disperse the crowd but they were unable to do so until early hours of the morning at about 4 A. M. This would indicate the intensity of brickbating by the crowd on account of which effective lathi charge was not possible. It is in evidence, as hereinafter discussed, that there was heavy brickbating from the nearby Law College Hostel which was a two-storeyed building. No lathi charge was possible on the persons who were brickbating from the first-floor of the building.

83 It was submitted, on behalf of the administration, that the only possible measure to stop brickbating from the two-storeyed Law College Hostel at midnight, that could be thought of, was throwing a few tearsmoke shells towards the Law College Hostel. The other alternative—which the authorities were discreet enough not to take recourse to—was breaking open of the door, entering inside the Law College

Hostel building and arresting all the inmates of the hostel on the night of the 26th. But such a measure at that hour of the night could only have been taken at the risk of life of the policeman as well as the inmates of the hostel. According to the administration, the situation was such that, even if the police had resorted to firing, their action could not have been condemned as illegal or indiscreet. In substance, it was submitted that the situation was such that it required patience and restraint on the part of the Magistrates in not taking recourse to any more drastic step than what was actually resorted to under the circumstances.

84. The question is : Is such view supported by the evidence on record ? The evidence of the SDO Mr. Padhi, who operated in the area, is that from Dak Bungalow junction he first reached College Square area. There, the ADM directed him to disperse the mob which had congregated near Ranihat bridge, opposite to Cuttack Hotel and the Law College Hostel. The SDO immediately went there. He said that a part of the crowd, which was dispersed in front of the radio shop, moved along the road; intermittently they were throwing brickbats; the police party were chasing them; ultimately a portion of the same crowd went towards the Ravenshaw College compound; a portion of it came to Ranihat bridge side and congregated there.

85. The situation near the Law College Hostel on the 26th night, before the police went into action, was that a part of the crowd, which took the main road from the radio shop, had gathered near the Law College Hostel; they were noisy and in a frenzied mood; they were brickbattering intermittently; and sometimes coming forward to charge the policemen who were there. It is in evidence that some members of this crowd had rushed inside the Law College Hostel and were brickbattering from the first-floor of the Law College building. Apart from the SDO Mr. Padhi, the ADM who was very near at College Square also saw brickbats being hurled from the Law College Hostel. In answer to Qq 484-490 he said that he saw 30/40 such brickbats falling from the Law College Hostel direction and also from the Ranihat bridge area. He was quite positive when he said that the brickbats were coming from the Law College Hostel premises.

86. P. W. 4 Mr. Promode Chandra Samantarai happened to visit the area at the request of the Principal of the Medical College to find out if any medical student was involved in the disturbance at Station Bazar area on the night of the 26th.

Mr. Samantarai came to the spot at about 12/12-30 midnight. He could only reach up to Cuttack Hotel where he stopped for about five minutes. Even from what he said in evidence, it is quite clear that the area was not still at that late hour of night free from disturbance; trouble was still there; crowd of persons appearing to be mostly students were running away towards Ranihat side. In answer to Q. 28 he said that so far as he could remember the Law College Hostel was little open and about 2 or 3 people were standing on the steps on the ground-floor; evidently they were visualising what was happening in front. He also said that the crowd was about 200 to 300 who were in front of him; it was gradually being diluted because people in batches were running towards Ranihat bridge area (Q. 269). He further said that from the general appearance of the people and of the crowd, who were running away whom he was seeing from the back, it seemed to him that they were mostly students because they were wearing suits (Qq. 271, 272). His evidence supports the version given by the administration that Ranihat area covering Law College Hostel was a trouble spot during the whole night of the 26th. The very fact, that even as late as 12 or 12-30 at night the main gate of the Law College Hostel was open with some of the inmates standing on the steps on the front by the side of the road, shows that the inmates of the hostel were participating in the disturbance that night. It is also in evidence that some members of the crowd, who were dispersed from Station Bazar area in front of the radio shop after being chased by the police, entered the Law College Hostel that night. Evidently it was this section of the crowd and the inmates of the hostel who were brickbatting from the Law College Hostel building as seen by the SDO Mr. Padhi and the ADM Mr. Rath.

87. It was in these circumstances that the SDO Mr. Padhi had to order the police to throw some tearsmoke shells towards the Law College Hostel building as a whole. He further said that before he ordered police to throw tearsmoke shells he gave warnings. In answer to Qq. 775-776 he said that there was continuous warning by him to the crowd before ordering teargas or lathi charge to disperse, to stop brickbatting and to go away; he also before use of teargas repeatedly warned the crowd, which was throwing brickbats from the hostel, to stop brickbatting. While in spite of repeated warnings given by the Magistrate brickbatting continued, there was no other alternative but

to use tearsmoke which apparently had its effect because the situation eased round about 3 A. M.

88. In these circumstances, it cannot be said that the use of force in the manner it was done was in excess of the requirements of the situation. In answer to Qq. 41-42 the ADM Mr. Rath said that to his knowledge he had not found any such excessive action on the part of the police to deal with the situation and that he had always been satisfied about that. The police used teargas shells and charged with lathis up to the traffic island area under the orders of the ADM; thereafter the SDO accompanied by police force rushed towards Ranihat bridge area and ordered use of teargas and lathi charge to disperse the crowd.

89. It is in evidence that, to the knowledge of the magistrates, there was no teargassing or lathi charge resorted to by police from the side of NCC road adjacent to East Hostel. The direction of the ADM to the police was to use the minimum force required to tackle the situation. The SP, the seniormost police officer, was commanding the force. The ADM made it amply clear in his evidence that the policemen and officers—however senior a police officer might be—were all acting under the direction of the ADM; he was present at the spot all along; he was also watching what amount of force was required; in fact force was used under his control until the crowd dispersed and the situation eased.

**I. Alleged assault on Mr. Manmohan Das and
Mr. Harihar Panda, students of
Ravenshaw College :**

90. *Charge against the police* : In support of the allegation that they were assaulted by the police inside the hostel, they filed affidavits describing the circumstances in which they were beaten as stated therein.

91. The case of Mr. Manmohan Das as stated in his affidavit is in substance this. He was inside the East Hostel compound referring to the quadrangle as appears on the spot map Ext. C/98; he saw from inside the hostel police with lathis chasing the students towards the hostel gate; he was hit on his head with teargas shell inside the hostel compound; he fell unconscious and came to senses at the college gate; after coming to senses he found himself resting on Mr. Harihar Panda and Mr. Maguni Das standing beside

him; he found both of them were seriously beaten by the armed police; he himself was also struck with lathis; then all of them became unconscious; then he regained consciousness in the van and found others; then he was carried to OMP magazine where he was inhumanly behaved; he was not supplied with food and water—all as alleged in the affidavit.

92. In the supporting affidavit of Mr. Harihar Panda he described what, according to him, were the circumstances in which Mr. Manmohan Das was injured by teargas and how subsequently he was severely beaten and fell unconscious. His version in substance was this : At 9-30 p. m. he heard certain noise near the Ravenshaw College East Hostel compound of which he was a boarder; he was looking from the verandah of East Hostel; he saw from the verandah police people beating; Mr. Manmohan Das was injured by teargas shell. Mr. Mukunda Das, General Secretary of the East Hostel Union informed the Superintendent of the Hostel about the condition of Mr. Manmohan Das; then the Superintendent is stated to have instructed him to take Mr. Manmohan Das to the hospital; under his instruction Mr. Harihar Panda, Mr. Mukunda Das and one Mr. Surendra Swain left with Mr. Manmohan Das for the hospital for treatment; on the way, while still inside the college compound, police charged Mr. Mukunda Das and Mr. Surendra Swain with lathis; at this point of time Mr. Harihar Panda was carrying Mr. Manmohan Das in his hand ; Mr. Mukunda Das and Mr. Surendra Swain on being charged by the police fled away ; Mr. Harihar Panda was seriously beaten and fell unconscious near the main gate inside the college compound along with his injured friend Mr. Manmohan Das. According to his version, beating by the police and his becoming unconscious—all were inside the college campus ; he gained consciousness inside the police van and found his friend Manmohan Das injured and another friend Maguni Das in the van ; they were taken to OMP magazine; there are certain other allegations—such as snatching away of his spectacles, etc. and ill-treatment at OMP magazine— all as stated in his affidavit.

93. In substance, the case of these two students, as suggested to C.W. II Inspector Anam Charan Mohanty, is that Mr. Manmohan Das, Mr. Harihar Panda and Mr. Mukunda Das were all arrested in the premises of Ravenshaw College on the night of September 26.

94. *Case of the administration* : The Additional SP Mr. J. K. Das in his counter affidavit stated that these two students were arrested on the spot having been found to be members of the unlawful assembly which raided and looted the radio shop that night on September 26. The Officer-in-charge C. W. 11 Inspector Mohanty stated that Mr. Manmohan Das was arrested between 10 and 10-30 P. M. that night ; he also arrested Mr. Harihar Panda, Mr. Mukunda Das and one Surendranath Sahu at the same time between 10 and 10-30 P. M ; they all were arrested from inside and the verandah of the radio shop of Umasankar Lal. The names of these arrested students, among the 35 students arrested that night, were mentioned in the F. I. R. Fxt. 7 lodged by Inspector Mohanty at 11-35 P. M. at the spot.

95. *Is the story of police assault on the two students acceptable ?* It appears that Mr. Manmohan Das wrote a letter dated October 6, 1964 Ext. C/2, addressed to the Superintendent of East Hostel, stating that teargas shell came and struck him on the head all on a sudden; though he was in the midst of the gas and his face was affected by the gas, he at a stretch came running to the Hostel; when he felt pain and bleeding from the head, he became senseless out of fear; thereafter he knew nothing of what happened to him.

96. The Superintendent of East Hostel Mr. Trilochan Misra (C. W. 1) stated in evidence that Mr. Manmohan Das left for home after being released from jail; that from home he sent this letter Ext. C/2 to him by post; he had that letter with him; he tallied the signature from the register maintained in the hostel; it was his signature as far as he understood.

97. It is significant that there is no allegation in this letter Ext. C/2 of Mr. Manmohan Das about armed police having struck him with lathis although he said that he was hit by teargas shell. The implications of this letter are fully dealt with hereunder.

98. Mr. Trilochan Misra, Superintendent of East Hostel, (C. W. 1) of which these two students were boarders, did not support or corroborate the students' version. The Superintendent said to this effect; Mr. Mukunda Das, General Secretary, East Hostel Union did not inform him that Mr. Manmohan Das was injured by teargas; in fact he did not meet Mr. Mukunda Das that night; he met him on the 27th afternoon; even then Mr. Mukunda Das did not tell the

Superintendent anything about Mr. Manmohan Das. The statement of Mr. Harihar Panda in his affidavit was this :

“ Teargas was charged and a boarder of our Hostel, Shri Manmohan Das was injured and when our Secretary Shri Mukunda Das informed the Superintendent and there was no chance of getting the ambulance, myself with Mukunda Das and Shri Surendra Swain with the instruction of the Superintendent of the Hostel, with the injured friend for treatment to the General Hospital.”

This portion of the affidavit was put to the Superintendent of the Hostel, Mr. Trilochan Misra (C. W. 1). He said that he did not see Mr. Mukunda Das that night and that he did not give any such instruction as stated in the affidavit of Mr. Harihar Panda quoted above. The Superintendent said that this statement of Mr. Harihar Panda is incorrect (C. W. 1 Trilochan Misra Qq. 100 -102).

99. It is, however, in the evidence of Mr. Trilochan Misra, Superintendent of the Hostel that one Udaya Chandra Biswal who was a boarder of East Hostel was said to have been affected by teargas that night. The Superintendent Mr. Trilochan Misra stated that the Hostel Secretary Mr. Mukunda Das mentioned to him about one affected by teargas whom he was carrying, but he did not mention the name ; the Superintendent made enquiries, but nobody could tell him the name. Besides, there was also reference by the local Press that one Udaya Chandra Biswal had been affected by teargas, as it appeared under the news item published in Prajatantra dated October 2, 1964 (page 2, col. 5), which purported to give an eye-witness narration by Sm. Rama Debi and others about what they came to know from the students inside the Cuttack Jail when they met them there ; the news item was dated October 1, 1964 when admittedly Mr. Manmohan Das, Mr. Harihar Panda were in the Jail ; there was no mention about the alleged assault on Mr. Manmohan Das in the said news item although Uday Chandra Biswal was mentioned as having been affected by tears smoke.

100. *Is the story as stated in the affidavits of Mr. Manmohan Das and Mr. Harihar Panda acceptable ?* Apart from the affidavits, neither of them was examined as a witness. The question is : Have they been able to establish the allegations against the police ? The affidavit of Mr. Manmohan Das is to the effect that he became unconscious on being hit by teargas shell. Mr. Harihar Panda,

Mr. Maguni Das and also he himself were assaulted ; they all lost their consciousness within the college campus. In his letter to the Superintendent of East Hostel dated October 6, 1964 Ext. C/2, Mr. Manmohan Das did not mention about any assault whatsoever on any person. The said letter also contradicts the affidavit of Mr. Harihar Panda that he was assaulted. According to the letter, Mr. Manmohan Das regained consciousness outside the college campus at College Square and found Mr. Harihar Panda and another student standing by and guarding him. Thus the letter completely rules out the story of Mr. Harihar Panda in his affidavit that he (Mr. Harihar Panda)

“ was severely beaten and fell unconscious near the main gate inside the compound of our college.”

The letter of Mr. Manmohan Das also negatives his own story in his affidavit that some lathis of armed police struck him and as a result he fell unconscious.

101. In his affidavit, Mr. Harihar Panda stated that after he was beaten by the police he found himself inside a police van along with his injured friend Mr. Manmohan Das and another Mr. Maguni Das. Therefore, according to his affidavit, Mr. Maguni Das came into the picture for the first time in the police van. If that was so, the statement of Mr. Manmohan Das in his affidavit, that after he came to his sense at the college gate he found Mr. Maguni Das standing beside him and the further statement that Mr. Maguni Das was “seriously beaten by armed police” in his presence at College Square or inside the college campus cannot be true.

102. That apart, the injury report of Mr. Manmohan Das Ext. 8/14 shows that he was examined on September 28 and no marks of injuries were found on his person. In his affidavit Mr. Manmohan Das said that he had a teargas shell hit on his head “causing serious wound” as to make him fall unconscious. In his letter Ext. C/2 he said that when he felt pain and bled from the head, he became senseless. If in fact he had a serious bleeding wound from the head as he himself said, it is improbable that there would be no mark of injury. If in fact, the impact of the teargas shell hit on his head had caused unconsciousness, it must have hit him with some force and it would have left some external injury —as the alleged victim himself Mr. Manmohan Das admitted both in his letter and in his affidavit. It is significant that the injury report shows no marks of injury.

103. As regards alleged severe beating by the police on Mr. Harihar Panda as a result of which he is stated to have fallen unconscious, it is significant that there is no injury report at all in respect of the alleged injury on him.

104. It is intriguing why the name of the student who is said to have been affected by teargas shell could not be ascertained in spite of all efforts made by the Superintendent of the Hostel. The Superintendent said that he heard one boy was affected by teargas; he enquired who that boy could be but nobody could tell him the name of the boy; he made attempts to learn the name of the boy; he found some names from the newspapers. The Superintendent also said that he asked the Hostel Secretary Mr. Mukunda Das the name of the boy he carried to the hospital but Mr. Mukunda Das was not in a position to tell the name; he gave only a description. The Superintendent said that he was curious to know the name of the affected boy and he went on asking everybody he met about the name of the boy but he got some description; he could not get the name.

105. The students' case, as suggested on their behalf to C. W. 11 Inspector Mohanty (Q. 947), was that Mr. Manmohan Das, Mr. Harihar Panda and Mr. Mukunda Das were arrested within the premises of Ravenshaw College on the night of September 26. The letter of Mr. Manmohan Das Ext. C/2. referred to above does not support this. The letter shows that there was no arrests inside the college campus; he (Mr. Manmohan Das) was at College Square when he saw Mr. Harihar Panda and another student (referring to Mr. Maguni Das) were standing by and guarding him; so none of them were arrested at least up to the place where they were at College Square.

106. The question then is: Where were they arrested? Mr. Manmohan Das in his letter said this:

“ After some time I was carried by the “lathis” of four policemen towards the station and placed inside a room where I saw some other wounded people there.

Along the way to that room the policemen scolded me using such words that are not at all expressible and tolerable by a college student from mere policemen. As I was suffering from the pain on my head and trembling with fear did not care for their words. In that room one man gave me some treatment and bandage on my head.”

Neither Mr. Manmohan Das nor Mr. Harihar Panda mentioned anything in their affidavits about this “room”

referred to in the letter as quoted above. The non-mention of this "room" is not without significance. The suppression of the fact that he was taken to a room which, in the context of the other evidence, would mean the radio shop is a telling circumstance which throws doubt on the case. Mr. Manmohan and Mr. Harihar sought to make out in their affidavits and evidence. Apparently, they did not want to say that they were at any time anywhere near about the radio shop. As hereinbefore stated, the F. I. R. Ext. 7 shows that these three students Mr. Manmohan Das, Mr. Harihar Panda and Mr. Maguni Charan Das were among the 35 students who were arrested, as members of unlawful assembly, from inside and the verandah of the radio shop that night.

107. In the ultimate analysis, therefore, the case of Mr. Manmohan Das and Mr. Harihar Panda about alleged police excess, as stated in their affidavits, has not been established as true. It can be reasonably inferred, from the evidence on record and the surrounding circumstances, that Mr. Manmohan Das and Mr. Harihar Panda somehow got involved in the mob attack on the radio shop; they were arrested inside the shop or in the verandah or near about there, they could not return to their hostel; thereafter, their fellow students, who came to know of the arrests and circumstances of the arrests, possibly wanted to give a coverage in the eyes of the Superintendent of the Hostel; it was for this attitude that none of the students including the Hostel Secretary Mr. Mukunda Das did disclose to the Superintendent of the Hostel the names of these arrested students; evidently, some sort of vague and hazy story was floated without giving names and particulars. If in fact, the story as stated in the affidavits of Mr. Manmohan Das and Mr. Harihar Panda was even partially true, certainly, of all persons, the Hostel Superintendent would have known about it the same night or the day after. The story of assault on them by the police and their having lost consciousness as alleged in their affidavits has not been proved. They have not come forward to give evidence before the Commission. So the allegations as made in their affidavits cannot be accepted as correct.

**J. Allegations of police excess by
Mr. Bibhuti Bhusan Sarangi :**

108. Mr. Bibhuti Bhusan Sarangi (P. W. 10) was a student of Ravenshaw College at the time of the movement, then staying in a mess situated at the northern side of the level-crossing at the Cuttack Railway Station. He filed an

affidavit in support of the students' case of alleged police excess. He said that, while staying in the mess, he used to take his meals in a hotel situated at Chauliaganj just in front of Ravenshaw College. His allegations against the police, as stated in his affidavit, are these :

- “ 4. That on the night of the 26th September, 1964 at about 10 P. M. when the petitioner was returning from the said hotel to his mess and when he had reached a spot in front of the Railway School, on account of severe lathi charge by the police as the students were running towards the College side, out of fear for being assaulted by the police, the petitioner left cycle, and ran away to save his life.
5. That after some time when the situation cooled down and there was no aggression from the side of the students, the petitioner went near the Police Officers and requested them to return his cycle, they threatened the petitioner to run away in order to save his life otherwise he would be assaulted by the police and he was directed to go to the Mangalabag Police Station on the next day to receive his cycle.
7. That with the object of getting his cycle the petitioner abandoned his studies and went to the police station on the 27th September, 1964, at about 7-30 A. M.
8. That at the PS the Police Officers induced the petitioner to depose falsely against a number of students, but as the petitioner did not agree to their inducement they threatened the petitioner of evil consequence, and still then as the petitioner did not agree to their coercion, the Police Officers snatched away a golden ring, cash of eleven rupees and odd, a pocket book and other papers, belt, from the petitioner without giving him any receipt and put the petitioner in that hajat.”

He was arrested by the police and ill-treated in the manner, as stated in his affidavit, until he was released from the jail on October 3, 1964. He also gave evidence before the Commission. In evidence he said that he saw the police beating persons ; he saw that a police Sub Inspector caught hold of a boy and beat him on his back with a lathi (Q. 13). He further said that the following morning when he went to Mangalabag Police Station he was asked by the police officers to be informer and to give the police information about the students (Q 28).

109. The State officials in their counter denied the allegations made by him as false. The case of the administration, as suggested to Mr Bibhuti Bhusan Sarangi (P.W. 10) in cross-examination, was that he had not seen any assault during the night of September 26 and as such he had not

mentioned about the alleged assault by the police in his affidavit (Q. 113):

110. It is significant that the allegations which he made in evidence,—namely, that he saw a police Sub-Inspector assaulting a boy on the night of September 26, that in the following morning at Mangalabag Police Station he was asked to be informer and that on his refusal he was arrested by the police—are not in his affidavit which was filed as early as March 24, 1964. Subsequently, when he deposed before the Commission in August 1965 he made these allegations which are apparently after-thought.

111. In cross-examination, when he was confronted with his affidavit where none of these allegations are mentioned, he could not give any satisfactory explanation; he said that he did not feel it necessary to state (Qq. 111, 112).

112. That apart, the way he said in his evidence to be moving that night, it was not possible for him to see a police Sub-Inspector having assaulted a boy on his back with a lathi at the place as alleged by him in his evidence. According to him, when he reached the spot in front of the Railway School he found persons running away towards college side; that out of fear for being assaulted he left his cycle there and ran away in front of the Railway School towards the Railway field till he reached there; there he stood in the open space for about 5 to 10 minutes; thereafter he did not find any person running; the police were running on the road. He also said that he was unable to see any person because there were obstructions; from the Railway field he went to his mess. It is evident from his alleged movement that night by reference to the spot sketch map Ext. C, that he could not have seen anything on the road where the alleged assault by the police officer is said to have taken place.

113. As regards the object of his filing the affidavit, he admitted that his object was to get compensation for the loss alleged to have been suffered by him and that he had no other object (Qq. 109, 110).

114. In view of the material omissions initially in his affidavit about the specific acts of alleged police excess which he subsequently introduced at evidence stage, and the improbability of his having seen anything, his story about alleged police excess is not acceptable.

K. Findings of the Commission :

115. On a careful scrutiny of the evidence before it, the Commission finds—

- (a) that at Station Bazar near the radio shop, the authorities including the Principal and Lecturer of Orissa School of Engineering, Principal of Ravenshaw College, magistrates and policemen all at the spot failed to pacify the mob; the students were up for trouble; their demand for immediate production of the radio shop-keeper at the spot and extraction from him an apology was not reasonable;
- (b) that in the grave situation as ultimately developed, even if the radio shop-keeper was available, it would not have been wise for the police to produce him before the mob in such angry mood;
- (c) that in the absence of any written complaint about the particulars of the alleged offence stated to have been committed by the radio shop-keeper on some student—cognizable or non-cognizable—it was not possible for the local authorities to take any action on the night of September 26 on mere surmises based on vague information received from the crowd at the spot;
- (d) that the story of Sasankadhar Das that the F. I. R. Ext. C/11 was extorted from him by the police is not acceptable;
- (e) that immediately before the police had to start action, the mob had entered and ransacked the radio shop; they were smashing and throwing the radio cabinets; there was heavy shower of brickbats coming from the mob; some members of the mob were snatching bamboo splinters from a thatched structure in front of the radio shop;
- (f) that attack on the radio shop, police clashing with the mob, heavy brickbatting, declaration of the assembly as unlawful and order to disperse passed by the ADM, and the SP executing the order to disperse—all these happened in quick succession; in spite of the order of the ADM,

the mob did not disperse and heavy brickbatting continued; it was at that stage the ADM had to order dispersal of the mob by tear-smoke and lathi charge;

- (g) that the situation took such a violent turn at and near the radio shop that there was no other alternative left but to order dispersal of the mob by tear-smoke and lathi charge; this initial use of force could not be avoided in the situation that developed;
- (h) that the traffic island at College Square near the main gate of Ravenshaw College, from which the tear-smoke shells were shot, was outside the college premises but the effect of the shells was perceived by the mob - 500 to 600 in number inside the main college gate, who were indulging in brickbatting from the heap of debris 15/20 yards from the main gate inside the college campus; use of tear-gas by the police in these circumstances was justified;
- (i) that the mob inside the college campus who were brickbatting from the heap of debris was dispersed with the use of minimum force; the use of tear-smoke was under the direct order of the ADM at the spot within his view and under his control;
- (j) that although the ADM and the SDO did not see any policemen having entered the college compound, it is possible that some 2 or 3 police constables did enter the college campus and were chased away as seen by the Principal of the college; such casual or compelling entry by the police while on duty at such a situation does not amount to excess as alleged;
- (k) that some members of the crowd who were dispersed from Station Bazar area near the radio shop, after being chased by the police, entered the Law College Hostel near Ranihat bridge that night; evidently, it was this section of the crowd and the inmates of the hostel who were brickbatting from the Law College Hostel building, while in spite of repeated warnings given by the magistrates brickbatting continued, there was no other alternative

but to use tearsmoke which apparently had its effect because the situation eased round about 3 A. M.;

- (l) that the sequence in which the situation developed, from stage to stage since evening till late at night up to early hours of the morning, necessitated the use of force in the manner and to the extent it was used by the magistracy and the police as discussed above; the police used teargas shells and charged with lathis up to the traffic island area under the orders of the ADM, thereafter the SDO, accompanied by police force, rushed towards Ranihat bridge area and ordered use of teargas and lathi charge to disperse the crowd; it cannot be said that the use of force in the manner it was done was in excess of the requirements of the situation;
- (m) that the policemen and officers—however senior a police officer might be present—were all acting under the direction of the ADM; he was present at the spot all along; he was also watching what amount of force was required; in fact, force was used under his control until the crowd dispersed and the situation eased;
- (n) that the case of Mr. Manmohan Das and Mr. Harihar Panda about alleged police excess, as stated in their affidavits, has not been established as true; they failed to prove that the police assaulted them as a result of which they lost consciousness as alleged;
- (o) that the story of Mr. Bibhuti Bhusan Sarangi about alleged police excess is not acceptable;
- (p) that in the ultimate analysis, the use of force by the police under the direction and control of the magistrates, as discussed herein, was not excessive

CHAPTER VIII

CUTTACK IN FERMENT THROUGHOUT
THE DAY—SEPTEMBER 27

	Paragraph		Paragraph
Introduction	1	F. Lathi charge and tearing inside the Ravenshaw College campus between 4 and 5 p. m. in the afternoon of 27th September	54—70
A. Jeep burning by the mob	2—12		
B. Why police entered Law College Hostel	13—28		
C. Alleged assault by Inspector Alam on the inmates of the Law College Hostel	29—36	G. What the police did with the cycles abandoned by the students	71—75
D. Alleged indiscriminate lathi charge by police at Ravenshaw College gate and also inside the College campus up to Kanika Library between 10 and 10-15 A. M.	37—47	H. Charge of alleged assault by the police on Mr. Sarat Chandra Jena P. W. 8 inside the Ravenshaw College campus	76—94
E. Alleged assault on Mr. Pratulla Kumar Patnaik P. W. 2 by police on the 27th September morning inside the Ravenshaw College campus	48—53	I. Findings of the Commission in relation to the incidents in Cuttack town on September 27	95

INTRODUCTION

After what had happened on the night of September 26, the situation became apparently calm by 4 A. M. in the early hours of the morning of September 27. This apparent calmness continued till about 8-50 A. M., though a situation was brewing inside the Ravenshaw College campus from about 7 A. M. leading to further troubles in the College Square and Ranihat bridge area throughout the day as hereinafter discussed.

A. Jeep burning by the mob :

2. Between 8-50 and 9 A. M. a procession of more than one thousand students, which came out from the Ravenshaw College campus to the main gate and proceeded towards Ranihat, attacked a police jeep which was being driven by the Additional Commandant of the 1st Battalion of Orissa Military Police, Cuttack, Mr. P. K. Misra C. W. 7, with two other policemen in uniform and a First Class Magistrate Mr. N. C. Sen C. W. 6. The processionists attacked the jeep at a place very near the Law College Hostel; the jeep was proceeding from Ranihat side towards College Square. The Additional Commandant, the Magistrate and the other occupants of the jeep were dragged out and manhandled. It is said that the Additional Commandant was severely beaten by blows, fisticuffs and hit with brickbats; his cap was thrown into the drain. He was rescued by a local resident Mr. K. N. Patra, Assistant Superintendent of Government Press, whose residential house

was nearby in front of Cuttack Hotel. The Magistrate Mr. N. C. Sen was also manhandled but he somehow escaped. The police mike, which was being carried in the jeep, was taken from the hands of the policemen travelling in the same jeep; the badges of the policemen were also thrown away; the fate of the jeep itself was that it was damaged, torn and burnt with the four wheels turned on one side and set fire to.

3. The case of the administration is that it was the processionists who had come out of the Ravenshaw College campus that manhandled the occupants of the jeep, including the Additional Commandant and the Magistrate, in the manner aforesaid and burnt the jeep itself. In support of this case the Additional Commandant Mr. P. K. Misra C. W. 7, the Magistrate Mr. N. C. Sen C. W. 6 filed affidavits and also deposed before the Commission. Mr. K. N. Patra, who saved the Additional Commandant from further assault also filed an affidavit in support of what he had actually seen and done.

4. On behalf of the students and the public, Mr. Prafulla Kumar Mohanty P. W 6 filed two affidavits and also deposed before the Commission. The case of the students, as stated by Mr Prafulla Kumar Mohanty, is to the effect that the students' procession, which had come out at about 9-20/9-25 A M. through the main gate of the Ravenshaw College campus, was suspended in front of the traffic island because they found in front of them the jeep was burning. In other words their case is that the processionists or the students had nothing to do with the jeep burning incident; the procession did not proceed beyond the traffic island; they were asked to retreat and they retreated to the tennis field of Ravenshaw College. Mr. Prafulla Kumar Mohanty further stated that the students apprehended that this must have been done by the *agent provocateurs* of the police (Q. 412).

5. The question is : Did the student processionists attack the jeep and its occupants ? The Additional Commandant Mr. P. K. Misra, who was a victim of the jeep burning incident, in his affidavit said this :

“ After I crossed Ranihat bridge I sighted a procession of about one thousand students coming from Ravenshaw College side towards Ranihat. They were shouting inciting slogans. No sooner I reached the road in front of the Law College Hostel, the processionists finding the police vehicle and police officers in uniform rushed towards my jeep and blocked the way and some of them indiscriminately started pelting stone. They surrounded

the jeep and shouted at us in very filthy language. ***While I was thus being abused by the furious crowd, some of them manhandled me and dragged me out of the jeep into their midst. The violent mob assaulted me, threw bricks at me as a result of which I have sustained bleeding injury at back side of my head and at my back for which I have been medically examined and my torn uniform has been seized by the officer in-charge of Mangalabag Police Station *** While assaulting and manhandling us another section of the riotous mob tore the hood of the jeep, was hitting the jeep and trying to turn it down. While I persuaded them not to destroy the State property nobody listened to me. Someone amongst them set fire to the jeep and in a group they turned the vehicle down on the right side. All this happened in front of the Cuttack Cycle Company."

His version as an eye-witness, as stated by him in the affidavit, was further reiterated and clarified by him in his deposition before the Commission. In answer to Qq. 302 -309 he said that by the time he brought the vehicle to a stop he was already surrounded by a group of students; it was no longer possible to go ahead; he was convinced that they were students who by reason of age, stature, bearing and mode of apparel produced reasonable conviction in his mind that they were students; the fact that he sighted them coming towards the traffic island side out of one of the gates of Ravenshaw College added further conviction to his belief. He had no doubt in his mind that it was a part of the procession who had attacked the jeep. He said that he was convinced that the persons, who surrounded the jeep, were a part of the procession and were not by-standers; he was so convinced, because he himself saw a part of the procession forking out of the main body and surrounding the jeep; this process was seen with his own eyes. The material portion of the evidence of the Additional Commandant on this point was amply corroborated by the Magistrate Mr. N. C. Sen who was himself a victim as aforesaid and Mr. K. N. Patra who had saved the Additional Commandant.

6. Mr. Prafulla Kumar Mohanty P. W. 6 was the only witness on behalf of the student who had been examined on this point. He only saw the burning of the jeep; he could not know who burnt or how burnt or who else were occupants or what was its fate. In his deposition before the Commission he said that it was about 9 or 9-15 A. M. when they gathered at a place inside the Ravenshaw College compound and preparations were made for starting the procession; the strength of the procession was admitted to be definitely more than one thousand; the processionists

could not move beyond the traffic island because of the difficulty, as stated by him in answer to Q. 26, which was this :

“ Q. 26 What was the difficulty

A. When the procession started to move it was near about 9-20 or 9-25 and when we reached the traffic island we saw a jeep ablaze and somebody told that it was perhaps a police jeep. Then immediately we the leaders who were conducting the procession decided within a moment of time to suspend the procession and to discuss the future course of action in the Ravenshaw College compound.”

Mr. Prafulla Kumar Mohanty was specifically asked about the reason why they decided to suspend the procession at that stage. He said that the students apprehended that after this happening (referring to jeep burning incident) if they proceeded in the procession, police would take action against the students; then they decided to wait, see, discuss and decide the further course of action in a meeting. A part of the procession which had gone up to the traffic island was asked to retreat (Q. 405).

7. It is significant that Mr. Prafulla Kumar Mohanty did not mention in his affidavits about this procession of the 27th September morning and the circumstances in which it was said to have been suspended, as subsequently stated by him in his evidence before the Commission. What Mr. Mohanty said in paragraph 11 of his second affidavit filed by him on March 24, 1965 as President Madhusudan Law College Union, was this :

“ 11. That while students were discussing about the same they heard a big hullah outside and consequently coming into the verandah saw that a jeep is ablaze with fire and a small gathering of people near about it.”

In his first affidavit filed on the same date as General Secretary, All-Utkal Students' Federation, he did not mention anything about either the procession or even about the jeep burning incident. His omission to mention this material fact in his two affidavits was rightly commented ; it is clear that the subsequent story of the suspension of the procession at the traffic island at the sight of the burning jeep was an afterthought, with the obvious object of making out a case that the students' procession, taken out of the Ravenshaw College compound on the morning of the 27th September, had nothing to do with the jeep burning incident.

8 This view that Mr. P. K. Mohanty's story is an afterthought is further supported by the surrounding circumstances. Taking the time factor, the evidence of Mr. Mohanty

is that the procession started at about 9-20/9-25 A. M. According to the case of the administration, the jeep burning incident had taken place before 9 A. M. If Mr. Mohanty's evidence as to the timing of the starting of the procession is accepted, then the processionists could not have been involved in the jeep burning incident, because even before the procession started the jeep burning incident must have already taken place.

9. The question then arises : Is the timing of starting of th procession as stated by Mr Mohanty correct ? It appears from record that the Additional Commandant Mr. P. K. Misra arrived at Mangalabag Police Station at 8-30 A. M.; within a few minutes thereafter he left Mangalabag with the Magistrate Mr. N. C. Sen in the jeep. At that time the SDO Mr Padhi and the Additional SP Mr J. K. Das were also at the Police Station. It is also on record that at 9-05 A.M. Mangalabag Police Station received a phone message that the jeep of the Additional Commandant Mr. P. K. Misra had been attacked and set fire to. This is supported by the affidavit of the officer-in-charge, Inspector Anam Charan Mohanty and the affidavit of the Additional SP Mr. J. K. Das. It is also on record that after receiving the message about the attack on the jeep, the SDO Mr. Padhi, the Additional SP Mr. J. K. Das and the Magistrate Mr. P. C. Roy left the Police Station for the spot at 9-05/9-07 A. M. By about 9-15 A. M. at the latest they arrived in front of Hind Cinema and parked their vehicle there, as they could not proceed on account of heavy brickbatting and a huge crowd of more than one thousand there. The party headed by the SDO, walked towards the mob while brickbatting was continuing. By then, about 9-15 A. M., they had seen the jeep burning ahead in front of the Law College Hostel.

10. It is the consistent evidence of all the eye-witnesses to the jeep burning incident, including the Additional Commandant Mr. P. K. Misra and the Magistrate Mr. N. C. Sen, that it was a part of the procession which had surrounded the jeep, tore and damaged it; that they were manhandled by some members of the procession

11. The Additional Commandant Mr. P. K. Misra filed an F. I. R. Ext. C/12 about the jeep burning incident at 10 A. M. on the spot at College Square and made over the same to the officer-in-charge Inspector Anam Charan Mohanty there. The F. I. R. was received at Mangalabag Police Station at 10-15 A. M.

12. If this version given on behalf of the administration through the various State official witnesses who deposed is true, then the story of Mr. Prafulla Kumar Mohanty that at 9-20/9-25 the procession had started from the Ravenshaw College compound and then suspended at the traffic island, cannot be accepted. It is abundantly clear that it was the processionists who had assaulted the occupants and burnt the jeep ; the story that the processionists had nothing to do with the incident is not acceptable.

B. Why police entered Law College Hostel :

13. A few minutes after the Additional Commandant escaped from the scene of the jeep burning incident, the police, under the command of the SDO Mr. Padhi arrived at the spot. As the police force and the SDO approached the mob, the latter started throwing brickbats at them. The mob was then charged with lathi. The majority of them dispersed towards Ravenshaw College and others ran inside the Law College Hostel. From inside the Law College Hostel brickbats were pelted at the police party.

14. In the meantime, the Additional Commandant Mr. P. K. Misra had his shelter at the residence of Mr. K. N. Patra who took him to his verandah and arranged a chair for him where he sat down for some time. The evidence of Mr. P. K. Misra is that after the police arrived he became slightly bold; he went up to the gate; from there he could see the front of the Law College Hostel; he also could see showers of stones and brickbats being thrown aimed at the police party from the balcony of the Law College Hostel (C. W. 7 P. K. Misra Oq. 11—13).

15. In his affidavit Mr. K. N. Patra, who saved the Additional Commandant from the processionists, also said that there was brickbattling throughout ; then finding the situation dangerous and the place full of shouting and agitated crowd to the right, left and in front of the Madhusudan Law College Hostel, he along with his children got inside his house. He said that then again he came out and found that policemen with lathis were chasing the crowd; the mob was running in different directions; there were heavy showers of brickbats falling from the upper storey of the Madhusudan Law College Hostel building ; he saw two or three full brickbats and one heavy stone falling from the upper storey, he found the situation dangerous ; he got inside his house

16. The evidence of the SDO Mr. Padhi, who came to the spot after the jeep burning, is that a section of the mob which had attacked the jeep moved towards the Law College Hostel and from that side brickbattling intensified; the portion of the road in front of the Law College Hostel was cleared by lathi charge but brickbattling started from the Law College Hostel itself; this could not be stopped in spite of repeated warnings; the inmates of the hostel were throwing brickbats at the policemen and towards the road where the policemen were present; many brickbats were being thrown from the balcony of the first-floor of the Law College Hostel and also from the top roof of the hostel.

17. This situation of heavy brickbattling from the Law College Hostel building immediately after the jeep burning was also stated by the police officers on the spot including the Additional SP Mr. J. K. Das in his affidavit and Inspector Mohanty C. W. 11 both in his affidavit and in his evidence before the Commission.

18. It was in these circumstances that the SDO directed the police to enter the hostel and make arrests. Accordingly, a force consisting of 14 policemen with lathis under the command of the Assistant Commandant Mr. Sharma C. W. 9 was directed to enter the hostel. Inspector Alam C. W. 8 was also asked to assist the Assistant Commandant Mr. Sharma. One Magistrate Mr. P. C. Roy C. W. 4 was also asked by the SDO to accompany the police force. The police force could not enter by the front door as the collapsible gate was closed and the front side was subjected to heavy brickbattling from inside. So the police force entered by the back-yard but Magistrate, Mr. P. C. Roy could not, in the beginning, proceed further because of heavy brickbats inside the hostel courtyard, as he had no helmet on his head. The policemen and officers, including Assistant Commandant Mr. Sharma and Inspector Alam, all entered and went upstairs. 26 arrests are said to have been made inside the hostel after resistance and scuffle; within 5 to 10 minutes Magistrate Mr. P. C. Roy entered and rushed to the first-floor, as by then, brickbattling had stopped after the police entered.

19. The inmates of the hostel complained to the Magistrate Mr. P. C. Roy that police had beaten them outside the hostel during the previous night. There was no allegation of beating by the police in course of the arrests inside the hostel. The policemen, including Inspector Alam, are said to have been rough to a certain extent in effecting the arrests,

as there was violent resistance by the students with chairs, curtain rods and other things as ready at hand. After arrests were effected, the police under the command of the Magistrate Mr. P. C. Roy brought the arrested persons out; they were put in a van, taken to College Square and made over to the officer-in-charge Inspector Mohanty at 10-15 A. M.

20. The case of the students, as pleaded by the Madhusudan Law College Union through its President Mr. Prafulla Kumar Mohanty in his affidavit, was, in substance, this : After the jeep burning incident, the students inside the Law College Hostel, apprehending some trouble, closed their doors and windows. Some day-scholar students of the Law College, having heard about the plight of the inmates the previous night, came to the hostel to enquire about their condition. While some students were discussing and preparing to make representation to the authorities, some of them were either taking their bath or meal, they heard the police breaking open the doors and windows. Immediately after this, the armed police entered the hostel by scaling the compound wall and through the broken doors. After entering the hostel, the armed police started beating mercilessly the unprovoked, peaceful and innocent students without any rhyme or reason. The innocent students, having been bewildered by this sudden attack, pleaded for mercy but they were laughed at and were beaten more mercilessly. Even, some students, who were bed-ridden because of their illness, were not spared, they were dragged from their beds and were beaten violently. It was also alleged that the students, who were taking meals, were dragged, beaten and their food were either thrown out or devoured by these hungry invaders (as described in the affidavit). It was further alleged that valuables such as rings, pens, costly wrist-watches, photo cameras, transistors, costly dresses and also cash were snatched away from their person and by breaking open the boxes; that most of the moveable properties of the students inside the hostel were looted, removed and destroyed by the police during the period when the hostel was under illegal occupation of the police; in particular, certain serious allegations have also been made against Inspector Alam which will be hereinafter dealt with separately.

21. In his deposition before the Commission in answer to Question 103, Mr. Prafulla Kumar Mohanty P. W. 6 made certain specific allegations against the police with particular

reference to the alleged conduct of Inspector Alam. Mr Mohanty's answer to the question was this :

" Q. 103 After that what happened.

A. While we were being beaten by the police one civilian officer whom we thought at that time to be SDO entered upstairs and was having some talk with Mr Alam For getting mercy, one Shri Abhay Patnaik and some other fellows whose names I do not remember now they approached him to tell the police not to beat us any further and during that process also when I was sitting I also uttered that "Sir, they have beaten us very severely". That black fellow who tried to snatch away my watch, with Mr. Alam ran towards me and along with Mr. Alam tried to role me down from the staircase. Then only the civilian officer prevented him not to do so and we were asked to move downstairs. After coming downstair I could see 4 or 5 of our friends formed a line in front of the latrine and we were directed to march out of the hostel."

22. There is also an affidavit dated March 24, 1965 by Mr. Sailesh Chandra Pradhan, a student of Madhusudan Law College who was an inmate of the hostel at the time, in which he stated that at about 11-30 A. M. on September 27, 1964 a contingent of police threw a cordon round the hostel; the police broke open the back door of the hostel with crowbar and entered; the students bolted the doors from inside in fear; the police broke open the door of the room and pulled down students from bed and beat them. He further said that he was then down with fever having a temperature of 101°F and implored not to beat him; the police did not listen and hit him about 16 strokes; he lost his sense; his left and right hands were fractured; and he lay in a pool of blood; he was falling down on the ground. As regards assaults on inmates other than himself, Mr. Sailesh Chandra Pradhan also said that one Lalmohan Naik was hit on his head and blood was oozing out; the police pulled out people who hid themselves under the cot and hit them; that many other students including Rabi Mohanta, Nabin Samanta, Radhakrishna Patra, Dola gobinda Sanial, Sarat Mahapatra, Prafulla Mahanty were all mercilessly beaten. He also made specific charge of ill-treatment by Inspector Alam, hereinafter discussed. The further charge against the police was that they stole away watches, clothes, ate the foodstuff and damaged cycles, radios and other valuables. Apart from filing the affidavit, Mr. Sailesh Chandra Pradhan did not give evidence before the Commission.

23. On behalf of the administration, the Magistrate Mr. P. C. Roy (C. W. 4), Assistant Commandant Mr. Sharma (C. W. 9) and Inspector Alam (C. W. 8) filed affidavits; they were also examined as witnesses before the Commission. Their evidence and their statements on affidavit were also supported by the DSP Mr. M. A. Khan, who accompanied the force along with the Magistrate and other officers. The State officials deny the alleged excess on the part of the police.

24. The question is : Were the inmates of the hostel brutally ill-treated as alleged ? If the inmates of the Law College Hostel were so brutally ill-treated by the police in the manner it was alleged, one would expect that in the normal course of human conduct the victim students, who were alleged to be bleeding with serious injuries as stated by them, would have complained to the Magistrate Mr. P. C. Roy who, immediately within 5 to 10 minutes, entered the hostel, went upstairs and met the students. It is significant that none of the students complained to the Magistrate about their having been assaulted by the policemen in course of their being arrested that morning inside the hostel. The material portion of the evidence of the Magistrate Mr. P. C. Roy (C. W. 4) is this :

- “ Q. 56 When you were inside the hostel did any inmate of the hostel complain to you about the policemen having manhandled them.
- A. Yes, 2 or 3 of them complained to me saying ‘Look here, Sir, these people beat us outside the hostel’ ‘they again came in breaking doors without any reasons and they are making zoolum with us’. Immediately Mr. Sharma contradicted. He said, the students resisted their arrest and therefore there was some scuffling between the police party and the students.
- Q. 215 Do you say that some students protested to you about the police excesses.
- A. They protested about their being assaulted outside the hostel and about the police Julam inside.
- Q. 216 What do you mean by ‘Julam’.
- A. They said so. I presumed that it was the scuffle between the police and the students and the entry of the police into the hostel which the students did not like.
- Q. 217 You cannot say the names of those persons who protested.
- A. No.
- Q. 218 Can you identify any of the students who were present in the hall.
- A. It would not be possible for me to identify.

Q. 219 Do you recollect that there were Prafulla Kumar Mohanty, Sailesh Chandra Pradhan and one Lal Mohan Nark amongst the injured students who were arrested from inside the Law College Hostel.

A. I do not know these students."

25. Thus, it is evident that, apart from the scuffle between the policemen who went there to arrest and the inmates of the hostel who resisted arrests, there is no proof that the police inflicted such grievous injuries on the inmates of the hostel as to cause bleeding as alleged. Indeed, the charge against the police is very serious and if established, such police action would certainly have been condemned. It is significant that in none of the affidavits, filed by Mr. Prafulla Kumar Mohanty, did he mention such assault and ill-treatment by the police as he subsequently said in his deposition before the Commission. If his allegations were true, then the inmates of the hostel themselves would have complained to the Magistrate Mr. P. C. Roy, who appeared on the scene immediately after the alleged assault. All that they complained of was that they were beaten outside the hostel, presumably they were referring to the injuries that they suffered the previous night in course of lathi charge by police. There is not even any murmur that any of the inmates of the hostel were assaulted by the police in course of the arrest in the morning of the 27th September as alleged.

26. This view is also supported by the evidence of the Assistant Commandant Mr. Sharma C. W. 9 who, in answer to Question 30, said that after making arrest he saw the Magistrate coming up to the verandah of the first floor; he introduced himself to the inmates of the hostel saying that he was the Magistrate and said that "You are all under arrest and be quiet". Then what the students said to the Magistrate was this :

" Sir, we have been lathi charged prior to this outside on the roads and now they have come to arrest us and doing all these Julam."

The inmates of the hostel did not even mention about any alleged assault inside the hostel, in course of their talk with the Magistrate, when he came up to the verandah of the first-floor of the hostel.

27. Evidently, some of the inmates of the hostel were injured the previous night during lathi charge outside on the road. In fact, Mr. Prafulla Kumar Mohanty's statement Ext. K. before the Cuttack Citizens Fact Finding Committee shows

that he was informed at about 7 A. M. on the 27th September 1964 that police had committed unprecedented excesses on the students near about College Square; that he went to the Law College Hostel immediately and saw the students inside the hostel in pitiable condition; that most of them were affected by teargas, their eyes were swollen, faces were pale, and he found inside some teargas shells which the students had kept. He further mentioned in his statement Ext. K that some of the students had been indiscriminately beaten. The material portion of his statement is this:

“Some of the students were crying in pain and informed me that they were indiscriminately beaten by the OMP armed constables with long lathi when they were trying to go out of the hostel.”

It is to be noticed that Mr. Mohanty spoke about what he saw as early as 7 A. M. in the morning of 27th September. So, the injuries, that the inmates of the hostel had suffered because of alleged indiscriminate beating, could not have been inflicted by the police party under the command of the Assistant Commandant Mr. Sharma along with Inspector Alam, who came much later at round about 9-30 A. M. Mr. Prafulla Kumar Mohanty P. W. 6 was confronted with his statement in Ext. K quoted above and he admitted the statement to be true although in the beginning he said that it was not some students who were indiscriminately beaten but one person (Q. 464). The tenor of his evidence with regard to Ext. K is that he did not feel comfortable with the commitments he had made in his statement before the Fact Finding Committee. In view of the presence of some injuries on the person of some of the inmates of the hostel, it can be reasonably inferred that they were injured the night before in course of lathi charge by the police in front of the Law College Hostel. It is not that these injuries were inflicted by the police party in the morning of the 27th September inside the hostel as alleged.

28. It is clear that there was some exaggeration, on behalf of the students, in their allegations against police party inside the Law College Hostel. The evidence of P. W. 6 Mr. Prafulla Kumar Mohanty is that there were nearly 50 to 60 policemen, armed with sten guns and bren guns, who had entered the hostel for making arrests; that police officers having some badges had 3 to 4 sten guns of 3 to half feet length, one 2-inch mortar to fire teargas shells, some grenades in the hands of Inspector Alam, some pa allelogram size tin grenades and pistol (Qq. 541 -544). It is significant that Mr. Mohanty

did not tell about alleged entry of these 50 to 60 policemen with sten guns and bren guns into the Law College Hostel anywhere at any time earlier to anybody else; he did not make any mention of the bren guns and sten guns even in his statement before the Fact Finding Committee Ext. K nor did he mention about this in either of the two affidavits filed by him before the Commission. This is certainly a material omission on the part of Mr. Mohanty which throws doubt on the version given by him about the incident in the Law College Hostel.

C. Alleged assault by Inspector Alam on the inmates of the Law College Hostel :

29. In view of the serious charge of ill-treatment by Inspector Alam inside the Law College Hostel in the morning of the 27th September, it requires to be dealt with separately.

30. Mr. Prafulla Kumar Mohanty in his affidavit, as President of the Madhusudan Law College Union, did not make any specific allegation against Inspector Alam in respect of his conduct inside the Law College Hostel. The only allegations against Mr. Alam in paragraphs 23 and 24 of the said affidavit relate to alleged merciless beating, bad treatment and vulgar abuses as stated therein after putting them inside the police van on the road. There is no charge against Inspector Alam of alleged assault or ill-treatment by him in course of the arrests made inside the hostel. In the other affidavit made by Mr. Mohanty, as General Secretary, All-Utkal Students' Federation on the same date, there is no mention whatsoever of Inspector Alam anywhere in the said affidavit.

31. In his evidence before the Commission, Mr. Prafulla Kumar Mohanty P. W. 6 alleged that Inspector Alam pointed a pistol, used vulgar abuses, threatened to kill if the inmates did not come out of their rooms. In answer to Q. 89, Mr. Mohanty further said that Inspector Alam gave him four blows, pushed him towards the urinal; some police officers and constables tried to snatch away his wrist-watch; that Inspector Alam dragged one Mr. Sarat Chandra Mohapatra from room No. 2 of the hostel; that he also dragged another inmate of the hostel Mr. Dolagobinda Samal from room No. 1. It is significant that Mr. Mohanty did not make any of these allegations against Inspector Alam either in his statement before the Fact Finding Committee Ext. K or in either of his affidavits before the Commission.

32. Mr. Sailesh Chandra Pradhan of Madhusudan Law College also filed an affidavit. His statement regarding the role played by Inspector Alam inside the hostel while making the arrests was this :

“ Sk. Alam, the Sergeant Major entered with pistol. While he pointed the pistol, police beat the students. The constables were abusing in most filthy language. Then when I gained consciousness we were marched in a line to the police van.”

In this affidavit, Mr. Pradhan did not make any allegation against Inspector Alam apart from what he said in the affidavit that Inspector Alam pointed a pistol : it is not the charge that Inspector Alam himself had beaten the inmates. What, according to Mr. Pradhan, Inspector Alam was said to have done is that he entered with a pistol and pointed the pistol. Mr. Pradhan did not allege that Inspector Alam had assaulted or ill-treated any of the students in the manner as alleged by Mr. Prafulla Kumar Mohanty.

33. The case of the administration, as stated by the Assistant Commandant Mr. Sharma, is that Inspector Alam was rough in handling the inmates of the hostel in course of the arrests made therein but it is not correct that he assaulted or ill-treated them in the manner as alleged by the students. The Assistant Commandant Mr. Sharma in his affidavit described the manner in which the police party was resisted by the inmates of the hostel in making the arrests. The material portion of his affidavit in this context is this :

“ As soon as we entered the building, those who were in the ground-floor, started rushing upstairs. We could apprehend some from the ground-floor and then rushed upstairs. Myself, Reserve Inspector Alam and about 6 to 7 Sepoys including the Lance Naik rushed up while the remaining Sepoys remained with the persons arrested at the ground-floor. The staircase door was attempted to be bolted by the inmates but we reached and the door was pushed from both sides, the inmates trying to prevent our entrance and trying to bolt the door and our party trying to push our way inside. As soon as we rushed in, some started scuffling with us resisting their arrest while some rushed inside the rooms and caught hold of whatever they could lay their hands on like mosquito curtain rods, chairs. Some also used brickbats which they kept collected on the verandah and in the rooms. There was thus a skirmish between them and ourselves and they wanted to overpower us. They were more in number than us and hence our Sepoys had to use lathis to protect ourselves to prevent them from overpowering us and also to effect their arrest. Thus with great difficulty they could be brought under control and taken to custody. All these happened,

in a matter of few 5 or 7 minutes. As a result of this skirmish, myself, Reserve Inspector Alam and some of our Sepoys were injured and some of the arrested persons also sustained some injuries. After the inmates were arrested the hostel building was kept under proper guard."

34. The manner in which arrests had to be made inside the hostel naturally involved some clash between the police party and the inmates of the hostel. It is evident that in making the arrests Inspector Alam took the leading part. The Assistant Commandant Mr. Sharma C. W. 9 explained the exact manner in which the arrests were made by Inspector Alam. Mr. Sharma also described the way Inspector Alam behaved inside the hostel. The material portion of the evidence of Mr. Sharma in this context is this :

Q. 36 Please tell us, how Mr. Alam behaved in course of these arrests inside the Law College Hostel.

A. He behaved a bit roughly while making arrests by shouting at them and saying what is all these—nonsense, you are all under arrest.

Q. 37 Apart from shouting did he in any way misbehave with the students.

A. He dragged them out and pulled them out from the room standing at the thresh-hold when they resisted the arrest.

Q. 38 While the students were being taken down from the first-floor did Mr. Alam in any way roughly deal with the students who were arrested.

A. Not while coming down.

Q. 39 Did Mr. Alam in any way behave in such a way as to cause injury to the students who were arrested.

A. He might not have caused any injury by pulling them, but there might have been some scratches on the students.

Q. 44 You just now said that Mr. Alam was somewhat rough in his dealing with the arrested students inside the hostel. How do you reconcile this statement of yours with the statements made in course of paragraphs 4 to 7 of your affidavit.

A. 'Rough' what I actually meant is that when the students resisted their arrest he had to use his force by pulling them out from the room and in fact his force had to be used to bring them out of the room to the verandah.

Q. 46 Was this rough attitude at all necessary.

A. It was necessary then. Unless he would have pulled out them or dragged them out, they would not have come up. We were just less in number. So I also felt that was necessary to use force.

- Q. 47 What was the necessity of shouting at the inmates who according to your knowledge must have been students.
- A. They were not behaving as students then. They were behaving very rudely too. Unless he would have shouted they would not have made them standing where they were."

35. This evidence amply clarified the sense in which Inspector Alam was stated to have been rough as mentioned by Mr. Sharma in his evidence. The gist of his explanation is that in view of the nature of the work that the policemen were to do under the circumstances, it necessarily involved use of force in making the arrests of the inmates of the hostel who were resisting the police; such resistance had to be overcome by police by some use of force.

36. Under these circumstances, the Commission finds that Inspector Alam was rough in effecting the arrests as stated by the Assistant Commandant Mr. Sharma but it cannot be held that such unavoidable roughness amounted to excess as alleged.

D. Alleged indiscriminate lathi charge by police at Ravenshaw College gate and also inside the college campus up to Kanika Library between 10 and 10-15 a.m. :

37. The case of the students is that after suspension of the procession upon seeing the jeep burning on the main road as aforesaid, they returned to the college campus and were holding a meeting in the tennis field; it was then that the police entered the college campus and attacked the students. It was alleged that there was indiscriminate lathi charge in front of the college inside the campus and also within the quadrangle up to Kanika Library inside the college; that cycles were taken into the quadrangle and smashed there. Apart from the general charge of alleged attack by the police on the students, it was also alleged that police severely assaulted Mr. Prafulla Kumar Patnaik P. W. 2 that morning resulting in his loss of one tooth. In support of their case, Mr. Prafulla Kumar Patnaik P. W. 2, Mr. Madan Mohan Mohapatra P. W. 5 and Mr. Prafulla Kumar Mohanty P. W. 6 filed affidavits and also deposed before the Commission.

38. The case of the administration, in short, was this: After the jeep burning incident and arrests inside the Law College Hostel, the situation in the meantime at the traffic island in front of the main gate of Ravenshaw College was deteriorating; the crowd inside the Ravenshaw College

campus, numbering 500 to 600, were getting violent; they, in a menacing mood, were shouting and hurling filthy abuses at the police which had taken position outside near the traffic stand on the main road; there was apprehension that the crowd inside the Ravenshaw College campus might at any time come out and start further act of lawlessness; there was intermittent throwing of brickbats at police from inside the campus.

39. In view of the grave situation prevailing since the previous night and the jeep burning incident in the morning, the SDO, apprehending serious breach of peace, issued orders under Section 144 Criminal Procedure Code at about 10 A.M. prohibiting meeting, procession, assembly of more than five persons in Cuttack town within the jurisdiction of Mangalabag and Cuttack Government Railway Police Station and directed the Sub Inspector of Police, Mangalabag Police Station and District Public Relations Officer to proclaim it widely in the areas.

40. In the meantime, the crowd inside the college campus was swelling gradually; there were intermittent brickbating, shouting and filthy abuses; all at once the crowd came forward towards the main road in a body pelting brickbats and shouting slogans. The SDO shouted at the top of his voice to the advancing mob to disperse but when they did not, he directed dispersa by tearsmoke and lathi charge. In pursuance of his order tearsmoke shells were fired. The brickbats thrown by the mob were hitting the policemen; the SDO was also about to be hit on this occasion. The use of tearsmoke by the police was responded to by heavier brickbating by the mob. It is said that tearsmoke had not the desired effect; some persons from amongst the mob, who knew how to tackle tearsmoke, made it ineffective by putting sand and wet cloth on it; it was then that the police resorted to lathi charge. The crowd ran inside the campus; some of them were arrested by the police. The case of the administration is that it was a mild lathi charge in that it was for a minute or so and had the desired effect of getting the crowd dispersed though the crowd still remained inside the college campus.

41. In support of their case, the administration mainly relied on the affidavits and the evidence of the SDO Mr. Padhi C. W. 5 and ADM Mr. Rath C. W. 3. The version of the two magistrates is also supported by the evidence and affidavit of Inspector Mohanty and the affidavit of the SP Mr. B. K. Mohapatra and of Additional SP

Mr. J. K. Das who all were at the spot at the time. Their consistent case is that the lathi charge in the morning of the 27th September was at the main gate of Ravenshaw College and not inside the college campus as alleged ; in fact the police did not cross the college gate that morning.

42. Now the question is : Is the version given by the student witnesses P. W. 6 Prafulla Kumar Mohanty, P. W. 5 Madan Mohan Mohapatra and P. W. 2 Prafulla Kumar Patnaik correct ?

43. As regards P. W. 6 Mr. Prafulla Kumar Mohanty, he was not an eye-witness to the alleged lathi charge at or in front of the Ravenshaw College campus. It is quite clear from the evidence on record that, by the time this lathi charge had taken place in front of the Ravenshaw College gate, Mr. Prafulla Kumar Mohanty, along with other inmates of the Law College Hostel, had already been arrested; the arrested persons had been produced before Inspector Mohanty at about 10-5/10-10 A. M. That apart, his own evidence is that after the students gathered for the second time inside the Ravenshaw College compound in the tennis field, he immediately ran to the Law College Hostel after telling the other student leaders to discuss the future course of action (Qq. 31, 32). Thus he could not have been an eye witness to the incident in front of the Ravenshaw College campus gate. So, all that he said in his affidavit vaguely and in his deposition before the Commission were mere hearsay.

44. P. W. 5 Mr. Madan Mohan Mohapatra in his affidavit did not mention about any happening on the 27th September. But in his deposition before the Commission he said that he found some of the students coming with a mike in front of the college to have a meeting ; the meeting was arranged at about 9-30 A. M. at the tennis ground; that he was present at the meeting ; that some of the students narrated the incidents of the 26th night and demanded justice. In answer to Qq. 28 and 29, he said that the students themselves dissolved the meeting; then later on in answer to Qq. 32 to 34 he said that at the meeting it was decided to prevent police excess, to break order under Section 144, and to start a silent procession to move throughout the city; he found a crowd of students came at first and they were immediately arrested near the traffic island. He said that there was no procession; it was decided to break 144 order batch by batch; that the first batch consisted of about 8 to 10 students: he found two

batches; in the second batch it was 5 to 7 students; the second batch was not allowed by the police to break order under Section 144; when they were going towards the traffic island, he heard whistle was blown and the policemen made lathi charge (Qq. 37 to 42). He was absolutely confused when he told this story. The position was this: It is nobody's case that in the morning of the 27th September, students in batches came out from the Ravenshaw College compound to break order under Section 144. It is the common case to the extent that only one procession of students came up to the traffic island. According to the students' version, the said procession returned to the college campus after seeing the jeep burning. It is not the students' case that the students in batches came out in the morning of the 27th September as stated by Mr. Madan Mohan Mohapatra. In fact, it was not until in the afternoon of the 27th September that the students came out in batches to break order under Section 144 as hereinbefore discussed. Apparently Mr. Madan Mohan Mohapatra was told some story to state before the Commission but at the time of giving evidence he got confused and deposed in the manner aforesaid. His evidence therefore is not acceptable.

45. As regards P. W. 2 Mr. Prafulla Kumar Patnaik, apart from the general allegation in evidence against the police, he made a specific charge against a police sergeant of having severely kicked on his face and his tooth broken. His evidence is hereinafter dealt with separately.

46. The students' case is that the police made indiscriminate lathi charge inside the college campus as far as up to Kanika Library. On this point, the evidence of the Superintendent of the Hostel C. W. 1 Mr. Trilochan Misra was that, on the 27th morning after leaving the parade-ground, he came by the passage between Kanika Library and the Physics Block; he did not find any student running towards Kanika Library from the portico (C. W. 1 Trilochan Misra Qq. 344-347). The Principal C. W. 2 Mr. B. Samantarai was more specific on this point; he said that in the morning of 27th September he found students running from the portico side towards Kanika Library; he however did not see any policemen chasing the students; that morning he had been twice to the front of the college in the vicinity of the tennis-court; whenever he had been there he did not see any policemen (C. W. 2 B. Samantarai Qq. 25-29). There is no evidence to the contrary, purporting to show that in the morning of the 27th September policemen at all had entered

the college campus, far from their having chased the students right up to Kanika Library as alleged.

47. In these circumstances, the Commission finds that there is no evidence in support of the students' case of alleged indiscriminate lathi charge by police at Ravenshaw College gate or inside the college campus up to Kanika Library between 10 and 10-15 A. M. in the morning of September 27, as alleged.

**E. Alleged assault on Mr. Prafulla Kumar Patnaik P. W. 2
by police on the 27th September morning inside
the Ravenshaw College campus :**

48. In his affidavit, he said that he found military police were chasing the students all round the college compound, throwing teargas shells and beating them mercilessly ; that they were also pulling out cycles one by one from the cycle stand, damaging them by throwing them, kicking them with boots and smashing them with lathis ; that he hid himself near the West Hostel for some time ; then, when the beating temporarily subsided, he came out to the college gate thinking that since he was in the NCC dress nobody would beat him In paragraph 2 of his affidavit he makes the specific charge of assault on him by a police sergeant which is as follows :

"2. As soon as I reached the tennis-court the Police Sub Inspector named Kali Babu of Mangalabag PS came running towards me and asked me why I am coming. I told him that I want my cycle back and I pointed to him that my cycle being damaged by some constables near the cycle stand. He told me rudely nothing will be given to me and we all students deserve kicks and beating. If I persist he threatened me that I shall also be beaten. I told him that you are meant to keep law and order and not to behave in this manner. Thereupon a police sergeant who was standing beside us told me "Sala" you want to teach us law "kick that fellow" "Immediately about 5/6 armed constables beat me with lathies on my back shoulder, legs and hands and I fell down crying".

"One of the armed constables jumped on my back. I caught hold of the leg of the sergeant who was commanding to beat me and implored."

"The sergeant replied you fellows burned the jeep and saying you deserve death so saying he gave me a kick by his foot on my face which hit my lips and tooth. A tooth was broken and the lip was cut and blood oozed out profusely. I found in a semi-conscious state that my cap, belt and shirt which was smeared with blood was being removed by the constable I lost my consciousness."

49. In his counter statement Sub-Inspector Kalia denied the allegations ; he said that in fact he had never entered into the Ravenshaw Collège compound at any time on September 27. The case of the administration is that he got injury in course of lathi charge at the college gate ; he was a part of the rushing mob ; while being pushed back by the police, he suffered tooth injury at the college gate ; police did not go inside the college campus on the 27th September morning as alleged.

50. According to PW 2 Prafulla's affidavit, it was at the tennis-court that he was assaulted by the police sergeant. Before the Commission, in examination-in-chief in answer to Qq. 32 to 36, he said that he was beaten at the tennis ground. Subsequently in cross-examination he said that it was at the college gate that he was beaten and thus contradicted himself. The material portion of his evidence in cross-examination on this aspect is this :

- “ Q. 309 You came out to the college gate thinking that you were in N C C dress and nobody would beat you. Is it true.
- A. It is true that I came to the college gate thinking that since I was in N C C dress, nobody would beat me.
- Q. 310 From the college gate where did you go.
- A. I did not go anywhere.
- Q. 311 Did you remain standing there or not.
- A. I remained standing.
- Q. 312 How long did you remain standing there.
- A. For a very short time.
- Q. 313 How long can it be ; 5 minutes, 10 minutes, half an hour.
- A. As soon as I went there I saw Kalia Babu.
- Q. 314 Was Kalia Babu alone there or there were other policemen
- A. One three-striped policeman was there with Kalia Babu.
- Q. 315 Were they the only two policemen there and near about at that time.
- A. At that time they were the two policemen there and near about.
- * * * * *
- Q. 320 This college gate where you were talking was in front of the traffic island.
- A. Yes.

- Q. 321 You met Kalja Babu and these three-striped policemen just outside the gate.
- A. At the gate.
- Q. 322 From the college gate to which place did you go.
- A. I did not go anywhere.
- Q. 323 You stated that you were there at the college gate for a very short time.
- A. Yes.
- Q. 324 After that short time to which place did you go.
- A. I did not go to any other place.
- Q. 325 So, would it be correct to say that you stayed at that place beyond 2 or 3 minutes.
- A. 2 or 3 minutes after, at that place I was beaten and taken away to the OMP barrack. After I was beaten I do not remember what happened. I regained my consciousness in the van"

According to his evidence in cross-examination it was at the main gate of the college that he was beaten by the police sergeant.

51. That apart, the case of students in Q. 573, put to the SDO Mr. Padhi C. W. 5 in cross-examination, is that Mr. Prafulla Kumar Patnaik was severely beaten by the OMP men when he was trying to take out his cycle from the cycle stand inside the college campus on the 27th morning after the N C C parade. This suggestion was denied by the SDO stating that no such incident came to his notice.

52. These inconsistencies are by themselves sufficient to make his story of assault on him by a police sergeant in the manner, as alleged, unacceptable.

53. The version of the administration that he got the injury resulting in loss of his tooth in course of a lathi charge at the college gate in the morning of the 27th September as hereinbefore discussed is plausible; it is clear from the evidence that he suffered the tooth injury while he as a member of the mob was being pushed back by the police at the main gate. If, in fact, he suffered the injury at the tennis ground or the cycle stand, then there would have been some case for him. In view of his admission in evidence that he suffered the injury at the college gate, where police had to disperse the crowd by lathi charge as aforesaid it is evident that he was in the mob rushing out from the college campus through the main gate, happened to be involved therein and got the injury in course of police action.

F. Lathi charge and teargassing inside the Ravenshaw College campus between 4 and 5 p. m. in the afternoon of 27th September :

54. It appears that the Inspector-General of Police and the Revenue Divisional Commissioner came to College Square area at about 12 noon when the chasings of the students by the policemen were over by that time and the situation was calm. It was about 2-30 P. M. that again the trouble started. The students were gathering inside the college premises, talking through loudspeaker and giving slogans inciting the mob for breaking the order under Section 144 which had been passed earlier that day. In the meantime, attempts were being made by public men to pacify the students; it is said Srimati Rama Devi and some other public men went to the students to explain and to pacify them. But the students were not in a listening mood; the public men who approached the students returned disappointed with the result that nothing tangible could be achieved. Thereafter, how the situation developed from stage to stage is stated hereunder.

55. Sometime between 3 and 4 P. M., fourteen persons in two batches came out of the college campus shouting slogans and declaring that they were violating orders under Section 144 Criminal Procedure Code. Before coming out, the students had made announcement through a microphone from inside the campus that order under Section 144 would be violated. These fourteen persons, as they came out through the main gate, were arrested by the police and taken into custody under the orders of the SDO Mr. Padhi, who was in charge of the situation.

56. After these arrests, the commotion and the crowd inside the college campus began to increase. In anger brick-bats were being thrown at random from inside the campus. The crowd consisting of students and outsiders were getting violent. There was grave apprehension of breach of peace and the crowd was rushing out of the college premises. The SDO with the police force was there watching the situation.

57. Sometime between 4-30 and 5 P. M. shouting, brick-batting and violence increased. It is said that the SDO and other officers repeatedly appealed to the students, gave them warnings and tried to persuade them to be quiet but this had no effect. Intermittently the crowd were trying to rush out of the main gate and attack the police party outside. Mob

frenzy was evident; at one time all on a sudden the mob rushed out through the main gate while heavy brickbatting started on the police.

58. It was at that stage that the SDO shouted at the mob at the top of his voice to disperse and go back but it had no effect. Then the SDO ordered dispersal of the mob by tearsmoke; accordingly some tearsmoke shells were used. This temporarily had the effect of stopping the onward rush but soon again the mob rushed forward. About 300 students rushed out; the police were ordered by the SDO to charge with lathi to disperse the crowd and apprehend the offenders. Police charged the rushing mob with lathis and the mob began to rush back into the college premises. While a section of the mob was rushing inside the college premises, heavy brickbatting was continuing from the rear of the mob inside the campus. The police continued to chase when the mob began to run inside the college premises.

59. It is said that the police chased right up to the tennis field near the portico. This chase had the desired effect. The mob dispersed; brickbatting stopped and some persons were arrested. Some cycles were abandoned by the members of the mob on the road and also inside the campus which were taken charge of by the police.

60. The SDO Mr. Padhi and the ADM Mr. Rath, who were also there at the spot along with other senior police officers, directed the operation of the police inside the college campus when they were chasing the crowd up to the portico of the college in the circumstances hereinbefore stated; the entire action of the police inside the college campus, covering the tennis ground and the portico, was under the direct control of the SDO and the ADM.

61. It was evident from the manner in which the mob behaved inside the college campus that they were under the impression that the police would not venture to enter the college campus; it was under this impression that the mob continued their lawless activities using the college campus as their fort and a place of safe shelter.

62. The case of the students, as pleaded by Mr. Prafulla Kumar Mohanty in his affidavit, is a general allegation without particulars; the students' case is to the effect that there was absolutely no necessity or occasion for any police force to be anywhere near the Ravenshaw College compound but the police were determined to break through the main entrance

gate of Ravenshaw College and to forcibly enter into the premises for the purposes of taking revenge on the innocent students occupying the different hostels within the campus. Mr. Nisamani Khuntia also filed an affidavit stating that in the afternoon of 27th September the police again entered inside the college compound and carried on indiscriminate beating of the students inside the compound; that they were chased and beaten. He also alleged that the police broke the cycles of the students with lathis, boots and heaped them upon the street. This charge is as hereinafter dealt with separately.

63. The question is : Was police entry and chase into the college campus in the circumstances justified ? On this point both the ADM Mr. Rath C. W. 3 and SDO Mr. Padhi, C. W. 5, who were the magistrates controlling the police action were cross-examined at great length. They justified the entry of the police inside the Ravenshaw College compound for the following reasons :

- (a) The Ravenshaw College premises had become permanently a source of disturbance. The students were using the college campus as their fort and a place of safe shelter as the SDO Mr. Padhi put it in his affidavit. The situation had become uncontrollable and the mob inside the premises behaved in a threatening manner to defy the order under Section 144 Criminal Procedure Code; the college premises with the heap of brickbats (debris) inside near the main gate within 20 to 30 feet was a continuous source of trouble.
- (b) The purport of the order under Section 144 was that there should be no crowd on the main road and that there should be no slogans, no noise by use of loudspeakers to incite the people. Notwithstanding the promulgation of the order, the students were violating it ; they were coming out in batches to the main road by collecting persons. Their obvious motive was to go in large numbers outside the college premises so as to disturb the area. The evidence of the ADM is that he had seen two batches of students coming out of the college offering Satyagraha and violating the order under Section 144; their number would be about 50 or 60. Fourteen out of them had been arrested. The students offering Satyagraha also took to overtacts of show of arms and shouting in a very insulting

- aggressive manner towards the police and the Government ; they also shouted slogans saying that the Government was drunkard and corrupt.
- (c) The situation was getting further aggravated as the students were collecting inside the premises in large numbers; they were also using loudspeakers and abusing the police personnel who were patrolling in that area; there was intermittent brickbating at the police force stationed in the area.
- (d) It was also noticed that apart from students there were outsiders inside the college campus who were likely to commit mischief to Government properties inside the college; the situation was getting more serious and uncontrollable. The ADM said that he could see that there were outsiders as they were aged persons and persons with dress as used by persons other than students and he could know them from their appearance (C. W. 3 Rath Q. 380). In fact some of these outsiders had been arrested from inside the college.
- (e) The mob consisting of students and outsiders were pelting stones at the police posted at the traffic island in front of the main gate, on NCC road adjacent to East Hostel and also on Pilgrim Road in which all these places the police had been posted. The police were being assaulted by brickbats at different times from inside the college premises. The ADM said in his evidence that he has himself seen all these things from a position where he was standing 60' from the main gate (C. W. 3 Rath Qq. 439—442).
- (f) At about 4-15 or 4-20 P. M brickbats were falling close to the policemen who were standing. The mob was aiming brickbats at policemen; both the ADM and the SDO on the spot saw the brickbats actually falling between the college gate and the traffic island.

64. It was in these circumstances the magistrates thought that there was no other alternative but to ward off the crowd gathering inside the college campus; accordingly the students and others inside the college compound were chased to go away from that vacant space in front of the Ravenshaw College building from where the said nuisance was continuing (C. W. 3 Rath Q. 435).

65. At about 4-30 P. M. or soon after the SDO Mr. Padhi and the police force entered the college premises; the ADM Mr. Rath followed them. At the time Mr. Rath accompanied the policemen inside the college compound in the afternoon of 27th September, he was still in charge of the force (C. W. 3 Rath Qq. 782-783).

66. The police, operating inside the college compound after their entry, was wholly under the control of the two magistrates present there with the force; for dispersing the mob there was some intermittent teargassing by the police inside the premises; tearsmoke shells were shot in the open ground facing the college building; teargassing is said to be the most innocent way of dispersing the crowd; prior to lathi charge teargassing is resorted to, the grenades were also used on this occasion. The police was asked to keep an account of such teargas shells fired and the grenades used; the evidence is that on the 27th afternoon 10 or 12 teargas shells were fired (C. W. 3 Rath Qq. 731--733).

67. The very presence of the two magistrates inside the college compound with the force is a telling circumstance in support of the view that police operation inside the college campus was not uncontrolled. The magistrates took care that the police did not go beyond the college building itself; the students were pursued up to the building. The ADM Mr. Rath said that he had not seen actually any police officer getting inside; police chased the mob inside the premises up to the gate near East Hostel. The ADM also made it amply clear that the police did not go beyond the portico or to Kanika Library as alleged. On this point, his answer to questions put in cross-examination were these:

“ Q. 368 Whether police entered the college corridor beyond the portico and went up to Kanika Library you cannot say.

A. No.

Q. 369 Why, because it was not possible for you to mark at a place from where it could not be seen.

A. Soon after the police chased inside the premises, myself and S P went up to the tennis field in the premises. I have not seen the entering of the police inside the Ravenshaw College building.

Q. 370 When you were in the tennis field, were the police still chasing the students.

A. Yes.

Q. 371 On the tennis field by that time no student was there.

A. They were fleeing away.

- Q. 372 Can you tell me up to what point they were exactly pursued.
- A I have noticed, they were pursued till the building. I have not seen actually any police officer getting inside.
- Q. 373 The police not only chased towards college portico but also towards the East and West Hostels.
- A. I have noticed them chasing the mob inside the premises up to the gate near the East Hostel.
- Q. 374 Regarding West Hostel.
- A. I have not noticed."

68. There can be no question that the sanctity of the college as an educational institution is always to be respected. The ADM Mr. Rath, was rightly asked as to whether the permission was taken from the Principal before the police force was ordered to enter the college premises. Mr. Rath explained that it was never the intention of the magistrate and the police to enter into the premises. A grave situation developed so suddenly that it was not possible to obtain permission from the Principal for the sudden entry of the police for stoppage of the unlawful acts. The answer given by Mr. Rath to Q. 867 was this:

- " Q. 867 Before the police force was ordered to enter that premises on the 27th afternoon was any permission taken from the Principal.
- A. It was never our intention before to enter into the premises and for the sudden entry for stoppage of the unlawful acts it was not possible to obtain any such permission, Therefore permission was not taken."

Mr. Rath further said that he was quite conscious that the premises of the college was under the control of the Principal but he never intended that the college premises should be handed over to the control of the magistracy. He said that it was not necessary to bring the college under the control of the magistracy. On the contrary he said that the magistrates moved the Government to instruct the Director of Public Instruction to close the college from 28th September onwards.

69. In course of the incident of the 27th September afternoon some students were arrested. It was suggested that when they were brought they were being assaulted by the police. The magistrates having been there on the spot, it was not possible that the police would be assaulting the arrested persons in the presence of the magistrates. It was suggested to ADM Mr. Rath that Mr. Nisamani Khuntia, who is said to have been present there at College Square at the time,

shouted "Police, stop, stop" when alleged assaults were going on the boys arrested. Mr. Rath admitted that Mr. Khuntia was talking something "stop, stop" to the SP; that the SP told him something; that was what Mr. Rath had heard. Mr. Rath said to the effect that there was exchange of hot words going on between Mr. Khuntia shouting 'stop, stop' and the SP telling him 'go out' (C. W. 3 Rath Q. 651). In course of argument, this intervention by Mr. Khuntia during the incident was said to be in the context that when cycles, left by the students during the incident, were being collected and heaped upon by the police at College Square carelessly causing damage, Mr. Khuntia asked the police to stop. The explanation is that Mr. Khuntia protested against the act of damaging of the cycles by the police in the manner alleged. The charge regarding cycles will be hereinafter dealt with separately.

70. As to the manner in which the arrested students were dealt with, Mr. Rath said that 14 out of the two batches of students, coming outside the college offering Satyagraha and violating the order under Section 144, were arrested; they were not beaten after arrest; they were brought and kept in the police van with all decency and not mercilessly as alleged (C. W. 3 Rath Qq. 719, 721).

G. What the police did with the cycles abandoned by the students :

71. Mr. Nisamani Khuntia, in his affidavit, made a specific charge against the police that about 100 bicycles of the students, without being seized, were brought out from the college compound; they were broken with boots and lathis and were heaped upon the street; subsequently without any seizure, the police are stated to have taken away the cycles in a truck.

72. The circumstances—in which at 4-30 p. m. on the 27th September afternoon, when the police were chasing, a number of cycles were brought out by the police from inside the college premises—were explained by the ADM Mr. Rath who was at the spot. His evidence is that, after the cycles were abandoned by the persons when they were chased to go out of the premises, the cycles were brought out by police for safe custody. They were found lying on the ground in the college premises after the crowd had dispersed; the police brought them out of the premises and put them just close to the traffic island where a van was waiting. Thereafter they were put in the van and carried to Mangalabag Police Station.

73. Apparently, the students were very much panicky and they went away abandoning the cycles; so the police kept them under proper care until they were returned to the lawful owners. The number of such abandoned cycles was stated to be about 20 or so; they were kept together; it may be that they were thrown one on the other. In answer to a question put to Mr. Rath suggesting that when the cycles were being heaped the police constables were giving kicks with boots and blows with lathis to them, Mr. Rath admitted that in one or two cases police constables were roughly handling the cycles and that in one such case he personally talked to a particular constable not to bring the cycles in that manner; so also senior police officers cautioned the police constables to keep them very carefully to avoid any damage.

74. Thus, it may be that in some stray cases the cycles had been roughly handled; that after they were kept, kicks were given by the police with boots; that lathi blows were given by them. It is unfortunate that some of the constables roughly handled the cycles in the manner they are alleged to have done. In fact Mr. Nisamani Khuntia, who was present, had protested to the ADM Mr. Rath saying "kindly see the breaking of cycles is prevented". Mr. Rath, however, said that although the cycles might have been roughly handled by some police constables, he had not seen any damaged cycles.

75. On this point, the Commission, while expressing regret that in certain cases cycles had been roughly handled by some individual constables, cannot find that on account of such rough handling, there was damage to the cycles to the extent as alleged; there is no evidence of the nature of damage to any cycle or cycles in this context.

**H. Charge of alleged assault by the police on
Mr. Sarat Chandra Jena P. W. 8 inside the
Ravenshaw College campus :**

76. Mr. Sarat Chandra Jena was a student of Ravenshaw College. His charge against the police is stated in his affidavit dated March 24 1965. The material portions of the affidavit are these :

" 2. The petitioner (Sarat Chandra Jena) was coming at 7 P. M. to the College office verandah on the road leading from the West Hostel to the College office. As soon as the petitioner reached the place where cycles are kept in the cycle stand which is at a distance of fifteen yards from the College office, about 8 Military Police Constables armed with lathis came running in front of me and beat me with

lathis and boots. These police constables were in hiding under a tree inside the College compound were covered by the darkness caused by the shade of the tree. The police administered about 20 blows on different parts of my body and kicked me by the boots.

3. That I fell down unconscious and my left hand was fractured and my cycle was completely damaged. I regained my consciousness after some time and went to the West Hostel and lifted by two students.
4. I was medically treated at Cuttack Hospital and left for home where I was under medical examination and treatment by doctors of Baripada and Balasore. I was bed-ridden over a month and was unable to resume normal work for three months after the date of occurrence."

Thus his case was that he was assaulted at 7 P. M. on September 27, 1964 in the manner as stated above in his affidavit. He also deposed before the Commission.

77. The case of the administration is that the authorities have no knowledge of such assault on this student as alleged. In this context the Additional SP Mr. J. K. Das filed an affidavit; in paragraph 69 he stated that the allegations made in the affidavit of Mr. Jena are denied and that the deponent be put to strict proof of the same. The case of the administration is that there is a possibility that this student might have received injury in course of admitted lathi charge between 4 and 5 P. M. on September 27, 1964. Thus it may be that he was injured but not at the time and place nor in the manner or circumstances as alleged.

78. There is no evidence that Mr. Jena was one of the leaders of the movement nor is there any evidence that he took any active part in it. In evidence he said to the effect that he was least interested in the activities of the Students' Union; these things take his time; there are people to organise and his business was to study.

79. At the time, Mr. Jena was staying at Santosh Mess at Professor Pada in Chhatra Bazar area. The questions which arise are : What was the business which brought him into the Ravenshaw College compound and what was the time when he came ? As he said in evidence, he was coming to the college office verandah at about 6-30 in the evening and was going to see the notice-board near the portico because the following day was a tuition fee collection day and he heard that the college was closed.

80. The Injury Register of the SCB Medical College Hospital, Cuttack Ext. C/18 shows that at 7-35 P. M. on September 27, 1964, the doctor had signed the entry regarding the injuries on Mr. Jena as entered therein; it is clear that by 7-35 P. M. examination of the injuries was over but the evidence of Mr. Jena however gives a different picture as discussed hereunder.

81. The sequence of what happened to Mr. Jena after he came to the college, according to his evidence, was this : As soon as he reached the cycle stand some 8 or 10 constables came from under a tree; they were covered by darkness; he could not see them; they came to him; they asked "where are you going here"; he told them "I am going to see the notice-board"; they scolded him; he told them that it was not his intention to do any harm and that he was going to see the notice board; after that the constables beat him on the left hand and it was fractured; they struck him about 15 to 20 blows with lathis (Qq. 19, 21); they also struck him on the left hip and hand. It was also alleged that the 8 or 10 constables had struck him on the right arm and on the right thigh; in cross-examination Mr. Jena said that this beating, his detention and talk with the policemen lasted perhaps more than 15 minutes and thereafter he fell down (Qq. 255 to 257); he said that he might have remained unconscious for 5 or 10 minutes (Q. 225); that he was taken into the dining-room of West Hostel and he remained there for perhaps 15 minutes; thereafter he was taken to the hospital through the College Chhak; that the time when he was passing from College Chhak towards the hospital was perhaps 8 P. M. (Q. 210). In answer to a question put by the Commission as to what time did he go to the hospital on the 27th September, he said that he could not say, it might be 8 or 9 P. M. at night (Q. 201). In further cross-examination, he reiterated that it might be between 8 and 9 P. M. approximately that he reached the hospital (Q. 271). It was also his evidence that at the hospital after 10 minutes some doctor came and took the measurements of his wounds; that it was perhaps after 9 P. M. he returned to his mess after applying tincture iodine to his wounds.

82. The sequence of his alleged movement, from the time he was alleged to have been beaten by the police until he came to the hospital for treatment of his injuries and his return to the mess in the manner he deposed, is not supported by the entry in the Injury Register Ext. C/18 according to

which the examination of his injuries was over at the latest by 7-35 P. M. when the doctor on duty signed the entry. This makes the case very initially somewhat doubtful.

83. This doubt as regards alleged assault on Mr. Jena by the police at the time, place and in the manner, as alleged by him in his affidavit and in his evidence, is further confirmed by certain other circumstances hereinafter discussed.

84. In paragraph 3 of his affidavit, he said that he regained his consciousness after some time and went to West Hostel and lifted by two students but in his evidence in answer to question 258 he said that he did not go to West Hostel after getting up from the place where he was alleged to have been beaten. He has completely gone back on his statement in the affidavit while he answered Q. 260 as follows:

“ Q. 260 Is your statement in the affidavit “I regained consciousness after some time and went to the West Hostel” true or false.

A. This is wrong.”

85. Then again as regards his being lifted by two students as he stated in paragraph 3 of his affidavit he has also gone back on the same in his answer to Q. 264 as follows:

“ Q. 264 Is your statement in Para. 3 of your affidavit that you were lifted by two students true or false.

A. This is also a mistake.”

86. That apart, there appears to be some attempt at subsequent embellishment in the charge of assault as alleged. In the affidavit there was no allegation of his having seen 8 or 10 constables assaulting four other persons. In evidence in answer to Q. 78 in which he was asked as to what else did he see in front, he said that when 8 or 10 police constables came to him, they also beat four other persons; when these four other persons ran away from the spot, the constables threw the lathis from the back side, the said people fell down and the constables ran after them. In cross-examination Q. 281 he was asked as to whether he could assign any reason why he had not stated in his affidavit about having seen the assault on 4 or 5 others; the reply was that he perhaps forgot

87. It is unfortunate that such mistakes or forgetting about events—rather important in the present context—could occur in an affidavit made by Mr. Jena, a post-graduate student. It is not that this affidavit was drafted by anybody

else or in consultation with anybody. In fact in answer to Q 261 he said that he did not consult anybody before drafting this affidavit. It could not be that this mistake or forgetting occurred due to the advice or omission of anybody else. The only conclusion one can draw from these discrepancies in his affidavit and evidence is that he was not sure of the exact charge that he was making either in his affidavit or in evidence.

88. It is also not understandable why Mr. Jena did not tell about this incident to any of the inmates of his mess where he was staying at the time or to the college authorities at any point of time. It is in evidence that there were about 14 or 15 other students living with him at his mess; one lecturer of the evening class in political science of Ravenshaw College; law students, service-holders and medical students; other post-graduate students of Ravenshaw College. In fact, in the room in which he was living, which was a five-seated room, there were Golak Bihari Sahu, Antaryami Mahant, Ramesh Behura and others staying with him at the time (Qq. 108 to 112); none of them were examined nor any of them filed any affidavit in support of the case.

89. Mr. Jena admitted that he did not even tell Mr. Bhaskar Chandra Das, lecturer of political science of his college who was staying with him in the mess (Qq. 240 to 240/B). Mr. Jena did not also send any information to the Principal of the college that he was assaulted inside the college premises nor did he tell the Principal before he left Cuttack for home. In fact he admitted that he did not complain to any authority. In this context in his answer to Q. 280 as to whether he could assign any reason why he did not inform the Principal, he answered that he had no idea then, he had not thought of (Qq. 277 to 280).

90. Nor is it understandable why Mr. Jena appeared to have tried to avoid his knowledge of even the disturbances in Cuttack town on the night of 26th September and during the whole day of 27th September. According to him, it was not until 6-30/7 P. M. at night of 27th September that he came to the college to be assaulted by the police at the place and in the manner alleged by him; it was not until 29th or 30th September, that is, two to three days after he was beaten by the police that he left for his home in Mayurbhanj (Q. 200). In answer to Qq. 115 to 118 as to whether he knew that there was a clash between the police and the students near the radio shop he said that he did not

know; that he came to know it after he got his injuries; he said that it was after 3rd or 4th day of the occurrence that he came to know of such clash between the police and the students; that he had no idea about police or radio shop. It is clear from the tenor of his evidence that he tried to show his having not even known about what was happening in the town during those days of disturbance arising out of the clash between the students and the police. It is difficult to believe that he did not know all this while he was living at a mess in Chhatra Bazar area not far from Ravenshaw College. The only inference that can be drawn from this is that he tried to avoid his having got somehow involved in some incident of student-police clash.

91. It is not that Mr. Jena himself was taking actual part in the movement but as a student he might have got involved while at the college. The explanation for his going to the college on the 27th September as given in his answers to Qq. 186 to 188 is that he went to the college with the idea that there might be any notice for the closure of the college; he thought that it might have been noticed on the notice-board because, before Puja, the college was going to be closed unexpectedly; that he had come from his home two months ago; he had desire to go home as soon as the college would be closed; when he heard that the college was closed, he apprehended that there was a fee collection date on the 28th September; so he was wondering how he would pay his tuition fee and was going to see the notice-board as to when the college would reopen.

92. As to the purpose of his having gone to the college the explanation seems to be plausible but the time that he alleged to have gone to the college for seeing the notice-board does not seem to be correct. There is no reason why he could not go to the college throughout the day time on the 27th September or why he should choose to go to the college at night at about 7 P. M. It appears that for some reasons he wanted to shift the time of his having gone to the college. The Injury Register Ext C/18 shows that he must have got the injury—much earlier than at 6-30 or 7 P. M. This indicates the possibility of his having been involved, however unintentionally not himself having taken active part in the movement, in any of the incidents of clash between the students and the police some time late in the afternoon of the 27th September.

93. In these circumstances, the story of alleged assault on Mr. Jena by 8 or 10 constables outside the college campus at 7 P. M. in the manner alleged, is not acceptable.

94. In the result, therefore, as regards the incident on the 27th September from morning till afternoon, the Commission finds that, apart from certain stray instances of some roughness on the part of individual policemen as hereinbefore discussed, the Commission is unable to find that there was any excess by the magistrates or policemen in handling the situation as developed from time to time throughout the day.

I. Findings of the Commission in relation to the incidents in Cuttack town on September 27 :

95. On a consideration of the evidence placed before the Commission and in the light of the foregoing discussion the Commission finds—

- (a) that it was the students of the procession, taken out of the Ravenshaw College campus on the morning of 27th September, who had assaulted the Additional Commandant of the 1st Battalion of Orissa Military Police Mr. P. K. Misra, the Magistrate Mr. N. C. Sen and the other occupants of the jeep and then burnt the jeep; the story that the processionists had nothing to do with the jeep burning incident is not acceptable;
- (b) that the students' story of suspension of the procession at the traffic island at the sight of the burning jeep was an afterthought with the object of making out a case that the said students' procession had nothing to do with the jeep burning incident; the story that at 9-20/9-25 A. M. the procession had started from the Ravenshaw College campus and then suspended at the traffic island cannot be accepted;
- (c) that a section of the mob, which had attacked the jeep, moved towards the Law College Hostel and from that side brickbatting intensified; the portion of the road in front of the Law College Hostel was cleared by lathi charge but brickbatting started from the Law College Hostel itself; this could not be stopped in spite of repeated warnings; the inmates of the hostel were throwing brickbats at the

policemen and towards the road where the policemen were present; many brickbats were being thrown from the balcony of the first-floor of the Law College Hostel and also from the top floor of the hostel; it was in these circumstances that the SDO had directed the police to enter the hostel and to make the arrests;

- (d) that some of the arrested inmates of the Law College Hostel, who got some injuries on their person, had been injured the night before in course of lathi charge by police in front of the Law College Hostel; it is not that these injuries were inflicted by the police party on the morning of the 27th September inside the hostel as alleged, there was some exaggeration in the allegations against the police party who had gone inside the Law College Hostel to make the arrests;
- (e) that the manner in which the arrests had to be made inside the Law College Hostel naturally involved some clash between the police party and the inmates of the hostel—who resisted; in making the arrests, Inspector Alam took the leading part;
- (f) that the evidence of the Assistant Commandant Mr. Sharma (C. W. 9) amply clarified the sense in which Inspector Alam was rough as mentioned by Mr. Sharma in his evidence;
- (g) that in view of the nature of the work that the policemen were to do under the circumstances, it necessarily involved use of force in making the arrests of the inmates of the hostel who were resisting the police; such resistance had to be overcome by police by some use of force;
- (h) that in these circumstances Inspector Alam was rough in effecting the arrests as stated by the Assistant Commandant Mr. Sharma but such unavoidable roughness did not amount to excess as alleged;
- (i) that after the jeep burning incident and arrests inside the Law College Hostel, the situation in the meantime round about 10/10-15 A. M. at the traffic island in front of the main gate of Ravenshaw College was deteriorating; the crowd inside the

Ravenshaw College campus numbering 500 to 600 were getting violent ; they, in a menacing mood, were shouting and hurling filthy abuses at the police which had taken position outside near the traffic island on the main road ; there was apprehension that the crowd inside the Ravenshaw College campus might at any time come out and start further act of lawlessness ; there was intermittent throwing of brickbats at police from inside the campus ;

- (j) that in view of the grave situation prevailing since the previous night and the jeep burning incident in the morning, the SDO, apprehending serious breach of peace, issued orders under Section 144 Criminal Procedure Code at about 10 A. M.
- (k) that in the meantime, the crowd inside the college campus was swelling gradually ; there was intermittent brickbating and shouting of filthy abuses ; all at once the crowd came forward towards the main road in a body pelting brickbats and shouting slogans ; the SDO, shouted at the top of his voice to the advancing mob to disperse but when they did not, he directed dispersal by tearsmoke and lathi charge ;
- (l) that the tearsmoke had not the desired effect ; some persons from amongst the mob, who knew how to tackle tearsmoke, made it ineffective by putting sand and wet cloth on it ; it was then the police resorted to lathi charge ;
- (m) there is no evidence in support of the students' case of alleged indiscriminate lathi charge by police at the Ravenshaw College gate or inside the college campus up to Kanika Library between 10 and 10-15 A. M. in the morning of 27th September as alleged ;
- (n) that as regards alleged assault on Mr. Prafulla Kumar Patnaik P. W. 2 by police on 27th September morning inside the Ravenshaw College campus, the version of the administration that he got the injury resulting in loss of his tooth in course of a lathi charge at the college gate in the morning of 27th September is plausible ; it is clear from the evidence that he suffered the tooth injury

while he, as a member of the mob, was being pushed back by the police at the main gate ; he was in the mob rushing out of the college campus through the main gate. got involved therein and received the injury in course of police action ;

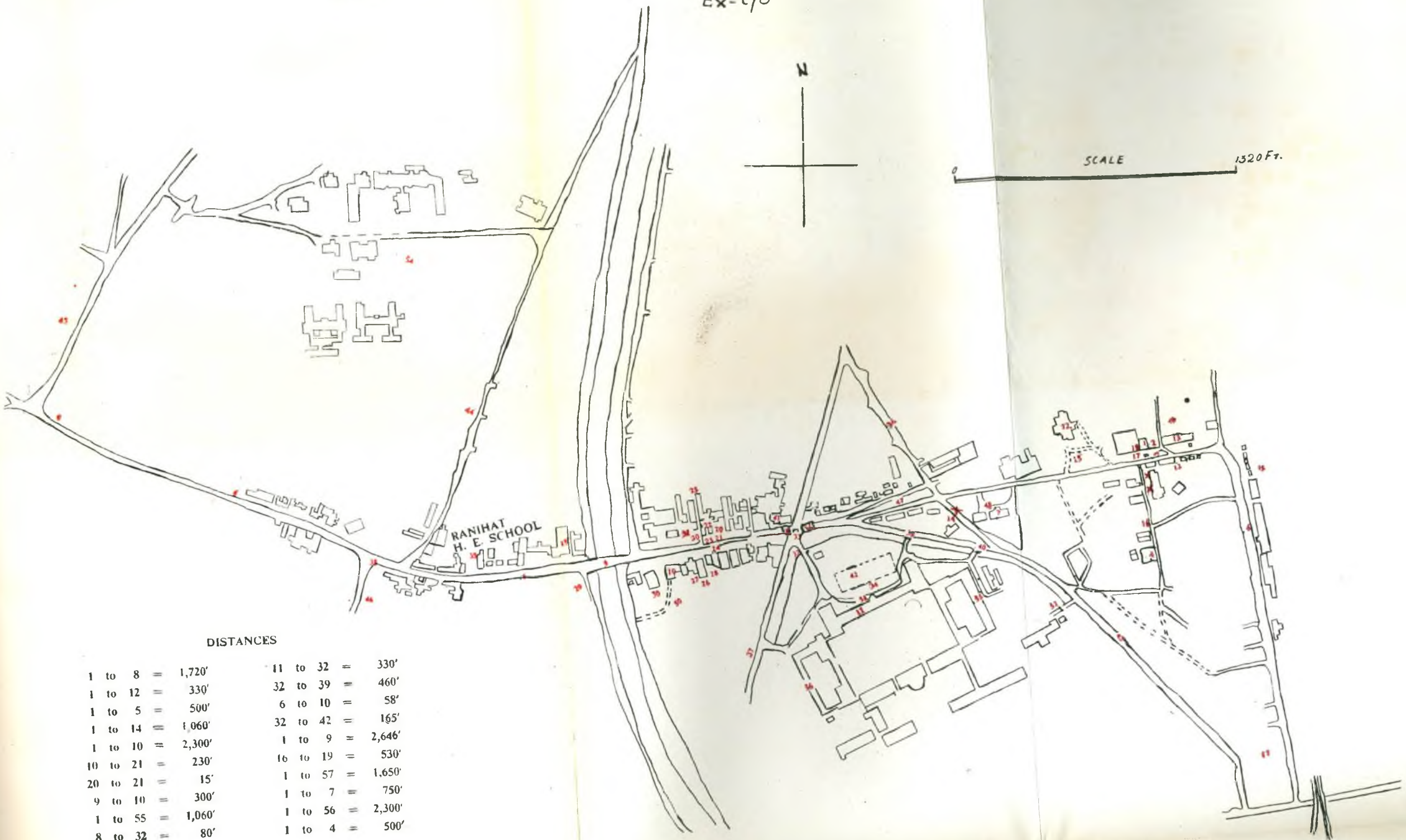
- (o) that as regards lathi charge and teargassing inside the Ravenshaw College campus between 4 and 5 p. m. in the afternoon of 27th September, the SDO and the ADM, who were there at the spot along with other senior police officers, directed the operation of the police inside the college campus while they were chasing the crowd up to the portico in the circumstances hereinbefore stated; the entire action of the police inside the college campus, covering the tennis ground and the portico, was under the control of the SDO and the ADM ;
- (p) that it was evident from the manner in which the mob behaved inside the college campus that they were under the impression that the police would not venture to enter the college campus; it was under this impression that the mob continued their lawless activities using the college campus as their fort and as a place of safe shelter;
- (q) that for the reasons as fully stated in paragraph 63 hereof—including the fact that the college campus with the heap of brickbats (debris) inside near the main gate within 20 to 30 feet was a continuous source of trouble--the magistrates rightly took the decision that there was no other alternative but to ward off the crowd gathering inside the college campus; accordingly the students and others inside the college campus were chased to go away from the vacant space in front of the Ravenshaw College building where the said nuisance was continuing; that it was in these circumstances that the police entry and chase into the college campus was justified ;
- (r) that as to the manner in which the arrested students were dealt with there is no evidence that they were mercilessly beaten after arrest as alleged ;
- (s) that as regards damage to cycles, apparently the students were panicky and they left abandoning the cycles ; the police kept them under proper care

until they were returned to the lawful owners ; admittedly in one or two cases, police constables were roughly handling the cycles and in one such case the ADM personally talked to a particular constable not to handle the cycles in that manner ; so also the senior police officers cautioned the police constables to keep the cycles very carefully to avoid any damage ;

- (t) that in some stray cases the cycles might have been roughly handled ; that after the cycles were kept, kicks were given by police with boots and lathi blows were given by them ; it is unfortunate that some of the constables roughly handled the cycles in the manner they did ;
- (u) that, while expressing regret that in certain cases cycles have been roughly handled by some individual constables there is no evidence that on account of such rough handling there was any damage to the cycles to the extent as alleged ;
- (v) that as regards the charge of alleged assault by the police on Mr. Sarat Chandra Jena P. W. 8 inside the Ravenshaw College campus, the sequence of his alleged movement, from the time he was alleged to have been beaten by the police until he came to the hospital for treatment of his injuries and his return to the mess in the manner he deposed, is not supported by the entry in the Injury Register Ext. C/18 according to which the examination of his injuries was over at the latest by 7-35 P. M. when the doctor on duty signed the entry ; this makes his case, as alleged, very initially somewhat doubtful ; that the only conclusion which can be drawn from the discrepancies in his affidavit and evidence is that he was not sure of the exact charge that he was making either in his affidavit or evidence ;
- (w) that the Injury Register Ext. C/18, referred to above, shows that Mr. Sarat Chandra Jena must have got the injury much earlier than 7 P. M. ; the injury report indicates the possibility of his having been involved—however unintentionally not himself

SPOT MAP OF MANGALABAG P.S. CASE Nos. 329 TO 336 OF 1964.

Ex-C/3



DISTANCES

1 to 8 = 1,720'	11 to 32 = 330'
1 to 12 = 330'	32 to 39 = 460'
1 to 5 = 500'	6 to 10 = 58'
1 to 14 = 1,060'	32 to 42 = 165'
1 to 10 = 2,300'	1 to 9 = 2,646'
10 to 21 = 230'	16 to 19 = 530'
20 to 21 = 15'	1 to 57 = 1,650'
9 to 10 = 300'	1 to 7 = 750'
1 to 55 = 1,060'	1 to 56 = 2,300'
8 to 32 = 80'	1 to 4 = 500'

REFERENCES

1. Magestic Radio shop room
2. Front verandah of Magestic Radio shop
3. Saloon and grocery shop in front of Radio shop.
4. Railway Hospital
5. Government Railway Police Station
6. Main Road
7. Dak Bungalow
8. College crossing
9. Ranihat Bridge over canal
10. Law College Hostel
11. Ravenshaw College
12. Madhusudan Law College

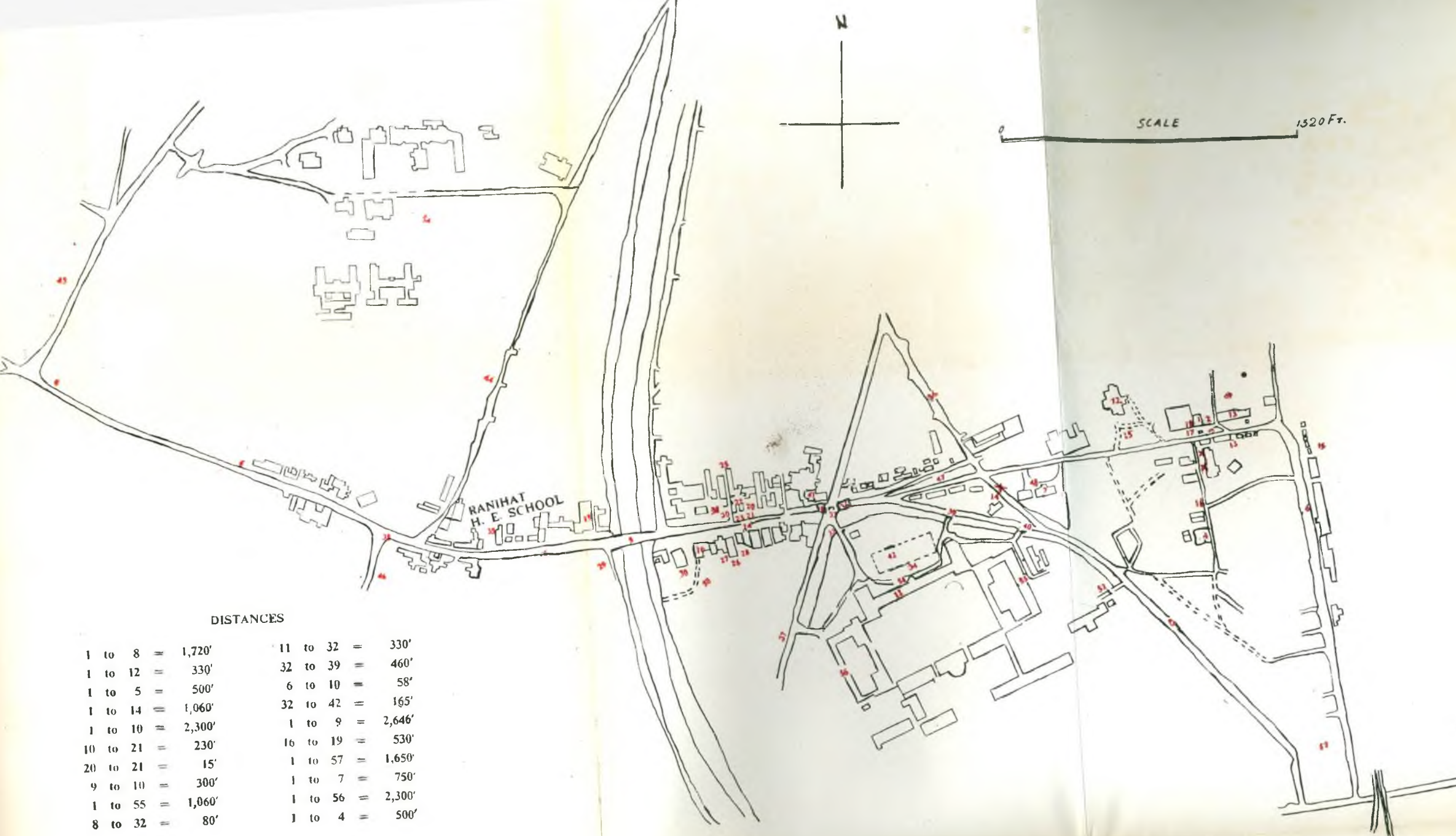
16. Failyway Hospital Road
17. Space in between main road and Sakuntala Alankar shop
18. Sakuntala Alankar shop
19. Hind Cinema
20. Cuttack Cycle Supply Co.
21. Place where Jeep was set fire
22. Residence of K. N. Patra
23. Gate to the residence of K. N. Patra
24. Waterpipe stand post in front of 'Brokebond Tea' Godown.
25. Drain and leading road towards North close to Western side to Brokebond Tea Godown.
26. The New Cuttack Hotel

29. Tea stall of Anadi Sahu
30. Hardware shop of G. C. Sahu
31. Garage of Krusna Sahu
32. Ravenshaw College main gate
33. Traffic post at College crossing
34. College campus
35. Ranihat High School
36. Road to Ice Factory
37. Pilgrim road
38. Ranihat Chhak
39. } Two other gates of Ravenshaw
40. } College.

43. Road to Malgodown
44. Road to Medical from Ranihat crossing
45. Road to Medical and Engineering School from Mangalabag Crossing.
46. Road to Dolmundai
47. Road in front of Shivji and Co. linked to Ice Factory Road.
48. Road to Dak Bungalow from Main Road
49. Road to Patara Sahi
50. Road near Law College Hostel
51. Road in front of Ravenshaw College
52. Road leading to N. C. C. building
54. Medical College campus
55. Road to Hostel of Ravenshaw College



SCALE 1320 Ft.



DISTANCES

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9. Ranihat Bridge over canal
10. Law College Hostel
11. Ravenshaw College
12. Madhusudan Law College
13. Station Bazar shops
14. Post Office, Chauliaganj
15. Law College Road

16. Failway Hospital Road
17. Space in between main road and Sakuntala Alankar shop
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27. Orissa Hotel
28. Hardware shop of Niladri Patra and Musi Patra.

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30. Hardware shop of G. C. Sahu
31. Garage of Krunsa Sahu
32. Ravenshaw College main gate
33. Traffic post at College crossing
34. College campus
35. Ranihat High School
36. Road to Ice Factory
37. Pilgrim road
38. Ranihat Chhak
39. } Two other gates of Ravenshaw
40. } College.
41. Police camp in the house of owner of the Cuttack Hotel.
42. Tennis Court of Ravenshaw College

43. Road to Malgodown
44. Road to Medical from Ranihat crossing
45. Road to Medical and Engineering School from Mangalabag Crossing.
46. Road to Dolmundai
47. Road in front of Shivji and Co. linked to Ice Factory Road.
48. Road to Dak Bungalow from Main Road
49. Road to Patara Sahi
50. Road near Law College Hostel
51. Road in front of Ravenshaw College
52. Road leading to N. C. C. building
54. Medical College campus
55. East Hostel of Ravenshaw College
56. West Hostel of Ravenshaw College
57. Subsidiary Railway Hostel

having taken active part in the movement—in any of the incidents of clash between the students and the police sometime late in the afternoon of 27th September;

- (x) that in these circumstances the story of alleged assault on Mr. Sarat Chandra Jena by 8 or 10 constables inside the college campus at 7 P. M. in the manner alleged is not acceptable;
- (y) that in the result, therefore, as regards the incidents on 27th September from morning till afternoon, apart from certain stray instances of some roughness on the part of individual policemen as hereinbefore discussed, there is no evidence that there was any excess by the magistrates or policemen in handling the situation as developed from time to time throughout the day.

CHAPTER IX
B. N. HOSTEL, CHRIST COLLEGE, CUTTACK
POLICE RAID AT NIGHT

	Paragraph		Paragraph	
Introduction	..	1-7	C. Did the policemen commit the alleged theft inside the hostel	32-37
A. Is the report of the Assistant Superintendent of the hostel, Mr Basanta Kumar Jena which is the basis of the charge acceptable	8-17		D. Was there any possibility of policemen moving about that night anywhere in the vicinity of the hostel under any mistaken belief	38-46
B. Did the policemen beat the students inside the hostel	18-31		E. Findings of the Commission	.. 47

INTRODUCTION

B. N. Hostel of Christ College, Cuttack is situated by the side of Mission Road running in front of the Mission High School. The college itself is about three furlongs away from B. N. Hostel (hereinafter referred to as the hostel). It is an eight-roomed one-storeyed building with its back towards Mission Road. The rooms are in one line and there is a running verandah of about 8 feet width in front of them. There is an open space in front of the verandah. There is no compound wall on the front side; so there is no obstruction to any person getting into the hostel from that side. Entry into the hostel from the main road is through a passage with a door at the end.

2. The capacity of the hostel is said to be 48, that is to say, six students in each room. There is an Assistant Superintendent in charge who is resident of the hostel; he is allotted one room in that block. On the night of the alleged incident October 28, there were only 25 boarders, the rest having gone home as the college was closed on account of the students' agitation.

3. The charge against the police, as stated by the Assistant Superintendent of the hostel, Mr Basanta Kumar Jena C.W. 12, is contained in his report dated October 29, 1964 to the

Principal, Christ College Ext. 19 which, for convenience of reference, is quoted below:

"To

The Principal, Christ College, Cuttack
Str.

Beg to state that—

Yesterday the 28th October 1964 at about 3 O'clock night I heard a big noise and got up. On the south side of the B. N. Hostel on the main road I heard "Please save us", save our lives from police. From the north side I heard "Sir save us from police we are dead". So I went outside I saw about 5 to 6 policemen in the hostel latrine and 5 to 6 policemen in the bathroom and again I saw a group of policemen with lathi were breaking doors and windows of some rooms at the east end of the hostel. So I rushed to the spot. And I saw some inmates of room No. 4 and No. 3 were severely beaten by the police and a good number of police were busy in collecting articles and belongings of the boarder. I requested the police to abstain from doing all these violent work and I explained them that as it was hostel, without permission of the authority they were not competent to get in. But in spite of my repeated request and submission the police did not pay any heed. Rather they used all sorts of filthy languages and were continuing violent work.

After sometime they went away and I went to inspect all rooms. I saw the doors of room No. 3 and No. 4 were broken. Shri S. C. Mohanty due to excessive police beating got fractured the eyebrow and wrist-joint of the hand. Shri P. Das, G. C. Naik, S. C. Naik, N C Patra, N K Panda got excessive swelling on their back and hip. Shri G. N. Das got fractured on the back.

Immediately I sent all the casualties to the hospital for treatment and collected the list of the things lost and damaged by the police and herewith sending all the lists of the things lost.

Sd. Basanta Kumar Jena

29-10-64

Assistant Superintendent,
B. N. Hostel, Cuttack."

4. Mr. Basanta Kumar Jena (C. W. 12) also deposed before the Commission as a witness. Mr. Manindra Nath Roy (P. W. 7) who at the time was acting as Principal of Christ College filed an affidavit and also deposed before the Commission. That apart P. W. 5 Mr. Madan Mohan Mohapatra, Secretary of Christ College Union also filed an affidavit in support of the charge and deposed before the Commission.

5. The charge against the police, in substance, was that on the night of October 28/29, 1964 at about 3 A. M. in the morning the police raided the hostel, beat the inmates and committed theft of some valuables belonging to the students.

6. In support of the charge, the students relied on the report of the Assistant Superintendent to the Principal Ext. 19; the three loss statements filed by the students Exts. 20, 21 and 22; the report from the officiating Principal Mr. M. N. Roy to the Director of Public Instruction, Orissa, dated October 31, 1964 Ext. 23; the relevant portion of the proceedings dated November 25, 1964 of the general meeting of the Governing Body of Christ College held on November 4, 1964 Ext. 24; report of the Principal dated November 6, 1964 to the District Magistrate, Cuttack Ext. 25 and a sketch map of the hostel, with its adjacent area, drawn by the Principal before the Commission Ext. 26. That apart, the students also relied on the brass butt-end of a lathi said to have been recovered from room No. 3 of the hostel on the night of the incident.

7. The administration completely denied the charge and their case is that they had no knowledge of such an incident. Sub-Inspector Surendranath Das of Mangalabag Police Station filed an affidavit to that effect.

A. Is the report of the Assistant Superintendent of the hostel Mr. Basanta Kumar Jena which is the basis of the charge acceptable ?

8. Admittedly, the body of the report was not written by Mr. Basanta Kumar Jena. It was dictated by him to a student. In evidence Mr. Jena said that the report was just dictated and one boy wrote the application and Mr. Jena signed. He could not even remember the name of the boy who wrote it although he was an inmate of the hostel. Mr. Jena said that it was not necessary for him to write the report; he dictated it for the sake of convenience; the boy wrote it and Mr. Jena put his signature. It is hard to accept the statement that a resident Assistant Superintendent of the hostel would forget the name of the boy who was a boarder of the hostel to whom he dictated the report.

9. That apart, there are certain other inherent improbabilities in the story of Mr. Jena having dictated and a student having written out the report as discussed hereunder.

10. The original of Mr. Jena's report Ext. 19 would show that the word 'room-mates' was scored out and the word 'inmates' was written in its place. This shows that the whole thing was written out by a student on his own who would naturally write 'room-mates' as referring to his fellow students who are alleged to have been severely beaten and that is how the word 'room-mates' got into the report.

11. Then again it appears from the original of the report Ext. 19 that Mr. Jena did not dictate this portion:

“ To

The Principal, Christ College, Cuttack”

because it was subsequently written by Mr. Jena himself. What were alleged to have been dictated by Mr. Jena were the words-

“ Through the Superintendent, B. N. Hostel”

which were struck out. The reasonable inference that one can draw from this is that some student wrote this report on his own addressing it as “Through the Superintendent, B. N. Hostel”. If, in fact, Mr. Jena himself dictated the report which he said was final (Jena to Q. 195), he would have straightway dictated “To the Principal, Christ College, Cuttack” and the student, to whom it is said to have been dictated, would have written it out accordingly. There was no question of correction by Mr. Jena.

12. The explanation, sought to be given by Mr. Jena in his evidence, was that he did not know then whether it would be addressed to the Superintendent or it would be addressed to the Principal and that after he got a clarification from the Principal he made the necessary correction. Similarly the alleged reason for his striking out the words “Through the Superintendent, B. N. Hostel” was that the Principal told Mr. Jena that he (Principal) would give this report which he would forward and that there was no question of sending through the Superintendent; that it was not necessary.

13. This explanation sought to be given by Mr. Jena is not convincing. In answer to Q. 71 Mr. Jena said that the Principal had come in the morning at 7 or 7-30 A. M. and that Mr. Jena handed over the report to the Principal at that time. Therefore, there was no occasion for Mr. Jena for getting a clarification from the Principal as alleged. The general tenor of the writing of the report with the word ‘room-mates’ and other features on the face of the document Ex. 19 show that it was written by some student without being dictated by Mr. Jena as alleged. Therefore, the story of Mr. Jena having dictated the report to the student is inherently improbable.

14. That apart, Mr. Jena appears to have given different stories as to the time when the report was written or when it was made over to the Principal Mr. M. N. Roy P. W. 7. Mr. Jena also appears to have given different stories about the place where he is said to have handed over the report to Mr. Roy. It is also in evidence that he gave different timings

as to when he returned from the hospital where he is said to have taken the injured students for treatment. The reasons which support this view are recorded below.

15. According to Mr. Jena's evidence, the incident took place at about 3 A. M. when he was fast asleep in the hostel. The police entered the hostel, beat the students, robbed them of their properties and stayed in the hostel for about 15 to 20 minutes (C. W. 12 Jena Q. 38). He said that immediately after the police left, he sent the injured students for medical treatment. After that what he did is clearly stated in his answer to Q. 71 thus :

“ Q. 71 After that what did you do.

A. After coming from the hospital it was morning 7 or 7-30—I wanted from everybody what was the thing lost. They gave me report. Immediately I noted down the things lost and I went to take my bath and get ready for the class. When I returned from the Medical Cpt. M. N. Roy was already present in the hostel. He asked me to give him a report. I handed over the report and two loss statements and another due to oversight or by mistake I could not give him. He asked me to give in fair handwriting. I said I will submit after 12 or 1 O'clock.”

According to this answer, it was at 7 or 7-30 A. M. in the morning that Mr. Jena returned from the hospital. Immediately thereafter, he noted down the things lost but the note referred to in his answer to Q. 71 is not forthcoming. He said that he handed over the report Ext. 19 and two out of the three loss statements (Exts. 20, 21 and 22) to Mr. M. N. Roy, at the hostel at 7-30 in the morning. In answer to Q. 74 Mr. Jena said that he returned home from the hospital at 9-30 or 10 A. M. and that Capt. Roy was already in the hostel by that time. According to his answer to Q. 75 it was at 9-30 or 10 after returning from the hospital that he handed over the three loss statements (Exts. 20, 21 and 22) to the Principal. Then again in answer to Qq. 217, 221 and 222 he said that he arrived at the hospital at 10-30 or 10 and said that he returned to the hostel by 10-30. He further said that he went to the hospital at 5-30 early in the morning. In answer to Q. 138 read with Q. 136 he said that he returned from the hospital at 2-30 P. M. Thus the timings for his return from the hospital are varying, namely 7-30 A. M., then 9-30 A. M., then 10-30 A. M. and lastly 2-30 P. M. It is not his evidence that he had been visiting the hospital at different times. He was giving different timings with reference to his one single visit to the hospital with the injured students. Thus, if he had gone to the medical hospital at 5-30 A. M. in the morning and

returned to the hostel either at 9-30 A. M. or 10-30 A. M. or at 2-30 P. M. as stated by him at different times, then it is unintelligible how could he meet the Principal Mr. M. N. Roy at the hostel at 7 or 7-30 A. M. in the morning as he said in his answer to Q. 71 quoted above.

16. Then, as regards the place where Mr. Jena is stated to have handed over the report to the Principal Mr. M. N. Roy who appears to have received it on 29-10-1964, as recorded at the top (left side) of the document Ext 19 in original, Mr. Jena gave varying answers. In answer to Qq. 137, 138 read with his answer to Q. 171, Mr. Jena said that he handed over the report to Mr. M. N. Roy at the hostel. But in answer to Qq. 171 and 172 he said that he handed over the report Ext. 19 to Mr. M. N. Roy at his residence (Mr. Roy's) at 2-30 P. M. or 3 P. M. On this point the evidence of Mr. M. N. Roy P. W. 7 is that Mr. Jena handed over the report Ext. 19 at the hostel (P. W. 7 M. N. Roy Q. 235).

17. These are apparent inconsistencies in the evidence of Mr. Jena which make his report of the incident in Ext. 19 not acceptable.

B. Did the policemen beat the students inside the hostel ?

18. In his report Ext. 19, Mr. Basanta Kumar Jena said that he saw some inmates of room Nos. 3 and 4 were severely beaten by the police. In his evidence before the Commission, he reiterated in answer to Qq. 36 and 37 that he had seen 2 or 3 boys in the process of being beaten. According to his report Ext. 19, the number of persons alleged to have been beaten by the police was seven, namely, M/s. S. C. Mohanty, Prahallad Das, G. C. Naik, H. C. Naik, N. C. Patra., N. K. Panda and G. N. Das. In his evidence, he again said that five persons had been injured of whom he could name only three, namely, Sudhir Kumar Mohanty, Prahallad Das and Gokulananda Das and the rest he could not remember (Qq. 67 and 68).

19. As regards the nature of injuries, he gave varying answers. In his report he said that Mr. G. N. Das had got fracture on his back. In evidence he said that he had some injuries on the hip and back—no mention of any fracture on him (G. N. Das). As regards Mr. Prahallad Das, in his report Mr. Jena said that he got excessive swelling on his back and hip whereas in evidence it is said that he got an injury at the back and perhaps fracture of the right shoulder because he

had a sling. As regards Mr. Sudhir Mohanty, Mr. Jena said both in his report and in his evidence that he got eye-brow fracture and injury on the wrist (Qq. 69, 70). But the Doctor is said to have told Mr. Jena that Mr. Mohanty had got some cut on his eye-brow, not a fracture (Qq. 232, 234).

20. According to his report and the portion of his evidence referred to above, Mr. Jena himself saw the students being beaten inside room Nos. 3 and 4. In answer to Question 242 what he said was this.

“Q. 242 Did you yourself see these five boys being beaten by the police?”

A. When I went to that place I saw they were beating. Sometimes lathi was striking against cot and sometimes mosquito curtain bars. It might be on these boys.”

Evidently, he is not sure whether the lathis struck against cot or mosquito curtain bars or it was on the boys. In further cross-examination, Mr. Jena said that so far as he could remember, the boys whom he had seen being beaten were N. C. Patra, Narendranath Panda and that he did not see the others being beaten by the police (Qq. 244, 245). Thus, Mr. Jena again contradicted himself with regard to the number of persons alleged to have been beaten by the police. According to this portion of his evidence, he had only seen two inmates, namely, Patra and Panda having been beaten by the police, whereas, in the earlier portion of his evidence he said that he had seen five students having been beaten by the police as discussed above.

21. Then again, it appears from his evidence that out of seven injured students named in his report Ext. 19, five were taken to the hospital and the remaining two were left behind. These two remaining students were Patra and Panda who were not taken to the hospital. It is interesting to note that Patra and Panda were the only two persons whom Mr. Jena had found beaten by the police and in fact, in his report Ext. 19, Mr. Jena said that among others, Patra and Panda got excessive swelling on their back and hip. If, in fact, Patra and Panda had such injuries as reported in Ext. 19, it is not understandable why they were not taken to the hospital for treatment or for first-aid.

22. This is not all. In answer to Q. 376, Mr. Jena said that he had not personally seen Panda and Patra being beaten. For ready reference the answers to the relevant

questions showing the glaring inconsistencies in his answers are quoted :

- “Q. 36 Did you see any student being beaten ?
- A. Yes, I have seen some students being beaten.
- Q. 37 How many.
- A. I saw 2 or 3 boys in the process of being beaten.
- Q. 244 Please name the boy or boys whom you have seen being beaten by the police.
- A. So far I remember, N. C. Patra and Narendranath Panda were the victims when I inspected the place.
- Q. 245 As regards the others you did not see.
- A. No.
- Q. 267 Who are the two persons who did not go with you to the hospital.
- A. It is a thing of long past. I cannot remember exactly. Perhaps Panda and Patra were not taken.
- Q. 376 (Witness's attention is invited to answer to question Nos. 37 and 267). Did you personally see Panda and Patra being beaten ?
- A. Panda and Patra—I have not seen them personally being beaten.”

In fact, Mr. Jena in the end completely denied having seen any beating inside room Nos. 3 and 4 in his answers to Qq. 431 and 432 which are these :

- “Q. 431 Did you see any severe beating inside room No. 3 or room No. 4 ?
- A. Personally I have not seen any severe beating.
- Q. 432 Did you see any beating inside room No. 3 or room No. 4 ?
- A. No beating—I have not seen.”

23. As regards the place where Mr. Jena is said to have seen the inmates of the hostel having been severely beaten, Mr. Jena in his report Ext. 19 said that the inmates of room Nos. 3 and 4 were beaten. Mr. Jena did not mention about any assault either in the latrine or in the bathroom. In his evidence before the Commission, Mr. Jena said that some policemen were busy in dragging boarders from the bathing place and latrine; he also said that he had seen a policeman was trying to drag one boy down by legs from the latrine where they were trying to hide themselves (Qq. 27—30).

24. Then, as regards the number of policemen who are alleged to have entered the hostel and beaten the inmates, Mr. Jena also gave different stories. In his evidence, he

said that he saw 7 to 8 policemen inside the rooms ; 7 or 8 on the verandah, 5 or 6 in the latrine and 5 or 6 in the bathroom and besides these, there were other policemen below the stairs (steps) and in the field whose number would be, according to him, at least 20 to 22 in uniform whom, he said, he saw. Thus, according to his evidence, the total number would be about 50 policemen with some officer in command. In his report Ext. 19 he stated that he saw about 5 to 6 policemen in the hostel latrine, 5 to 6 policemen in the bathroom and a group of policemen with lathi, breaking doors and windows of some rooms at the east end of the hostel. Mr. Jena did not mention in his report about any policemen inside the rooms or in the steps or outside in the field which he subsequently mentioned in his evidence before the Commission. In cross-examination, however, he said that he had seen approximately only 15 policemen who were visible (Q 287). Later on, in course of further cross-examination, he again contradicted himself when he said in answer to Q. 438 that the total number of policemen he had seen during the occurrence was 50 or 55.

25. In view of this apparent contradictions in his answers on material points, it is difficult to accept the story of Mr. Jena that the inmates of the hostel were severely beaten by the police as alleged or at all.

26. This view is further confirmed by the circumstance that the records of the Medical College Hospital, where the injured students are alleged to have been taken by Mr. Jena for treatment, do not support that any of the students, other than Mr. S. C. Mohanty, were treated or given first-aid at the hospital. The names of the other injured persons, whom Mr. Jena is alleged to have taken to the hospital, do not appear in the Casualty Register under date October 29, 1964 Ext. C/17. As regards, Mr. S. C. Mohanty, an extract from the Surgical Out door Register of the hospital Ext. 27 shows that he was attended for some injury on October 29, 1964; the nature of the injury is not mentioned; the entry simply says "Injury". Apart from the entry about Mr. S. C. Mohanty, the records of the hospital do not show that any of the other students named in Mr. Jena's report Ext. 19 or in course of his evidence were taken to the hospital for treatment; their names do not find any mention in the Casualty Register Ext. C/17. Mr. Jena's answer to Q. 535, which he volunteered, was that he had taken all injured students to the Casualty Ward; that the Doctor sent the casualties to different places which he did not know. This explanation of Mr. Jena

is not convincing. If, indeed, the other injured students had been taken to the Casualty Ward of the hospital, their names would have appeared in the Casualty Register. Mr. S. C. Mohanty who was a material witness was also not examined to explain how and when he got the injury.

27. In support of the students' case of alleged beating of the inmates of the hostel by policemen, Mr. Jena subsequently introduced a butt-end which is said to be of a police lathi M. O. III as having been recovered from a room where the policemen are said to have beaten. There is no mention of the butt-end in his report Ext. 19. It was in course of his evidence that he, for the first time, stated before the Commission that the butt-end was left in room No 3; that it was perhaps a student who had handed over it to him and then Mr. Jena handed it over to the Principal Mr. M. N. Roy. Mr. Jena's evidence is that the butt-end was shown to him before he went to the hospital in the early hours of the morning of October 29. So, if he had got the butt-end before he went to the hospital, it is not understandable why it was not mentioned in his report Ext. 19. His explanation is that it was not necessary because he thought that it would be exhibited by the authority concerned. The explanation is not at all satisfactory. If the butt-end of a police lathi had in fact been recovered immediately after the police left, it would have been a clinching evidence of the entry of the police inside the room from where it is said to have been recovered. In the normal course, one would not omit to mention this recovery.

28. In answer to Q. 7 read with Q. 43, the Principal Mr. M. N. Roy P. W. 7 said that he was given the brass cover at 10-30 A. M. in the morning of October 29, when he, for the first time, saw it. Subsequently, however, in course of his deposition, Mr. M. N. Roy said that he saw the butt-end M. O. III for the first time after a day or two, and that he did not see the butt-end in the morning when he first went to the hostel after the incident was reported to him (Qq. 344 to 349). That apart, it is significant that Mr. M. N. Roy did not mention about the butt-end in his report dated October 31, 1964 to the Director of Public Instruction, Orissa Ext. 23, or in his report dated November 6, 1964 to the District Magistrate, Cuttack Ext. 25.

29. It is a telling circumstance that it was not until August 29, 1965, in course of deposition before the Commission, that Mr Basanta Kumar Jena C. W. 12 was

shown the butt-end M. O. III by the learned counsel for the students and the public (Q. 92). While in cross-examination he was asked to explain where he kept it, Mr. Jena replied that it was kept in the office and that he submitted it afterwards. If, in fact, this butt-end was kept in the office by Mr. Jena, then this butt-end, as the best evidence in support of the charge against the police, should have been produced earlier. There was also no mention of it in the affidavit of the Principal Mr. M. N. Roy or in any of his reports to the authorities.

30. It appears that the butt-end M. O. III is only a common brass cover which can be fitted in with any lathi. There is no proof that this brass cover is necessarily the butt-end of a police lathi.

31. In this view of the evidence, as unsatisfactory, the Commission is unable to hold that the charge that there was severe beating by the policemen inside the hostel, as alleged, has been proved.

C. Did the policemen commit the alleged theft inside the hostel ?

32. In Mr. Jena's report Ext. 19, there was no specific charge of the policemen having stolen from the hostel the particular articles which were subsequently mentioned in his evidence before the Commission. All that Mr. Jena stated in his report Ext. 19 was that a good number of policemen were busy in collecting articles and belongings of the boarders. There was no mention as to what particular articles the policemen collected. In his evidence before the Commission, he said that they were collecting lungi, books, radio, watch, trunk and suitcase (Qq. 11, 12) ; he saw the articles having been lifted and removed by the policemen. He said that he saw them carrying the articles to the verandah, but beyond the verandah he could not say to which place they were transported.

33. As regards the watch in answer to Q. 388, Mr Jena said that he had not himself seen the watch having been stolen. As regards the trunk in answer to Q. 380 as to whether he remembered if any trunk was removed from room No. 3, he said that he could not say. Then as regards the suitcase, he also said in answer to Qq 379 and 381 that he could not remember whether any suitcase was removed ; earlier in answer to Q. 378 he had said that a suitcase might have been removed.

34. With regard to the alleged theft of a radio, his evidence is interesting. Ext. 20 the loss statement submitted by Mr. Subhas Chandra Naik, a boarder of room No. 3, shows under item No. 3 the loss of one "Electronic" Table Transistor worth Rs. 235 as one of the stolen articles. Mr. Jena said that he was told that one Table Transistor Radio was brought for repair and was kept in a trunk under lock and key which was taken away (Qq. 131 to 135). It is not understandable as to how Mr. Jena could see a radio which was inside a trunk under lock and key. He ultimately admitted that he did not see the transistor amongst the things that were put in the verandah. The inconsistencies in his case with regard to the alleged theft of the transistor are apparent from his following answers:

" Q. 134 What sort of box was it in which the radio transistor was put.

A. Trunk.

Q. 135 Was the trunk under lock and key.

A. That must be.

Q. 401 Did you see the transistor among the things that were put in the verandah?

A. No.

Q. 402 You never saw a transistor in the hostel.

A. No, I did not see the transistor before.

Q. 403 Did you at all see the transistor before this incident.

A. No.

Q. 404 When for the first time did you come to know that some transistor has been taken away by police.

A. So far I remember, when I was in room No. 3 or room No. 4 or in the verandah I saw a transistor was taken away by police.

Q. 405 From where.

A. I do not remember exactly ; but I saw it was removed by police.

Q. 406 From where.

A. I cannot say.

Q. 407 Was it from trunk.

A. That I cannot say.

Q. 408 Was it lying outside in a trunk.

A. That I cannot say.

Q. 424 You have said there the transistor was put in the trunk under lock and key. How do you say that you saw the transistor?

A. The boy who lost the transistor said that it was inside the trunk under lock and key. I saw the transistor in the process of being taken away by the police without the trunk.

Q. 425 The transistor without the trunk was being taken away

A. Yes."

The tenor of his evidence and his demeanour throughout lead to the conclusion that he was not sure what case he was making with regard to the alleged theft of the articles by the policemen from the hostel.

35. Further, it appears that Mr. Jena had also prepared two other lists—one being the list of damages to the hostel properties (Q. 274) and the other being the list of stolen properties. In his evidence Mr. Jena said that he had drawn up the list of things which he saw were stolen, after coming back from the hospital and submitted the same to the Principal Mr. M. N. Roy (C. W. 12, B. K. Jena Qq. 279 to 281). It is significant that neither of these two lists has been produced. The Principal Mr. M. N. Roy said that he did not receive the list from Mr. Jena although Mr. Jena said that he had submitted the same to Mr. M. N. Roy. In answer to Q. 291, Mr. M. N. Roy said that Mr. Jena did not send to him a separate list of things lost. In answer to Q. 299, Mr. M. N. Roy also said that so far as he could remember Mr. Jena did not send to him any list of properties said to have been damaged.

36. With regard to the loss statements alleged to have been submitted by the students Exts. 20, 21 and 22, Mr. Jena in his report Ext. 19 stated that all the lists of things lost were sent along with the report. In answer to Q. 75, Mr. Jena said that after returning from the hospital, three loss statements were handed over by him to the Principal Mr. M. N. Roy, who had come to the hostel. Mr. Jena, however, added that out of the three loss statements, two were given to Mr. M. N. Roy, one due to oversight or due to mistake was not given to him then; it was submitted afterwards along with his report. As to the time when Mr. Jena returned from the hospital and handed over the loss statements along with his report to Mr. M. N. Roy, he gave different timings as hereinbefore discussed. According to his answers to Qq. 136 to 138, the remaining loss statement along with the report was handed over to Mr. M. N. Roy

at 2-30 P. M. after Mr. Jena returned from the hospital. Mr. M. N. Roy's evidence is that it was on October 29, when he visited the hostel, that he wanted the boys to give him (Mr. Roy) a list of the articles which according to them were taken away by the police and that the said lists were given to Mr. Roy when he visited the hostel on the 29th. Mr. Roy also said that when the boys reported about the loss, he (Mr. Roy) told them to give a written statement of the losses which they suffered. Mr. Roy further said that it was then that the boys noted down in his presence and gave him the statements (P. W. 7—M. N. Roy—Qq. 4, 14 to 16). If, in fact, the three loss statements Exts. 20, 21 and 22 were enclosed with Mr. Jena's report Ext. 19 which, according to Mr. Jena, was submitted to Mr. M. N. Roy at 2-30 P. M., then it cannot be true that the Principal Mr. M. N. Roy received the loss statements at 10-30 A. M. as he said in his evidence. The loss statements could not have been sent along with Mr. Jena's report which, according to him, was submitted at 2-30 P. M.

37. In the ultimate analysis of the evidence of the Assistant Superintendent of the hostel and the acting Principal of the college, the statements made by them are inconsistent with one another on material points ; in fact at places they contradict each other ; besides, their evidence is self-contradictory on material points, as discussed above. In view of these contradictions, the evidence of either of them is not acceptable.

D. Was there any possibility of policemen moving about that night anywhere in the vicinity of the hostel under any mistaken belief :

38. While taking the view that the charge of alleged severe beating and theft by the policemen from the hostel has not been established, the possibility of some policemen moving about on the night of October 28/29 in the vicinity of the hostel on the public road adjacent to the hostel or by approaches to the road cannot be ruled out.

39. The question arises thus : It appears from the affidavit filed by the District Magistrate that on October 28, Cuttack City was in a disturbed state. His affidavit gave some clue to what presumably happened in darkness on the night of October 28. What we get from it was, in substance, this: The students went on procession throughout the main streets, about one thousand of them assembled at the Collectorate

and conducted demonstrations in their usual manner. The demonstrators in the Collectorate broke through the police cordon in spite of warnings and persuasions. Batches also entered into the offices of the Revenue Divisional Commissioner, Central Division, Cuttack, SDO, Sadar, Cuttack, different other offices and created disturbance. Demonstrators also misbehaved with the magistrates and police officers on duty. On the ground of creating obstruction and indulging in violence, arrests were made and the arrested students were taken in four police vehicles to the Advanced Police Training School building because the students refused to go on bail. It is said that the arrested persons refused to get down from the police vehicles. They were produced before the SDO who discharged them. The students, however, refused to get down from the vehicles till about midnight on October 28. It is said that a batch of students went to the house of the SDO, Sadar and were trying to raid it. A force was immediately sent, and on seeing them the students ran away towards B. N. Hostel which is very near the house of the SDO.

40. We get some more light about this from the evidence of the Principal Mr. M. N. Roy P. W. 7, which also confirms that there was some movement of the police, chasing the students, who were trying to raid the house of the SDO that night. Mr. M. N. Roy said that he heard that a large number of students were going in procession and demonstrating before the Collectorate; and that by October 29, 1964 students were being arrested in that connection. He further said to the effect that he enquired from the students that police started running towards the hostel from the opposite side of the hostel chasing some people; then the police misunderstood the whole thing in the dark night and were under the impression that these students, whom they were chasing, had gone towards the hostel; so the police must have chased them under the mistaken belief that the persons, whom the police were chasing, must have gone inside the rooms in the hostel. He said the police must have mistaken that way but actually the place to go by was the road adjacent to the hostel; but the police entered the hostel and are alleged to have created the mischief. Mr. M. N. Roy further said that Mr. Jena told him about the police having chased the students from the opposite side, that is, from the side of the SDO's bungalow.

41. There would have been some point, in support of the charge against the police, if the Principal Mr. M. N. Roy was consistent in his statements. What Mr. M. N. Roy (P. W. 7) initially said about his having heard from Mr. Jena, he completely denied and thus he contradicted himself. The relevant portion of Mr. M. N. Roy's evidence, showing the contradictions, is this :

- “ Q. 133 So, according to you, the police must have chased them under the mistaken belief that the persons whom the police were chasing must have gone inside the rooms in the hostel.
- A. They must have mistaken that way but actually the place to go by was the road adjacent to the hostel. But the police entered this hostel and created this mischief.
- Q. 135 This belief or impression you gathered from the talks in the morning of 29th in the hostel where the Assistant Superintendent and the students were present.
- A. Yes.
- Q. 136 Was your impression confirmed by the Assistant Superintendent of the hostel.
- A. Yes.
- Q. 137 He also told you accordingly.
- A. Yes.
- Q. 169 Is it correct to say that you learnt from the Assistant Superintendent that on hearing the noise he came out of his room and saw policemen chasing from the side of the SDO's quarters.
- A. His report says that and also from his talk, I learnt.
- Q. 170 The report came later on. So, confine your answer to what the Assistant Superintendent told you and not mentioned in the report.
- A. The Assistant Superintendent told me that on hearing the noise he came out of the room; but if one policeman goes ahead and beats somebody and the other policemen were chasing people from the other side, it does not affect
- Q. 171 Did you enquire from him what was the number of policemen and the persons chased.
- A. I enquired; there were not less than 8 policemen. About the people chased, he could not give the number.
- Q. 172 Chasing was from the direction of the SDO's quarters.
- A. Yes.”

42. What Mr. M. N. Roy said above was before the midday recess on August 18, 1965 on which date he was examined before the Commission. After midday recess, he

had completely gone back on his answers to the questions and said to the effect that all that he said was his guessing and it is not that Mr. Jena had told him. The relevant portion of his evidence, after midday recess, denying all that he said before midday recess, is this :

“ Q. 192 Did the Assistant Superintendent tell you when he found the policemen chasing persons in the space in front of the hostel.

A. That chasing is my impression. When the question is how the policemen could come here, it might have been by this way. (Adds) As I was not present in the hostel, the question how the policemen could come there I felt that they might have come by chasin the people.

Q. 193 Is your answer before the Commission that the Assistant Superintendent told you that he saw policemen chasing persons, given before midday recess true or false.

(Question explained and repeated)

A. I said that this is my impression.

(Question explained and repeated).

A. I do not think that answer is correct.

Q. 194 If the Assistant Superintendent had not told you about the police having chased some persons that night then how could you yourself get that impression.

A. The question that how the police came there—that police might have come chasing the people by that way.

Q. 195 So this impression of yours at that particular time is a mere guess or based on information.

A. It is a mere guessing. I guessed only as to how the police could come there.”

43. Immediately after P. W. 7 Mr. M. N. Roy's deposition was over on August 20, 1965, Mr. Jena C. W. 12 was the next witness to be examined. In fact, Mr. Jena was waiting to be examined, immediately after Mr. M. N. Roy, since August 18, 1965. Mr. Jena completely denied having told Mr. M. N. Roy about policemen chasing persons from the direction of the quarters of the SDO, Sadar. What Mr. Jena said was this :

“ Q. 308 You told the Principal that when you came out of your room on hearing the piteous appeals you saw policemen chasing persons from the direction of the quarters of the S D O, Sadar.

A. No, I have not told

Q. 508 Did you come to know that sometime after mid-nightt i.e., in the early hours of 29th of October, 1964, the residential quarters of the S D O, Sadar, Cuffack was surrounded by a group of persons.

A. I do not know

Q. 509 Until now you have no knowledge of it. Is it so.

A. No.

Q. 510 Until now you have no information of it.

A. No Sir."

44. It is unfortunate that witnesses of the position of teachers of educational institutions should be so hesitant not to disclose the entire truth and such lack of candour as expressed in course of their deposition before the Commission on this point is regretted.

45. The Commission, however, takes this opportunity of expressing the view that if at any time, in course of investigation, it comes to light that any policeman misbehaved in the manner they are alleged to have done, Government should take steps that such policemen be brought to book and punished. The charge of theft and severe beating by policemen is a serious charge. If either of these charges had been established, the Commission would have no hesitation in holding their conduct as reprehensible and would have condemned their action.

46. In view of the position that there is no evidence in support of the charge and that the evidence of the two witnesses C. W. 12 Mr. Jena and P. W. 7 Mr. M. N. Roy is not acceptable for the reasons discussed above, the Commission finds that the charge against the police has not been established.

E. Findings of the Commission :

47. As already indicated in the preceding paragraphs, the findings of the Commission, on the basis of the available evidence, may be briefly summarised as follows :

(i) *Re: Is the report of the Assistant Superintendent of the hostel Mr. Basanta Kumara Jena which is the basis of the charge acceptable :*

(a) that it is hard to accept the statement of the Assistant Superintendent of the hostel that he would even forget the name of the boy who was a boarder of the hostel to whom he dictated the report; the story of the Assistant Superintendent having dictated the report to the student is inherently improbable;

- (b) that the Assistant Superintendent appears to have given different stories about the place where he is said to have handed over the report to the acting Principal; he also gave different timings as to when he returned from the hospital where he is said to have taken the injured students for treatment;
 - (c) that there are apparent inconsistencies in the evidence of the Assistant Superintendent of the hostel and other doubtful features which make his report of the incident Ext. 19 not acceptable;
- (ii) *Re: Did the policemen beat the students inside the hostel :*
- (a) that in view of the apparent contradictions in his answers on material points, it is difficult to accept the story of the Assistant Superintendent of the hostel that the inmates of the hostel were severely beaten by the police as alleged or at all;
 - (b) that in this view of the evidence, as wholly unsatisfactory, the Commission is unable to hold that the charge of alleged severe beating by the policemen inside the hostel has been proved;
- (iii) *Re: Did the policemen commit the alleged theft inside the hostel :*
- (a) that in the ultimate analysis of the evidence of the Assistant Superintendent of the hostel and the acting Principal, the statements made by them are inconsistent with one another on material points; in fact at places they contradict each other; besides their evidence is self-contradictory on material points;
 - (b) that in view of these inconsistencies and contradictions, the evidence of either the Assistant Superintendent of the hostel or the acting Principal is not acceptable;
- (iv) *Re: Was there any possibility of policemen moving about that night anywhere in the vicinity of the hostel under any mistaken belief :*
- (a) that while taking the view that the charge of alleged severe beating and theft by the policemen from the hostel has not been established, the possibility of some policemen moving about on the night of

October 28/29 in the vicinity of the hostel on the public road adjacent to the hostel or by approaches to the road, cannot be ruled out;

- (b) that it appears from the affidavit of the District Magistrate, Cuttack, also from the evidence of the Assistant Superintendent of the hostel and the acting Principal that on the night of October 28/29 a batch of students are stated to have tried to raid the house of the SDO which was very near the hostel; a force is said to have been immediately sent to the SDO's house and on seeing the police force the students are said to have run away towards the hostel;
- (c) that although the Assistant Superintendent of the hostel and the acting Principal appear to have known about it, yet, for reasons best known to them, they appeared to be hesitant to disclose this fact even in course of giving evidence before the Commission;
- (d) that the possibility of some students having surrounded the residential quarters of the SDO some time after midnight or in the early hours of October, 29 and the policemen having chased them by the road adjacent to hostel, cannot be ruled out;
- (e) that, if at any time, in course of investigation, it comes to light that any policemen misbehaved in the manner they are alleged to have done, the Government should take steps that such policemen be brought to book and punished; the charge of theft and beating by policemen is a serious charge; if either of these charges had been established, the Commission would have no hesitation in holding the police conduct reprehensible and would have condemned their action ;
- (f) that, in the result, in view of the position that there is no acceptable evidence, the charge against the police cannot be found to have been established.

CHAPTER X
ALLEGED ILL-TREATMENT BY POLICE AT OMP
BARRACK, CUTTACK

	Paragraph		Paragraph
Introduction	..	1-22	Findings of the Commission on alleged ill-treatment by police at OMP barrack. 23

INTRODUCTION

There is a charge against the police that the persons arrested on the 26th (night) and 27th September were taken to the Orissa Military Police barrack (hereinafter for brevity referred to as OMP barrack) and ill-treated by the police in the manner alleged.

2. Mr. Prafulla Kumar Mohanty, who himself was one of the students arrested in the morning of 27th September in the Law College Hostel as stated in paragraphs 26 and 27 of his affidavit, as President of the Madhusudan Law College Union, said that the injured students in the OMP barrack frantically prayed for medical aid or even for some first-aid treatment ; instead of any medical assistance or treatment they are alleged to have been mercilessly beaten ; that the students were illegally detained in the OMP barrack without being formally arrested and without being produced before any magistrate. Apart from Mr. Prafulla Kumar Mohanty, such and similar allegations were also made by Mr. Nisamani Khuntia, Mr. Harihar Panda, Mr. Man Mohan Das, Mr. Bibhuti Bhusan Sarangi, Mr. Sailesh Chandra Pradhan, Mr. Sukumar Nanda, Mr. Prafulla Kumar Patnaik and Mr. Promode Samantarai.

3. The allegation of Mr. Harihar Panda about the treatment shown to the arrested persons inside the OMP barrack is that they were not provided with food and water and were not allowed to attend call of nature whenever necessary ; their complaints to the higher officers were rewarded with threat of use of force and more abuse to their institution, family and to their parents. Mr. Harihar Panda went to the length of saying that the treatment to them inside OMP barrack was not in any way less than what was meted out to the Jews by the Nazis in concentration camps in Hitler's Germany.

4. Mr. Man Mohan Das alleged that he was inhumanly behaved and was not supplied with food and water.

5. Mr. Bibluti Bhusan Sarangi, who was arrested at 7-30 A. M. on 27th September, stated that he was removed to the OMP barrack and kept in a room 50' x 20' along with other students numbering 110 in all; that on account of heaping of 110 students in a small room, he was in great discomfort and had to sit with much difficulty for the whole of the night. He also said that in spite of his repeated requests he was not given any food at all till 2-30 P. M. when he was given only two small *Singadas* and two small *Ladus* in Mangalabag Police Station where he was arrested; in spite of request he was not given anything else; at night at about 11 P. M. he was given only three pieces of Chapatis and a little curry, and in spite of request nothing more was given.

6. Mr. Sailesh Chandra Pradhan, who was arrested at Law College Hostel in the morning, said that no facilities for treatment were given for more than 24 hours; inside the OMP barrack the arrested persons were harassed; no water was given to them and they were told that urine would be given; he suffered from acute pain and heavy temperature; in spite of repeated requests to send for a doctor, it was not done; he was not given a blanket to cover himself; the police in their presence took food whereas the arrested persons were groaning under hunger.

7. Similar allegations of ill-treatment were made by Mr. Sukumar Nanda who was arrested on 26th September night in front of the radio shop.

8. Mr. Prafulla Kumar Patnaik, who was arrested on 27th September morning and suffered injury resulting in loss of tooth, said that he was taken to OMP barrack and no medical aid was given to him in spite of repeated requests. He also said that his request to send him to Medical College was turned down.

9. The student leader Mr. Promode Samantarai as President of the SCB Medical College Students' Union in paragraph 8 of his affidavit said this:

" 8. That the students who were loaded into the police van including injured students were taken to the OMP barrack and were subjected to inhuman and unimaginable tortures. They were confined in damp, stinking and over-crowded cells. Drinking water and food was denied to them for several hours and injured students were not permitted first-aid. In one of the cells with a dimension 20' x 15', 80 to 100 injured and ailing students

were forced to live for more than 36 hours in an insanitary and inhuman conditions. They had nothing to sleep on except the damp stinking floor. For water they were offered urine. ”

Mr. Samantarai himself was not one of the arrested persons and therefore was not an eye-witness to what he said in the affidavit. In verification he stated that the contents of paragraph 8 quoted above were based on information gathered from newspapers and from the speeches delivered by students in their meetings.

10. The explanation of the administration was given in the affidavit of Sub-Inspector Ram Chandra Naik who was in charge of the OMP barrack camp during the relevant period. The gist of what he said in paragraphs 8 to 13 of his affidavit is as hereinafter follows.

11. On the night of 26th September Sub-Inspector Ram Chandra Naik took 35 arrested persons straight to the OMP Medical Hospital where they were treated; after giving medical treatment in the OMP barrack he put them there; food was supplied to them but they refused to take it and abused him in filthy language; so, he left the entire food with them requesting them to distribute among themselves; next morning he did not find any food left which was supplied to them from which he presumed that they must have consumed the food the previous night. He also said that tea and tiffin were also supplied to them early in the morning on their demand. At about 11 A. M. on 27th September some more arrested persons were brought to the barrack and handed over to him; he was asked to get the arrested persons medically examined; he got the injured persons treated in the OMP Hospital and thereafter put them in the barrack; all the arrested persons were given food at about midday.

12. Again, at about 5 P. M. on 27th September, another batch of 14 arrested persons were brought to the barrack and handed over to Sub-Inspector Naik and he got them treated in the OMP Hospital. Again, at about 7-30 P. M., 20 more arrested persons were brought to the barrack; the injured arrested persons were treated in the OMP Hospital; two more persons were also handed over to him and they were put inside the barrack.

13. As regards food supplied in the barrack, Sub-Inspector Ram Chandra Naik said that night meals were sent from Mangalabag Police Station and supplied to all the arrested persons who were then at the barrack and they took their night meals.

14. Then, as regards production of the arrested persons, it was stated that they were duly produced before the SDO, Sadar between 10 P. M. to 12 O'clock on 27th September, that is, within 24 hours as required by law. The following morning, that is, 28th September the accused persons were escorted by the police officers to Cuttack Jail and handed over to the Jail authorities.

15. The allegations made in the different affidavits filed on behalf of the students, regarding alleged assault on the arrested persons inside the OMP barrack, ill-treatment inside the barrack, non-supply of food, water and medical aid, while they were in custody, were all denied on behalf of the administration as absolutely false and imaginary.

16. The case of the administration is that the arrested persons were never assaulted nor ill-treated while they were in the OMP barrack ; they denied that no food was supplied to the arrested persons while they were in police custody. They denied, as false and frivolous, the allegations made in the different affidavits that when arrested persons wanted water, police officers told them that water could not be given and they should drink their own urine.

17. The question is : Are the allegations of ill-treatment by the police, as alleged in the different affidavits filed on behalf of the students, true ? The Commission had local inspection of the OMP barrack in the presence of the parties concerned. It must be said that the conditions in the OMP barrack were far from ideal. The barrack is situate in certain old and ancient blocks of buildings beyond the railway line. The rooms, in which the students were detained, were not at all well-ventilated ; the accommodation was not sufficient for the number of persons who were placed in the rooms. No doubt however, that the two hazats in Cuttack City—one at Mangalabag Police Station and the other at Lalbag Police Station -which the Commission had also visited, were not sufficient to accommodate such a large number of arrested persons.

18. It is said that they could not be sent to the jail without completing the enquiry. As regards the injured arrested persons, they could not be sent to the SCB Medical College Hospital inside the town, because of the tense situation throughout on the 26th September night and also the following day 27th September.

19. Therefore, there was no other alternative but to send the arrested persons to the OMP barrack.

20. There is no doubt that the arrested persons suffered certain discomforts because of lack of proper accommodation, inadequacy of proper food and lack of first-aid medical aid in the OMP Hospital and at the barrack. The Commission also visited the hospital. It appears that the hospital at the barrack was not meant to meet the requirements of such a large number of injured persons ; the equipment did not appear to be sufficient for the purpose.

21. Evidently, the authorities could not foresee such a situation and were not prepared for meeting the requirements of the arrested persons at the barrack. Although, there were the discomforts both in respect of their accommodation, food and medical first-aid which were unavoidable under the circumstances, the allegations made in this context, namely, that they were treated as in a Nazis camp in Hitler's Germany and such other charges, are exaggerations.

22. While, therefore, holding that the charges against the police of ill-treatment in the OMP barrack as alleged are somewhat exaggerated, the Commission, however, is constrained to find that the arrested persons did suffer certain discomforts, though unavoidable, under the circumstances. The Commission recommends that, in future, the said OMP barrack should not be used for purposes of keeping persons in custody ; adequate arrangements should be made to meet such emergent situation in future, if any.

23. *Findings of the Commission on alleged ill-treatment by police at OMP barrack:* In the light of the foregoing discussion, the Commission holds:

- (a) that the two hazats in Cuttack City--one at Mangalabag Police Station and the other at Lalbag Police Station--were not sufficient to accommodate such a large number of arrested persons ;
- (b) that the arrested persons could not be sent to jail without completing enquiry ;
- (c) that the injured arrested persons could not be sent to the SCB Medical College Hospital in the heart of the town because of the tense situation throughout the 26th September night and also the following day, i. e., 27th September ;

- (d) that, therefore, there was no other alternative but to send the arrested persons to the OMP barrack ;
- (e) that the conditions in the OMP barrack were far from ideal ; the barrack is situate in certain old and ancient blocks of buildings ; the rooms, in which the arrested persons were detained, were not at all well-ventilated ; the accommodation was not sufficient for the large number of persons who were placed in the rooms ;
- (f) that the arrested persons suffered certain discomforts because of lack of proper accommodation, inadequacy of proper food and lack of medical first-aid in the OMP Hospital and at the barrack ; the hospital at the barrack was not meant to meet the requirements of such a large number of injured persons : the equipment did not appear to be sufficient for the purpose ;
- (g) that the authorities could not foresee such a situation and were not prepared for meeting the requirements of the arrested persons at the barrack ;
- (h) that although the discomforts both in respect of their accommodation, food and medical first-aid were unavoidable under the circumstances, the allegations made in this context, namely, that they were treated as in a Nazi camp in Hitler's Germany and such other charges are exaggerations ;
- (i) that while holding the charges against the police of ill-treatment in the OMP barrack as alleged are somewhat exaggerated, there is no doubt that the arrested persons did suffer certain discomforts though unavoidable under the circumstances ;
- (j) that in future the said OMP barrack should not be used for purposes of keeping persons in custody ; adequate arrangements should be made to meet such emergent situation in future, if any.

CHAPTER XI

CHANDANPADIA INCIDENT ON NOVEMBER 14

	Paragraph		Paragraph
Introduction	1—5		
A. Case of the public : Defence of the administration	6 -8	D. Was anybody found injured as a result of lathi charge	32—38
B. Was it necessary to resort to lathi charge and use tearsmoke	9- -17	Alleged assault on a rickshawala	34
C. Was there indiscriminate assault on the crowd as alleged	18—31	Alleged assault on a young hoy	35—37
		E. Findings on the facts	39

INTRODUCTION

Chandanpadia, as the name itself suggests, is a field where Chandan Jatra is held. It lies close to the premises of the Cuttack City Municipality Office. There is a tank closeby where the deity is taken and put in boat during Chandan Jatra known as “ Chandan Pokhari ” or “ Municipality Tank ”. The area is situate between the recently constructed Shahid Bhaban on the one side and the Municipality office building on the other. There are only two entrances to Chandanpdaia—one in front of the Municipality Office which is the main road connecting Chandanpadia with Choudhuri Bazar and the other to the rear of the Municipality Office connecting it with Telenga Bazar. This road at the back runs over the northern embankment of the Municipality tank and is very narrow in that hardly two vehicles can cross each other on it. This portion of the road itself is very narrow though beyond it the road is wider. There is also a third path through the Municipality market which is very narrow. Three main roads connecting Chandanpadia are Choudhuri Bazar road, Manik Ghose Bazar road and Firingi Bazar road. Chandanpadia itself is a field with Shahid Bhaban on the south, Municipality Office compound on the north, Municipality pond on the west and the Municipality market on the east, which can accommodate 5 to 6 thousand people. There is a small temple close to the tank in the space on the eastern side of the embankment.

2. The student agitation which had started in September was still continuing in the month of November. The educational institutions in the Cuttack City, which reopened on November 4, were being picketed by the strikers as a result of which willing students could not attend. The situation was also tense in that the hungerstrikers were

demonstrating and offering Satyagraha in front of the Collectorate. Throughout the city there was still an atmosphere of disturbance.

3. It was in this situation that the leaders made efforts to pacify the students in various ways by personal approach and by address at public meetings ; one such meeting was held by the Congress on November 14, 1964 in Chandanpadia, which was addressed by Mr. Biju Patnaik for the purpose of giving some concrete programme to the public to bring back peaceful atmosphere throughout the State. Admittedly, this was a gathering which consisted of respectable men from different walks of life, including old respectable teachers of schools and colleges, high officials, Advocates, doctors, engineers and also businessmen—who all attended the meeting with the definite hope and confidence that there would be some solution of the problem.

4. Unfortunately, disturbance was created at this meeting—presumably with the motive of frustrating the very object for which the meeting had been called by the conveners. This led to police intervention resulting in stampede and skirmishes hereinafter described. It is common ground that there was an incident at Chandanpadia in course of that meeting.

5. The controversy that arises is the interpretation of the action that was taken by the magistrate and the police at the spot, that is to say, whether the use of force, lathi charge and teargassing in the manner it was done was justified.

A. Case of the public : Defence of the administration :

6. This leads to the question : What was the charge against the police ? From the side of the students and the public there is no affidavit or any eye-witness to state before the Commission as to what actually happened on the night of November 14, 1964 at Chandanpadia, after the disturbance had started in front of the dais at the meeting. Mr Nisamani Khuntia, on behalf of the citizens of Orissa in his affidavit, compared the incident at Chandanpadia to the atrocities at Jallianawala Bagh and stated that the nearby tank became a tank full of human heads. What he actually said in the affidavit about this incident was this :

“ 23. Indiscriminate assault went on by the police on the public. People ran hither and thither, some jumped into a nearby

tank to save themselves. Inside the tank wherever they stood up, they were assaulted with long police lathis. A large body of persons swam across the tank including the Secretary of the local PCC, who came along with Shri B. Patnaik. The Advocate-General and the PCC President who were brought by Shri B. Patnaik along with him, tried to hide their heads against protection.

24. Several Advocates who were in the meeting were assaulted heavily by the police. Many Journalists who went to the place were mercilessly beaten. The entire place was converted to a field of blood. The nearby tank became a tank full of human heads. People escaped by swimming. The police was also all through throwing teargas on these people. A Jallianawala Bagh was enacted inside the closed municipal compound having a tank within and walls all around with small opening. This unprecedented police excess and oppression did not stop that night.
25. The police in their madden drive got into the house of many citizens. They broke open their doors and assaulted them and threw brickbats into their houses. The people and journalists who ran away and closed the doors, were assaulted by breaking open the doors and at places by the police entering forcibly into the houses. Thereafter when the police deserted the municipal field on the way in Telenga Bazar, a place where mostly lawyers and gentlemen of very high order live, wherever the police saw a human being either on the verandah or on the roof, from the street threw brickbats at them. The next morning the police also cordoned the municipal field and persons who happened to pass in the streets near about the place, were assaulted.
26. A rickshawala was heavily assaulted by the police and on a young boy a police vehicle was deliberately run over. The boy suffered a very serious injury to his leg. Immediately the police lifted the boy and brought him to the municipal compound and with a knife his leg muscle was cut off and thrown there. The boy in such a distress condition was thrown on the streets and long after he was picked up by some public men and was removed to the hospital wherein he is lying till to day. Nobody thought of even seeing to his proper treatment.
27. That regarding all these happenings, persons who got assaulted and who suffered in the meeting and the people of the locality prayed for the intervention of higher authorities. Even the High Court Bar Association including the Advocate-General of Orissa condemned the action and sought central intervention in the matter "

That apart, the student leader Mr. Prafulla Kumar Mohanty in his affidavit also made similar allegations against the police. He said :

" 44. The saddest part of this whole episode is the naked attitude of the police and the authorities including the chiefs of

the ruling party was exhibited on 14th November 1964 in the Chandanpadia at Cuttack when they invited public and student in great number and then let loose the mad drunken men of the Orissa Military Police on the absolutely peaceful members of the public and students completely unwarranted."

7. The point now is : Are these grave allegations against the police in Chandanpadia, compared with Jallianawala Bagh, substantiated by evidence ? Neither Mr. Nisaman Khuntia nor Mr. Prafulla Kumar Mohanty was an eye-witness to what had happened at the Chandanpadia meeting. Mr. Ghanashyam Mohanty P. W. 9 stated before the Commission that he made a statement in the newspaper Prajatantra on November 24, 1964 Ext. 31 about what he had experienced at Chandanpadia. In evidence he said that the guardians of the students of Cuttack town were invited to attend the meeting on behalf of Mr. Biju Patnaik; he (Mr. Ghanashyam Mohanty) reached Chandanpadia at about 6 P.M. in the evening; by the time he reached police had surrounded the Maidan from all sides; he walked by the side of the pond and reached the meeting place; when the meeting had just begun about 14 to 15 students came with black flags; when they came near the dais Mr. Biju Patnaik is stated to have jumped from the dais and snatched a black flag from one of the students; in the process of his attempting to take the flag from the boy, lathi charge by the police commenced. He said that he ran away along with several others when police started chasing and lathi charging. In answer to a question put to him as to whether he knew anything more about Chandanpadia incident, the witness said what he heard but did not see (Qq. 33—36). Thus on his own evidence he did not see anything of the incident after about six in the evening. He was not in a position to say how the police chased and what was the nature or quantum of the force that the police used in course of the disturbance which followed till late at night. Therefore, his evidence does not support or even refer to the alleged indiscriminate assault and oppression by the police.

8. The case of the administration is in substance this : They completely deny the charge of alleged indiscriminate assault by the police. They justify lathi charge and use of tearsmoke. In support of their case the ADM C. W. 10 Mr. R. K. De filed an affidavit and also gave evidence. Among the police officers at the spot, the Additional SP Mr. J. K. Das filed an affidavit purporting to explain the situation.

B. Was it necessary to resort to lathi charge and use tearsmoke :

9. It is said that there was serious clash and apprehension of danger during the first session of the meeting at Chandanpadi that evening of November 14, when Mr. Biju Patnaik while addressing was dragged down and manhandled. The question is : was the apprehension reasonable or was the ADM Mr. R. K. De, who ordered use of force, unnecessarily panicky?

10. In course of the meeting, which had commenced Mr. Biju Patnaik was trying to address the meeting which consisted of not less than 2,000 to 3,000 people. A group of persons at the centre, mostly looking like students, were demonstrating. All of them were shouting and it was a confused medley of sounds. There was a peaceful group in between the dais on which Mr. Biju Patnaik was standing and the demonstrators. These demonstrators were not only shouting, jeering, booing and gesticulating but also were trying to push forward towards the dais and were gradually pushing ahead. From their shouts, it was clear that the demonstrators did not want the meeting to be held; they did not want to hear Mr. Biju Patnaik. In a body, they were making a show of fisticuffs and by gestures threatening Mr. Biju Patnaik. They were prepared and intent on breaking up the meeting by resorting to violence. It is said that stones rolled in paper were also being hurled at the meeting.

11. By that time the ADM Mr. R. K. De had come to the spot on receiving information that serious trouble was being apprehended at this meeting. He had come there with the SDO and the Additional SP. The Town Inspector and the City DSP had also come and were present at the meeting. As a precaution, a police force had been posted near about the Town Hall building.

12. In course of the first phase of the meeting, Mr. Biju Patnaik and the conveners were trying their best, over the mike, to pacify the group of persons who were creating disturbance. Mr. Biju Patnaik, while trying to pacify the miscreants, requested them to be quiet and to listen to him and said that they were at liberty to leave the place. On this, the demonstrators at the centre of the meeting went on shouting and did not listen to Mr. Patnaik. In this way, the meeting continued till about 8 or 8-30 p. m. In the meantime those persons, who were at the centre creating disturbance by

shouting, booing, gesticulating and flourishing fisticuffs and hurling paper balls at the dais, had advanced towards the dais either by bypassing or driving away the persons in their front. Suddenly the miscreants tried to snatch away the mike from Mr. Biju Patnaik, pulled him down and he was found in the midst of the crowd. The evidence is that they tried to drag him towards the north of the dais to a distance; they were assaulting him with fisticuffs and by pulling his shirt. As a matter of fact his shirt was torn and he was being dragged away towards Shahid Bhawan; the supporters of Mr. Patnaik or the conveners of the meeting were also trying to save Mr. Patnaik from the crowd, while the crowd was dragging him; there was a scuffle. The persons, who were creating the disturbance, were very excited and in an agitated mood. It was apprehended that anything might happen and even might tell upon life.

13. All this time, the ADM was standing at the corner of the Municipal Office premises to the west of the dais along with the SDO and the Additional SP. In this situation, the ADM warned the miscreants to be peaceful, otherwise he would be compelled to declare the assembly unlawful. Several warnings were given but they had no effect; ultimately he declared the assembly unlawful. Apprehending danger to life, he directed the Additional SP to disperse the crowd, if necessary, by use of minimum force. Accordingly, the Additional SP ordered the force to come and disperse the crowd; strict instructions were given for mild lathi charge (C. W. 10 R. K. De Q. 115).

14. As soon as the police ran to the spot, the entire gathering ran away in all directions and most of them went towards the north, towards the Shahid Bhawan and the police chased them to the Municipal Office. The miscreants picked up brickbats from the rubbles stacked on the road and started brickbatting. It was described as a tug-of-war between the conveners and Mr. Biju Patnaik on the one hand and the miscreants on the other. The brickbatting, which had already started, was intensified as soon as the crowd reached the Municipal Office. Police ultimately drove them out further towards the north.

15. In the meantime, those who went away towards the west, that is towards the Town Hall side beyond the tank, also started hurling stones. It is said that brickbats also came from the east and west outside the Municipal compound. In this way, there was heavy brickbatting; the police on the

north were chasing the crowd ; the crowd were running away, again coming and brickbatting. During the period of the crowd hurling brickbats and police chasing the crowd, one constable was said to have been severely injured in his eyes and two constables on their head ; they were brought to Shahid Bhawan by other constables in a senseless condition. This sort of hide-and-peek—hit-and-run--tricks were going on on all sides.

16. The police used tearsmoke under the orders of the Magistrate at the Municipal market and also towards Ramchandra Bhawan. The ADM Mr. R. K. De said that, as the policemen were very limited, only six rounds of teargas shells were fired on the northern side near the Municipal gate and on the southern side beyond the tank near Ramchandra Bhawan gate (Qq. 45, 46). The use of tearsmoke was under control both at the southern and at the northern end (Qq. 117 to 120).

17. Having regard to the situation and the circumstances in which lathi charge and use of tearsmoke were ordered by the Magistrate and resorted to by the police, it cannot be said that it was in excess of the requirements in handling such a situation as had developed in course of the meeting. Thus the initial lathi charge and use of tearsmoke were not unjustified.

C. Was there indiscriminate assault on the crowd as alleged :

18. The total strength of the force, which operated in the area, was 30 to 40 sepoys under the command of the officers. There were in all three police vans; two platoons came in the three vans and were posted at places by way of precaution. The evidence of the ADM Mr. R. K. De is that it was at later stage at 10 or 10-30 p. m. that the rifle platoon came as reinforcement, when the situation was out of control due to incessant throwing of brickbats, crackers; policemen, who were there, were unable to control it. In answer to Q 704 the ADM Mr. R. K. De C. W. 10 said that he did not allow anybody to use firearms; strict instructions were given for mild lathi charge (Q 115).

19. It was till late at night that the disturbance continued in the area. It is in evidence that the miscreants had blocked the roads on Manik Ghose Bazar side by placing hume pipes so that the police might not be able to chase the miscreants and they (miscreants) might continue in indulging in brickbatting; the idea of the miscreants was that if the roads were

open it would be easier for the police to run after them; it was with that motive that they blocked the roads; they were throwing brickbats towards the police and police were chasing them away, this sort of skirmish between the miscreants and the police continued at both the ends, on the south and on the north (Qq 67 to 72). During this skirmish some constables were injured.

20. One main charge against the police was that the entire place was converted into a field of blood; the nearby tank became full of human heads; the people escaped by swimming. There is no evidence that the crowd was chased into the tank as alleged. On this point, the ADM Mr. R. K. De was cross-examined at length.

21. Undoubtedly, having regards to the situation of Chandanpadia, where the meeting took place, there was congestion when the meeting was dispersed by lathi charge. There are three exits from Chandanpadia as aforesaid- one is Choudhuri Bazar road, the other is Manik Ghose Bazar road and the third is Firingi Bazar road. The road leading towards Choudhuri Bazar is bifurcated near the Municipal Office- one goes in front of the Municipal Office to Choudhuri Bazar and the other gets into the Municipal market and reaches Choudhuri Bazar. Apart from these, there are also two other exits from Chandanpadia as explained by the ADM Mr. R. K. De (Qq. 107, 108, 110).

22. It is also in evidence that the area was not sufficiently lighted. The light was inadequate; besides it was a cloudy night. In answer to a question put to the ADM Mr. R. K. De, he said that there was no light on the embankment road passing by the side of the tank; there was only one bar light near the dais (Qq 642 to 644). Thus the exits on Manik Ghose Bazar side and Firingi Bazar side by the embankment road were practically dark. It may be noticed that this embankment road is a comparatively narrow road in between the tank on the one hand and a wall on the other side running up to the end of the embankment.

23. As a result of the initial lathi charge in front of the dais at the meeting, people were seen running away helter skelter in consternation in different directions. A stampede was brought about by the initial chase of the policemen to disperse the miscreants. Some people were seen running towards the tank out of panic. The possibility of some of them getting into the tank themselves for safety, while running

by the embankment road, which was dark with no lights and was at the time congested because of the suddenly dispersing crowd all together in a body, cannot be ruled out.

24. On this point, the evidence of Mr. R. K. De is that he did not see any part of the crowd falling into the tank; that in course of his moving about he did not see any person in the tank itself. He also said that from the position where he was standing he did not hear the alleged screaming of people who might have fallen into the tank (Qq. 57, 62, 112, 114). Mr. R. K. De said that he was always anxious that police should not do anything in excess; he wanted to check up, that is why he was moving, rather running, to and fro all along and that, to his knowledge, there was no excess on the part of the police (Qq. 574, 575).

25. As regards publications in newspapers by public men as to how and when they, while running away from the meeting, were chased and beaten by the police, Mr. R. K. De said that he had all this information subsequently when he read the statements three or four days after the incident. Mr. R. K. De also got the information from the Samaj all these days that people were chased by police up to the tank and that they had to swim across the tank. He said that he had no official information but he read these in newspapers. While his attention was drawn to these publications in the newspapers, Mr. R. K. De, however, reiterated to the effect that he never saw any policemen chasing anybody towards the tank, not even to the brink of the tank; he had not seen the people running towards the tank nor the police running behind such people; he had not seen anybody falling into the tank; if he had seen such a thing he would have taken action against the police; he would have prevented such chasing of the crowd by the police into the tank. In answer to Q. 596 Mr. R. K. De frankly stated that if the police had chased the crowd to fall into the tank, he would have considered that as police excess. This answer to the question was sought to be interpreted as an admission of police excess, but in the context of the earlier questions put to him, his answer to Q. 596 does not amount to an admission of police excess. It is a hypothetical answer to a hypothetical question, namely that, if he had seen any person falling into the tank by reason of police chase, he would have prevented such chasing, and if the police did not care for his order he would have taken action because he would have considered that as police excess (Qq. 595, 596).

26. It appears that many public men, including politicians and lawyers, had made statements in the newspapers about the chase and alleged beating by the police of members of the public, when running away from the meeting at Chandanpadia. In Q. 579 put to Mr. R. K. De the names of such gentlemen, who had made such statements in the press, had been mentioned. The High Court Bar Association also passed a Resolution Ext. 4 at a meeting held on November 16, 1964, which was this :

“This meeting of the High Court Bar Association while disapproving the behaviour of a handful of persons who did not permit the proceedings of the meeting, strongly resents and protests against the unwarranted, unprovoked and uncalled for lathi charge and police excess, indiscriminately let loose on the peaceful public including the Members of our Bar and even some of the conveners of the meeting, without any warning or any prior intimation during the Public Meeting held in the evening of Saturday the 14th November 1964 in the Municipal grounds, whereto the public were invited to attend.

This meeting is strongly of the view that the police who are pledged to protect the lives and liberties of all, had turned themselves in that night into a lawless force to attack and humiliate the citizens.

While condemning the President of the Meeting Mr. B. Patnaik for not restraining or protesting the police attack we demand that suitable and immediate action be taken by the Government against officers and the individuals responsible for their acts of omission and commission.

We wish to convey our strong reaction against the humiliation and assault meted out by the police and demand assurance for security and safety of the people, so that such occasions should never be repeated in future.

We also express our regret at the misreporting in the Newspapers outside Orissa to the effect that there was pelting of stones before the lathi charge.

This Meeting further resolves that the following telegram be sent to the President of India, the Prime Minister of India, the Home Minister of India and the Governor of Orissa.”

The text of the telegram which was sent in accordance with the resolution was this :

“REIGN OF TERROR PREVAILING AT CUTTACK (.)
LIFE, LIBERTY, PROPERTY IN IMMINENT DANGER (.)
SITUATION EQUALLY DISTRESSING THROUGHOUT
STATE (.) POLICE LET LOOSE (.) PRAY INTERVENE (.)”

27. It is unfortunate that none of the affected persons, who are stated to have been beaten by the police in the manner alleged, came forward to give evidence or even filed an affidavit in support of the charge against the police. It was not possible for the Commission to call any of them to give

evidence, as none of them had filed affidavits. Witnesses, called by the Commission, had to be confined to those who had filed affidavits.

28. As regards the resolution passed and telegram sent by the Bar Association, they were apparently on the basis of the information stated to have been given to that august body—the Bar—relying on which they expressed their resentment and protest as expressed in the resolution and the telegram. The opinion of the Bar has great weight in such matters of public interest. The Commission would have been happy, if any of the lawyers present at the meeting would have come forward to say if in fact there was any police excess at Chandanpadia as alleged. In this position, the Commission has necessarily to come to its conclusions on the materials before him.

29 With regard to the charge that the crowd was chased to fall into the tank, it is not unlikely that some members of the crowd while dispersing, being chased by the police, got into the tank for safety. This view is confirmed by the fact that under orders of the Magistrate the police used mild lathi charge, that is to say, simply raising the sticks which scared the crowd away in all directions including the adjacent tank side. Mr. R. K. De explained in his evidence what he meant by strict instructions given for mild lathi charge. He said that it is a matter of degree; where the miscreants are very adamant and countercharging the police, it may be necessary to resort to blows, but here by “mild lathi charge” what he understood was simply raising the sticks which scared away the crowd. Mr. R. K. De then said that in the present case as soon as the policemen raised lathis and ran towards the crowd, the mob ran away in different directions having been scared (Qq. 571, 573). In this context it is hard to accept the evidence of the ADM Mr. R. K. De that on the night of the incident he had not seen or even heard of any member of the crowd having fallen into the tank while scared away by police by lathi charges or that he had not even heard the noise or voice of anybody who are said to have fallen into the tank. It is not possible to miss such a sight in spite of the darkness in or around the tank.

30. Then the question arises: Could such falling into the tank have been avoided? There are only three exits which are narrow: even those exits are not sufficiently lighted; in fact the embankment road had no light at all; the road was throughout dark up to the end of the embankment. In such a situation when the police

raised lathis on the crowd by way of a mild lathi charge, as Mr. R. K. De described it, the crowd would naturally react in the manner they did, namely, to try to escape and to save themselves from being hit by lathis. As a result of the crowd all together in a body suddenly dispersing in haste in all directions, there was naturally congestion on the narrow roads by which the crowd was dispersing; some members of the crowd presumably had fallen into the tank and saved themselves from being hit. It being a cold winter night in the month of November, those, who had fallen into the tank, were certainly put to great inconvenience. But this could not have been avoided. The very situation and surroundings of the place—want of proper exits, congestion and darkness—were responsible for the inconveniences to which the members of the public were put. What therefore followed, as a natural consequence of a mild lathi charge, that is to say, raising of the sticks to scare away the crowd, was what normally could be expected in such a dark congested area.

31. It would have been graceful, if the ADM Mr. R. K. De had been bold enough to frankly admit these unavoidable inconveniences to which certain members of the public had presumably been put to, in course of mild lathi charge by the police in the manner it was done, and he should have expressed regret for the same. These discomforts and inconveniences, to which some members of the public were put, were the natural consequences of a lathi charge on a crowd which cannot be avoided.

D. Was anybody found injured as a result of lathi charge :

32. The evidence is that no report or complaint, in writing or orally, of any member of the public was received that they had been assaulted by the police at Chandanpadia meeting. In fact, no such report or complaint was made either on the night of the incident or even subsequently. It cannot, however, be ruled out that there might be some stray cases, where innocent citizens who came with the object of attending the meeting and who had not committed any unlawful act, had been chased and received blows during the charge (C' W 10 R. K. De Qq. 123, 124) The ADM had made enquiries on the spot. He said that he had no information that anybody was injured that night nor did he receive any complaint from the public during his stay in the area that anybody had been injured due to police action; there was no report that anybody had been admitted into any hospital or taken to the hospital, even for first-aid due to police action that night (Q. 600).

33. The question arises : How is it that in spite of police action till late at night nobody was found injured ? The reason, as given by ADM C. W. 10 R. K. De, was this :

“ Q. 115 What according to you would be the reason of there being no injured person lying around even though the policemen rushed at them with lathis.

A. Strict instructions were given for mild lathi charge. This might be the reason for not finding any injured person lying around in the area.

Q. 571 What do you mean by “mild lathi charge”.

A. It is a matter of degree my lord. Where the miscreants are very adamant and countercharging the police it might be necessary to take resort to blows, but ‘mild lathi charge’ what I understand is ‘simply raising the sticks’ which scared them away.

Q. 572 So raising the lathis you mean is a ‘charge’.

A. Yes. It is a charge because law does not prohibit it.

Q. 573 So in the Municipal meeting only lathis were raised according to you

A. What I saw that is my impression. As soon as the policemen raised lathis and ran towards the crowd, the mob ran away in different directions being scared.”

It is clear from the evidence that, as soon as the policemen raised lathis by way of mild lathi charge, the crowd ran away. In such a situation, lathis could not have struck the dispersing crowd. They were just scared away. In fact nobody was arrested; the aim was to drive out the miscreants (C. W. 10 R. K. De Qq. 127, 128). Mr. De said that he did not see any police officer assaulting any person of the crowd with lathi. The fact that nobody was found injured nor any report or complaint made about anybody having been injured at the meeting in course of the lathi charge confirms the view that there was no excess on the part of the police as alleged.

34. *Alleged assault on a rickshawala* : Apart from a vague allegation, made in paragraph 26 of the affidavit of Mr. Nisamani Khuntia, that a rickshawala was heavily assaulted by police, this was not further pressed before the Commission. There are no particulars as to the name of the rickshawala or when, where and how he was assaulted by police as alleged. There is not even any suggestion of such alleged assault to any of the witnesses called from the side of the administration. Accordingly, there can be no finding on the charge of such alleged assault for want of evidence.

35. *Alleged assault on a young boy* : It appears that one Mr. Jagannath Naik filed an affidavit on May 20, 1965 stating that his nephew Brajakishore Naik a student of Marwari High School, Cuttack, had been run over by a police jeep, while coming with terrific force, as a consequence of which he suffered most grievous injuries as fully stated in the said affidavit. Subsequently on May 29, 1965 the victim Brajakishore Naik himself filed an affidavit alleging that on November 15, 1964, that is to say, the day after the incident on the night of November 14, 1964, he had been to Chandan tank near Chandanpadia for washing his clothes and taking his bath; that on his way to the tank when he was near the Municipal Office, a police jeep carrying some armed military police madly rushed towards him and deliberately ran over him at a terrific force as a consequence of which he suffered most grievous injuries; that his muscle in the calf of the left leg was squeezed out of the body by terrific pressure; that he fell down on the ground having been momentarily unconscious. It was also alleged that the police people who were in the jeep got down and caught hold of him, carried him farther in a most inhuman way, severed the detached muscle from the leg by bayonet; that he was loudly crying all the while and protesting but all his entreaties did not rouse any pity in the police people. He described the manner in which he was treated as stated in the said affidavit and claimed compensation of Rs. 10,000 for the loss sustained by him and reserved his claim for further compensation as may arise in future.

36. On a petition made on behalf of this boy, the Commission on December 3, 1965 directed the Secretary to the Commission to visit the injured boy—then lying in the SCB Medical College Hospital—in company with lawyers of both parties with due notice to the hospital authorities in course of that day. Accordingly the Secretary visited the hospital as directed and submitted a report to the Commission about the condition of the boy as stated therein. The Secretary reported that though the boy may not succumb yet it was apparent that he may become invalid or at least cannot have strength to use his leg properly. Subsequently again on January 15, 1966, the Commission directed the Secretary to ask for reports from the Medical College authorities regarding the nature of the injury of the boy and the nature of the treatment he is getting in the hospital. Accordingly the Secretary wrote to the Superintendent of the Medical College Hospital on January 25, 1966. In reply to the said letter the Superintendent of the hospital wrote a letter, dated February 10, 1966

stating that the boy was admitted on November 15, 1964 for compound fracture of his leg; he was attended in the Casualty Department by Dr. P. K. Bhanj, Resident Surgeon of that day, and treatment was given by him also; the nature of the injury is stated to be grievous; that the boy is now being treated in the hospital and is improving well as reported by Dr. J. B. Mohanty, Reader in Surgery, the treating Surgeon of the boy—all as stated in the said letter. An intimation was given by the boy's uncle Mr. Jagannath Naik about his contemplated hunger-strike. Under the direction of the Commission, the Secretary sent to the Secretary, Home Department, Government of Orissa, all the relevant papers in this connection under a covering letter dated January 25, 1966.

37. This is an unfortunate case in which the young boy was run over by the jeep on a date and at a time where no police assault is alleged. This matter is therefore outside the scope of the terms of reference. The Government should, however, on compassionate grounds, make enquiries as to when, how and under what circumstances the boy was injured in the manner stated in his affidavit. It is a matter for the Government; the Commission gives no finding on this as outside the scope of the terms of the reference.

38. In the ultimate analysis, therefore, it cannot be said that there was any excess on the part of the magistrates and the police in taking the measures that they had taken in scaring the miscreants from the meeting on November 14, 1964 at Chandanpadia.

E. Findings on the facts :

39. As a result of the foregoing discussion, the Commission holds —

- (a) that the student agitation, which had started in September, was still continuing in the month of November; the educational institutions in Cuttack City, which reopened in November, were being picketed by the strikers as a result of which willing students could not attend; the situation was also tense in that the hunger-strikers were demonstrating and offering Satyagraha in front of the Collectorate; throughout the city there was still an atmosphere of disturbance;

- (b) that it was in this situation that the leaders made efforts to pacify the students in various ways by personal approach and by address at public meetings; one such meeting was held by the Congress on November 14, 1964 in Chandanpadia in the heart of the city which was addressed by Mr. Biju Patnaik for the purpose of giving some concrete programme to the public to bring back peaceful atmosphere throughout the State;
- (c) that disturbance was created at this meeting—presumably with the motive of frustrating the very object for which the meeting had been called by the conveners; this led to the police intervention resulting in stampede and skirmishes;
- (d) that in course of the first phase of the meeting, Mr. Biju Patnaik and the conveners were trying their best, over the mike, to pacify the group of persons who were creating disturbance; in this way the meeting continued till about 8 or 8-30 P. M.;
- (e) that in the meantime those persons, who were at the centre creating disturbance by shouting, booing, gesticulating and flourishing fisticuffs and hurling paper balls at the dais, had advanced towards the dais either by bypassing or driving away the persons in their front; suddenly the miscreants tried to snatch away the mike from Mr. Biju Patnaik, pulled him down and he was found in the midst of the crowd; the crowd tried to drag him towards the north of the dais to a distance; they were assaulting him with fisticuffs and by pulling his shirt; his shirt was torn and he was being dragged away towards the Shahid Bhawan; the supporters of Mr. Biju Patnaik or the conveners of the meeting were also trying to save Mr. Patnaik from the crowd, while the crowd was dragging him; there was a scuffle; the persons, who were creating the disturbance, were very excited and in an agitated mood; it was apprehended that anything might happen and even might tell upon life;
- (f) that in this situation the ADM warned the miscreants to be peaceful, otherwise he would be compelled to declare the assembly unlawful; several

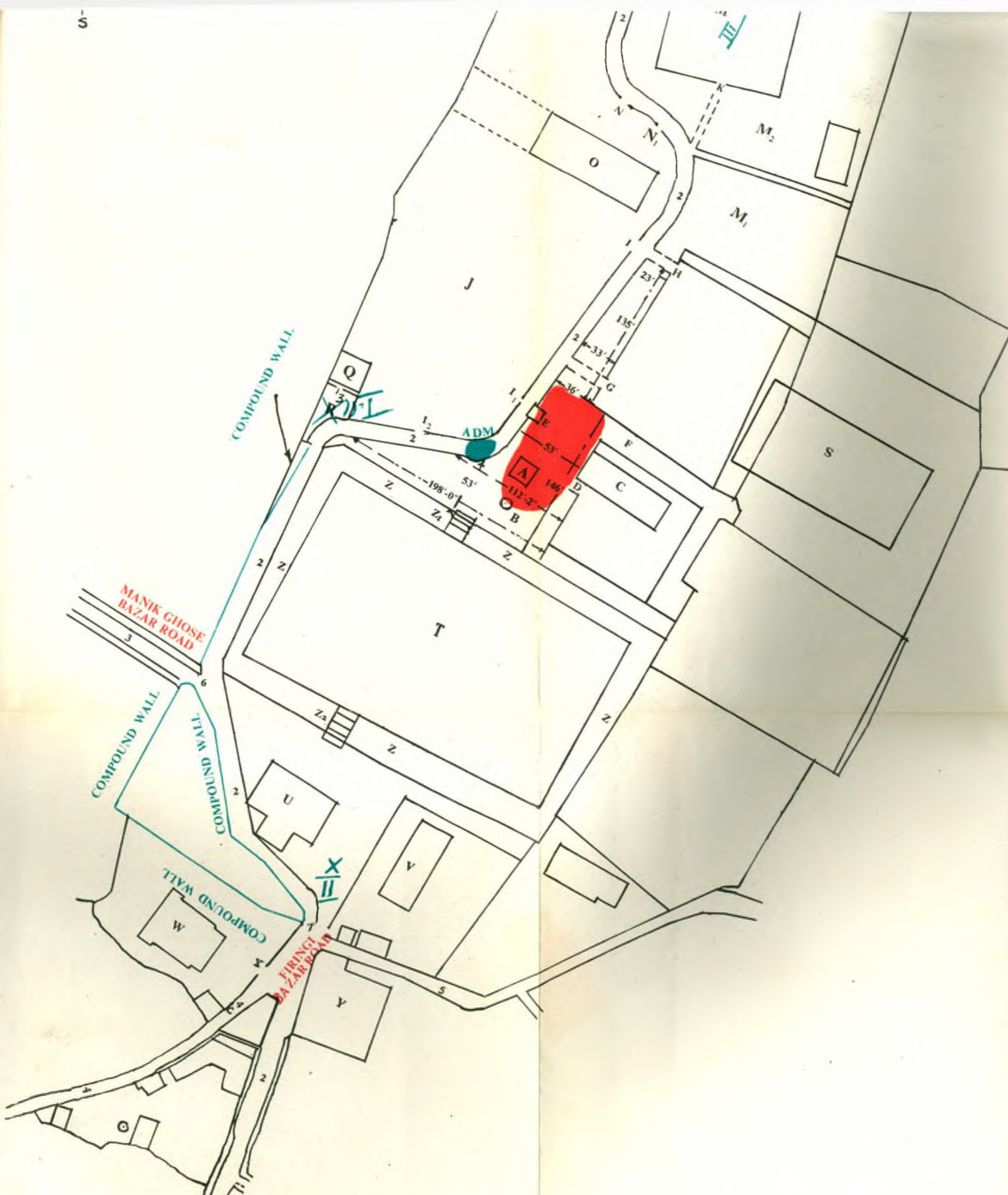
warnings were given but they had no effect; ultimately the ADM declared the assembly unlawful ;

- (g) that apprehending danger to life the ADM directed the Additional SP to disperse the crowd, if necessary, by use of minimum force; accordingly, the Additional SP ordered the force to come and disperse the crowd; strict instructions were however given for mild lathi charge;
- (h) that as soon as the police ran to the spot, the entire gathering ran away in all directions and most of them went towards the north, towards the Shahid Bhawan and the police chased them to the Municipal Office; the miscreants picked up brickbats from the rubbles stacked on the road and started brickbating; the brickbating was intensified as soon as the crowd reached the Municipal Office; police ultimately drove them out further towards the north;
- (i) that in the meantime those, who went away towards the west, that is, towards the Town Hall side beyond the tank, also started hurling stones; brickbats also came from the east and west outside the Municipal compound; in this way, there was heavy brickbating; the police on the north were chasing the crowd; the crowd was running away, again coming and brickbating;
- (j) that this sort of hide-and-seek--hit-and-run--tricks were going on all sides;
- (k) that in course of all this, one constable was severely injured in his eyes and two constables on their head; they were brought to the Shahid Bhawan by other constables in a senseless condition;
- (l) that the police used tearsmoke under the orders of the Magistrate towards the Municipal market and also towards the Ramchandra Bhawan; six rounds of teargas shells were fired on the northern side near the Municipal gate and on the southern side beyond the tank near the Ramchandra Bhawan gate; the use of tearsmoke was under control both at the southern end and at the northern end;

- (m) that the total strength of the force which operated in the area was 30 to 40 sepoy's under the command of the officers; there were in all three police vans; two platoons came in the three vans and were posted at places by way of precaution;
- (n) that having regard to the situation at Chandanpadia where the meeting had taken place, there was congestion when the meeting was dispersed by lathi charge; there are three exits from Chandanpadia—Choudhury Bazar road, Manik Ghose Bazar road and Firingi Bazar road;
- (o) that Chandanpadia area was not sufficiently lighted; the light was inadequate; besides it was a cloudy night; there was no light on the embankment road passing by the side of the tank; there was only one bar light near the dais; thus the exits, on Manik Ghose Bazar side and Firingi Bazar side, by the embankment road were practically dark; the embankment road is comparatively narrow road in between the tank on the one side and a wall on the other side running up to the end of the embankment;
- (p) that as a result of the initial lathi charge in front of the dais, people were seen running away helter skelter in consternation in different directions; a stampede was brought about by the initial chase by the policemen to disperse the miscreants; some people were seen running towards the tank out of panic;
- (q) that the possibility of some of them getting into the tank for safety while running by the embankment road, which was dark with no lights and was at the time congested because of the suddenly dispersing crowd all together in a body, cannot be ruled out; it is not unlikely that some of the crowd, while dispersing being chased by the police had got into the tank for safety; presumably some members of the crowd, thus suddenly chased in the circumstances, had fallen into the tank and saved themselves from being hit,
- (r) that it being a cold winter night in mid-November, those who had fallen into the tank were certainly put to great inconvenience; but this could not have

been avoided; the very situation and surroundings of the place—want of proper exits, congestion and darkness—were responsible for the inconveniences to which the members of the public were put; what resulted as a natural consequence of a mild lathi charge, that is to say, raising of the sticks to scare away the crowd, was what normally could be expected in such a dark congested area;

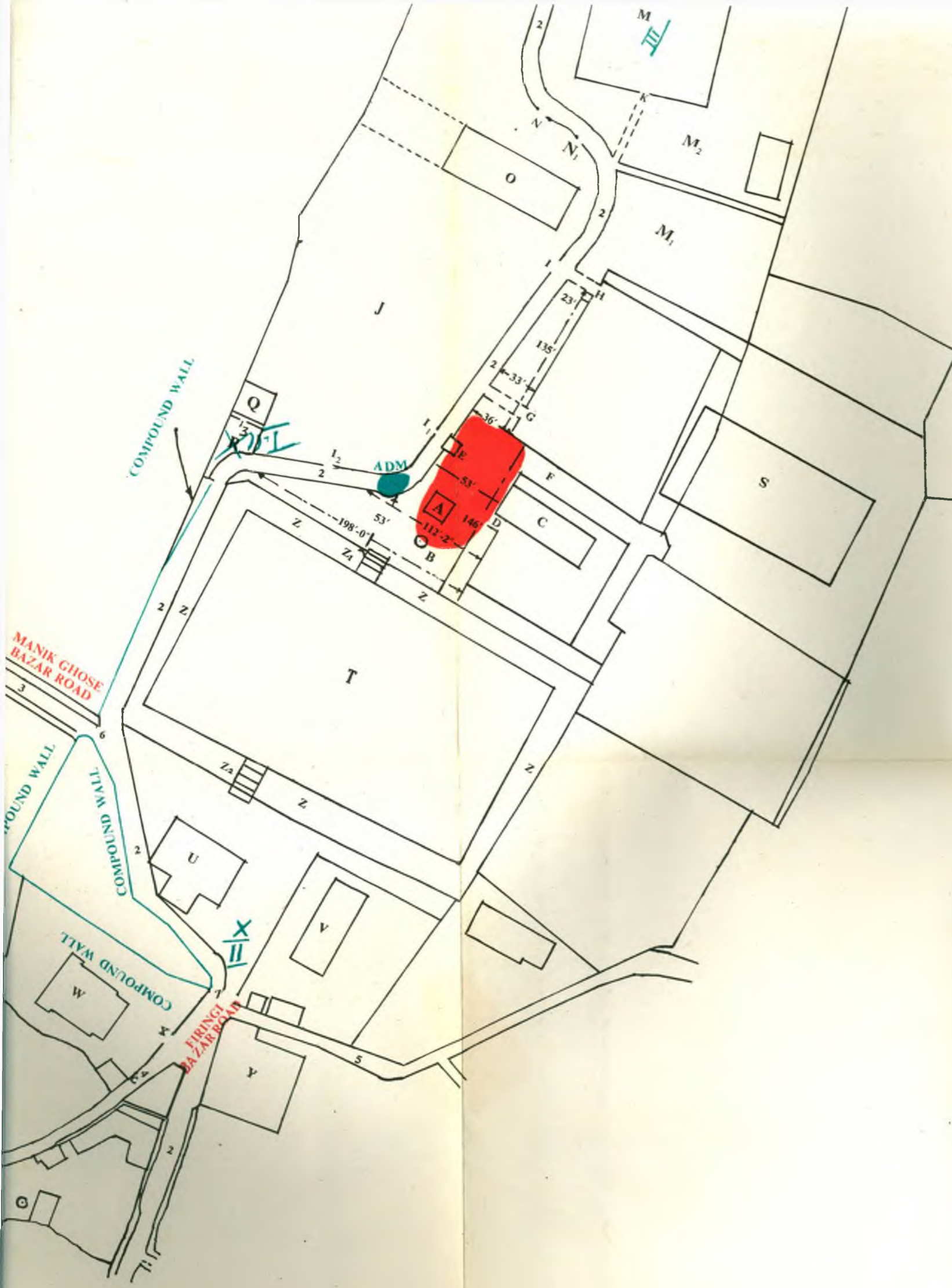
- (s) that it is unfortunate that none of the affected persons—who are stated to have been beaten by the police in the manner as alleged by public men including politicians and lawyers, in the newspapers and also in the resolution passed by the High Court Bar Association Ext. 4--came forward even to file an affidavit in support of the charge against the administration; it was not possible for the Commission to call any of them to give evidence, as none of them had filed affidavits;
- (t) that as regards the resolution passed and telegram sent by the Bar Association, they were apparently on the basis of the information stated to have been given to them relying on which they expressed their resentment and protest as expressed in the resolution and the telegram;
- (u) that as regards the alleged heavy assault by the police on a rickshawala, there is no evidence nor was this charge pressed before the Commission;
- (v) that as regards the alleged assault on a young boy Brajakishore Naik on November 15, 1964, that is to say, the day after the incident on the night of November 14, he had been to Chandan tank near Chandanpadia for washing his clothes and taking his bath and is alleged to have been assaulted by the police; it is an unfortunate case in which this young boy is said to have been run over by a police jeep on a date and at a time where no police assault is alleged; this matter is outside the scope of the terms of reference; the Government should however, on compassionate grounds, make enquiries as to when, how and under what circumstances the boy was injured in the manner stated in his affidavit; the Commission gives no finding on this charge as outside the scope of the terms of the reference ;



- Shri Biju Patnaik held a meeting.
- B. A small temple
 - C. The Municipal School
 - D. The Gate of Municipal School
 - E. Small Water pump house—idle
 - F. Open space in between Sahid Memorial Hall and the Municipality School.
 - G. & H. Two gates of Sahid Memorial Hall.
 - I. I₁, I₂, I₃. Gates on the compound wall of the Tennis Field.
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 - W. Rama Chandra Bhavan
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 - Z₁ & Z₂. Steps to the Tank
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 - 2. Jubuli Patna Road
 - 3. Town Hall Road
 - 4. Gosain Bagicha Road
 - 5. Road to Hadi Sahi
 - 6. Eastern Extremity of Town H
 - 7. Entrance to the Town Ha pound.

DISTANCES

A to R ..	155'-0"
A to Z ₁ ..	53'-0"
A to B ..	15'-0"
A to D ..	33'-0"
A to Compound wall of Tennis Ground	48'-0"
A to K ..	380'-0"
6 to 7 ..	231'-0"
7 to X ..	60'-0"
R to 6 ..	224'-0"
A to M ₁ ..	235'-0"
A to M ₂ ..	330'-0"
A to M ..	380'-0"
Length of tank from East to West.	307'-0"
Breadth of tank from North to South.	185'-0"
Width of road close to the tennis ground in eastern and southern side.	15'-0"



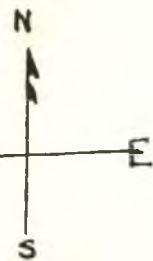
- Shri Biju Patnaik held a meeting.
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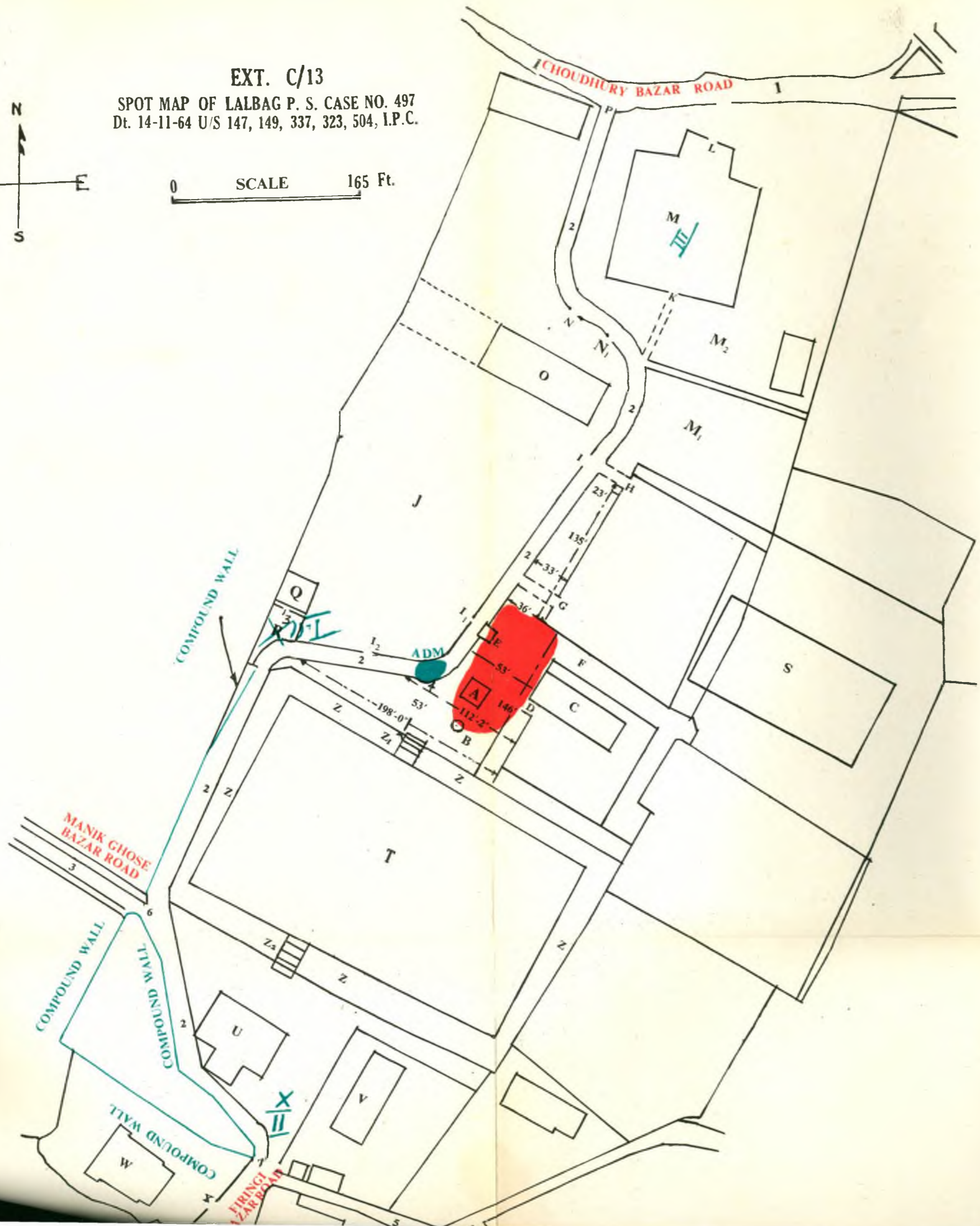
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EXT. C/13

SPOT MAP OF LALBAG P. S. CASE NO. 497
Dt. 14-11-64 U/S 147, 149, 337, 323, 504, I.P.C.



SCALE 165 Ft.



INDEX

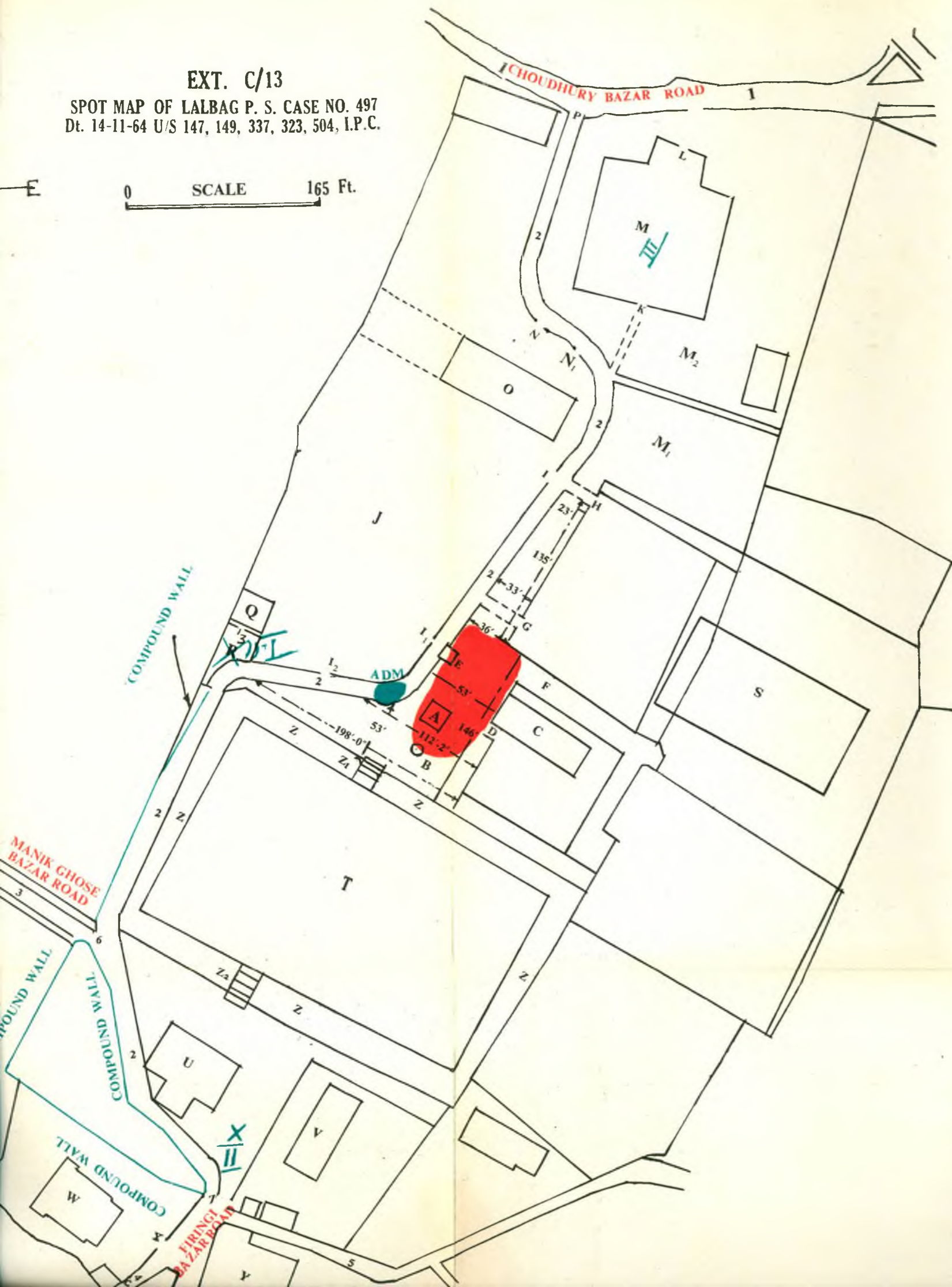
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- (w) that the charge against the police that the entire Chandanpadia area was converted into a field of blood, that the nearby tank became full of human heads is an exaggeration; the fact that nobody was found injured nor any report or complaint made that night or thereafter about anybody having been injured at the meeting in course of the lathi charge confirms the view that there was no excess on the part of the police as alleged ;
- (x) that in the result, therefore, having regard to the situation and the circumstances in which mild lathi charge and use of tearsmoke were ordered by the Magistrate and resorted to by the police at Chandanpadia on the night of November 14, it cannot be said that it was in excess of the requirements in handling such a situation as had developed in the course of that meeting and that such use of minimum force in the circumstances was not justified.

CHAPTER XII

JAGATSINGHPUR INCIDENT

	Paragraph		Paragraph
Introduction	.. 1—5		
A. Charge against police : defence of the administration	6—13		Rescue of women and children from the burning police quarters by Inspector Waiz Mohammad with a few constables : four rounds of revolver firing by Inspector in self-defence 64-65
B. Background : position prior to the incident	14—22		Second gunshot firing at 4-15 P. M. : situation after the first firing and before the second firing 66—72
C. Broad account of the sequence of events inside the police station premises and places nearby ending with gunshot firing on October 29 : 9-30 A. M. to 4-15 P. M.	23—40		Why was not the victim Krishna Prasad Mohanti immediately taken to the hospital 73—75
D. Was use of force from stage to stage —tearsmoke, lathi charge and ultimately firing— justified	41—76		Was second firing unavoidable .. 76
Unruly mob since 9-30 A. M. : declared unlawful as mobly at 3-05 P. M.	42—45		B. Telegraph and telephone lines cut off : culverts removed 77—86
First lathi charge 3-10 P. M.	.. 46—49		F. Alleged assault on Jyotirmoyee Patnaik 87—90
Use of tearsmoke at 3-15 P. M.	.. 50—53		G. Is the story of the policemen having set fire to the three police quarters inside the police station after everything was over acceptable 91—98
Second lathi charge at 3-25 P. M.	.. 54-55		II. Is the evidence of the sole witness on behalf of the public P. W 15 Mr. Dbruba Charan Patnaik acceptable 99—106
First gunshot firing at 3-45 P. M. : situation prior to firing : setting fire to police quarters at about 3-35/3-40 P. M. and mob carrying away brother of an ASI	56—63		I. Findings of the Commission .. 107

INTRODUCTION

Jagatsinghpur, recently declared as a subdivision of Cuttack, is situate at a distance of about 28 miles from the district headquarters. There is a good all-weather pucca road connecting Cuttack City with Jagatsinghpur. There is a regular bus service between Jagatsinghpur and Cuttack. There is a local post office very near the police station. It is fairly well populated with a busy market area. Many eminent public men of Orissa hail from Jagatsinghpur. It is a town where the public in general are fairly educated with progressive outlook. It is an important centre of all political parties in the State.

2. There are a College, a High School and a Girls' M. E. School. The Commission had the opportunity of visiting some of the educational institutions and the attached hostels which gave good impression of academic life and activity. It appeared that general public take interest in education. Prominent public men are also connected with the management

and organisation of these institutions—an encouraging feature in the civic life of Jagatsinghpur.

3. The general look of Jagatsinghpur with the College, Schools, Hospital, Post Office, Tahasil Office, Block Development Office, Sub-Registrar's Office, Police Station, Inspection Bungalow and busy market places would give any visitor an impression of an enlightened public. Jagatsinghpur public are in general politically conscious. They are responsive to any political movement in general interest of the country. Even in the past, during the pre-independence days, the contribution of Jagatsinghpur people in all political movements is well-known. The intelligentsia at Jagatsinghpur consist of eminent persons, such as politicians, educationists, lawyers and other public men. Jagatsinghpur though until recently was not even a subdivision, it holds an important position in popular estimation—both in and outside the State.

4. In the present context, the position of the police station is a relevant factor in the assessment of the situation during the days of students' agitation at Jagatsinghpur. It is almost in the heart of the town within an open compound between the hospital on the eastern side and the Inspection Bungalow on the western side. There are open fields, big tanks all around with an approach road from the main road—Jagatsinghpur-Balikuda road. In front of the police station there is an open ground for use by the public in general called Gandhi Padia with a statue of Mahatma Gandhi. It is said that public meetings are held at this place. In between Gandhi Padia and the police station, there is no compound wall—there is a barbed wire fencing with poles at places which also were found to have been broken. The police station is accessible from almost all sides north, south and west. On the eastern side there is a boundary wall for the hospital. There is no independent boundary wall for the police station on the eastern side. The police station is thus situated at a place, too much exposed from the point of security and protection in case of emergency. Moreover the fact that the Sub-Registrar's Office is also situate in the same building along with the police station makes the position worse. There can be no doubt that the public has the right of access to the Sub-Registrar's Office during office hours throughout the day. For a police station not to have an independent abode and to be housed along with another public office, in the manner the police station and the Sub-Registrar's Office have been housed in the same premises as at Jagatsinghpur, is an unfortunate phenomenon, which, in future, should be avoided.

5. There are three quarters for police officers on the north-western side in front of the police station. They consist of three detached thatched houses of bungalow type—one for the Circle Inspector and two for the ASIs. These quarters are also equally exposed on all sides with no boundary walls nor even any kind of fencing. These types of houses are not suitable for quarters of police officers having to deal with law and order problems from day to day. This aspect will be fully dealt with hereinafter in a separate chapter when recommending measures so as to obviate recurrence of such a situation in future.

A. Charge against police : Defence of the administration :

6. The allegations against the police were mainly confined to the incident on October 29, inside Jagatsinghpur Police Station premises. The case of the public, in substance, is that on the date of the incident October 29 since morning there was peaceful demonstration by the students until 3 P. M. After that, they were dispersing to attend a meeting at Gandhi Padia in front of the police station situate as aforesaid. While they were going towards Gandhi Padia there was simultaneous lathi charge and teargassing by police; within a few minutes thereafter there was indiscriminate firing by police. It was also alleged that the police had assaulted a young girl student—Shrimati Jyotirmoyee Patnaik. It was further alleged that after everything was over, the police set fire to the police quarters to save their skin and prestige and to suppress the truth. Their point is that long after lathi charge, teargassing, firing were over and the police station compound was cleared of the crowd by about 5 to 6 P. M., police people themselves set fire to the police quarters after removing all the articles; the alleged object of the police people was to create evidence to justify their action—teargassing, lathi charge and firing.

7. In support of the allegations against the police P. W. 15 Mr. Dhruva Charan Patnaik, a contractor, filed an affidavit on behalf of the citizens of Jagatsinghpur. He also gave evidence as the only witness from the side of the public on the Jagatsinghpur incident. He is said to be an eye-witness to the incident inside the police station premises. The relevant portions of his affidavit in support of the charge are these :

“15. That, at about 3 P. M. when the Satyagrahis began to disperse and return to Gandhi Padia to hold the proposed meeting, the police took recourse to lathi charge and teargassing, all at once and simultaneously.

16. That, although the teargas shells were fired within the range of 200 yards with the Thana building and its centre point, they did not prove as effective as envisaged. In the result the students, Satyagrahis receded from their original place and fled hither and thither. Neither any caution nor warning was given to the squatters prior to such sudden actions of the police. Nor even the assembly was declared unlawful. Nor any time was given to them for dispersal. The whole situation was unprovocative. Lathi charge and teargassing were never warranted. All were taken aback at the deliberate zoolum and madness and abnormal attitude of the police and that specially to young kids.

* * * * *

18. That, as a result of such teargassing and lathi charge, persons described in Schedule 'A' were injured.

19. That there seemed to be pre-planned action on the part of the police to violently attack and assault the students by brutal force. Pursuant thereto, without waiting for few minutes even, the police personnel resorted to indiscriminate firings at the command and *mala fide* instigations and belligerent encouragements of the ASP Shri Mallik. The Circle Inspector of Police Shri Waiz Mohammad, Shri F. C. Mohanty, officer-in-charge and Shri J. K. Mohanty, a junior SI, Jagatsinghpur PS.

20. That such firing was absolutely uncalled for, unwarranted and unnecessary in view of the prevailing situation and circumstances of the incident. No warning, caution and time lag were at all given to the students and the other onlookers nearby before such firing was resorted to. It was as if a mad orgy of the police, let loose.

21. That, in the result Shri Krishna Prasad Mohanty aged about 17, son of Shri Jagannath Mohanty of Tumba-Ardhisali, PS Jagatsinghpur sustained immediate death. Shri Purna Chandra Behera aged 14, son of Madhusudan Behera, PS Jagatsinghpur was seriously injured in his chest. He was removed to SCB Medical College Hospital where it took about a fortnight to cure him after extracting the bullet reposed in his chest by a major operation. Others who were hit by bullets during the firing are enumerated in the Schedule "B".

22. That, finding this shocking and hazard results of their wilful acts, the police people cleverly manipulated and arranged to set fire to a dilapidated abandoned thatched police quarter besides engaging some Dalals to inflict injuries on the police personnel and directing the police personnel to cause self-inflicting injuries on their bodies.

23. That, these were deliberately done subsequent to firing to cover and camouflage the intentional excesses, wrongs and *mala fide* acts of the local police and to save their skin and prestige from any future allegations, enquiry and investigation and to suppress the truth.

24. That, the local police snatched away the cycles of the persons enumerated in Schedule hereunder and detained them for long time so that the owners might be harassed. Some of the competent parts of some of these cycles are missing and replaced.

25 That, the local police through its agent Saboteurs, also cut the telegraph, telephone and electric lines and further dismantled and cut the culverts on highway roads and placed barricades on such roads in order to shunn and leakage of their zoolum to the outside world.

* * * * *

33. That the police called a young girl aged about 15 Shrimati Jyotirmoyee Patnaik, daughter of Shri D. C. Patnaik, a Matric student, while she was going to the proposed meeting and when she came near the police officer she was mercilessly assaulted by the police officers and she sustained grievous injuries thereby in her waist and other places of the body."

8. Mr. Jagannath Mohanty, father of the deceased Krishna Prasad Mohanty, who was shot dead during the firing, also filed an affidavit stating the circumstances in which the deceased had gone to the Thana premises. He said that his son was shot dead there during the police firing which was done in an "over-zealous and maddened manner"; that it was almost an act of murder and brutal killing. It was also alleged that the deceased, after having been hit by the bullet, was dragged inside the police station room from a distance of hundreds of feet; that the deceased was assaulted with bayonet and rifle butt when he fell down after the bullet hit him on the mouth; that no first-aid or medical attendance or treatment was given to him anywhere.

9. There is also an affidavit filed by Mr. Kunjabehari Mangaraj whose son Golakbehari Mangaraj is stated to have been severely assaulted by the police. He claimed compensation as payable by the authorities of the State.

10. Apart from these allegations, the further case of the public against the Magistrate and the police, as from time to time suggested to the Magistrate C. W. 16 Mr. S. N. Swain, is also this: The injured (referring to deceased Krishna Prasad Mohanty), who died subsequently, was still living when the Magistrate removed him to the police station and as a result of further beating his tongue came out as appears from the post-mortem report (tongue between the two rows of teeth). It was also suggested that at about 3 P. M. the demonstration stopped, students and some members of the public were collecting at Gandhi Padia to hold a meeting as previously fixed; when they were so collected for holding

the meeting, the Magistrate Mr. Swain and the ASP Mr. Mallik came to the police station; bullets were fired indiscriminately, both far and near, to places which were visible and invisible throughout the day and night of 29th October (C. W. 16 S. N. Swain Qq. 1051, 1061, 1062, 1053).

11. The case of the administration is that it was necessary to use such force from stage to stage, as the situation was gradually deteriorating ending with violent attack on the police station and setting of fire to the police quarters by the mob, which endangered life and properties of the Government and police personnel—all as explained in details by, among others, the Magistrate C. W. 16 Mr. S. N. Swain and C. W. 17 Inspector Waiz Mohammad in their affidavits and in evidence.

12. In support of the ultimate use of force—firing—the case of the administration is that at about 3-45 P. M. there was extreme mob violence by way of brickbating, rushing towards the police station and setting fire on the three police quarters. At this stage, when the situation was so grave, the first firing (4 rounds) was made at 3-45 P. M. towards the police quarters in order to save the houses and the inmates. There was no casualty as a result of the first firing. Thereafter the mob receded towards the rear of the police quarters. In the meantime the police officers, including Inspector Waiz Mohammad, were rescuing the inmates of the police quarters. It was then that the mob, which had receded, again violently attacked. Inspector Waiz Mohammad in self-defence had fired four rounds to the air from his revolver to scare away the mob and brought the family members of the police officers to the police station. As by then the mob swelled up to 5,000 and again rushed towards the police station at about 4-15 P. M., the police had to resort to firing for the second time (two rounds) as result of which Krishna Prasad Mohanty fell dead and another was injured and was carried away by some members of the mob. The case of the administration in support of the police action is fully discussed hereunder

13. These, in short, are the respective cases urged on behalf of the public and the administration.

B. Background : position prior to the incident :

14. Jagatsinghpur is a stronghold of Samjukta Socialist Party (hereinafter referred to as the SSP). The SSP, led by certain important leaders of the party at Jagatsinghpur at the time, took active part in instigating the students and in

helping them to make their agitation a success. At Jagatsinghpur proper there are mainly two political parties the Congress and the SSP led by their respective leaders.

15. The Students' Unions at Jagatsinghpur were well organised, evidently financed by the political parties. Mr. Upendra Lenka said to be aged 20-21, Secretary of Jagatsinghpur Students' Union, was among the student leaders in the forefront of the procession on the date of the incident October 29. The other student leader was Mr. Gourang Hota said to be aged about 22 or 23 of village Purohitpur within a mile and a half from Jagatsinghpur. Mr. Hota was at the time a student of BJB College at Bhubaneswar; he was also one of the student leaders who led the procession on the date of the incident as hereinafter stated.

16. In sympathy with the students' agitation at Cuttack in the month of September, ten students of Jagatsinghpur College informed the officer-in-charge, Jagatsinghpur Police Station on October 3, during the Puja vacation that they would launch a hunger-strike in front of the police station from the following morning, that is, October 4, as a protest against the police action at Cuttack. The hunger-strike notice Ext. C/39, which was received at the police station, was this:

"We, the following students of the local college and school of Jagatsinghpur solemnly declare to go on hunger-strike from date 4-10-1964 in front of the Thana office. As a protest against the—

- (1) Unprecedented brutal oppression of the Orissa Police over the students of the State.
- (2) Partial stand of the State Government on the problem of the students and police.

Our hunger-strike can only be called off when our demands of (i) Freeing all the arrested students unconditionally, (ii) Setting of a judiciary committee to decide and settle up the matter which has led to such a State-wide disturbance

It is for the information of whomsoever it may concern."

17. This notice was signed by ten students. A copy of the notice was forwarded to the District Magistrate, Cuttack, Chief Minister, Orissa, State Home Minister and the Union Home Minister. Immediately on receipt of the notice, leading public men of the locality, including the Headmaster of Jagatsinghpur High School, Principal, Jagatsinghpur College, Secretary, Jagatsinghpur College, were contacted by police. On October 4, these gentlemen persuaded the students and the students agreed not to launch hunger-strike and to wait for the opening of the educational institutions.

18. On the opening of the educational institutions on October 26, about 400 students of different schools and colleges at Jagatsinghpur took out a procession. They moved in the Bazar shouting slogans—

BIJU BIREN KEUNTHI, MADA BOTAL JEUNTHI—
ORISSARE KIYE CHHATARA, BIJU BIREN
ROUTARA, AMARA DABI PURAN HEU, POLICE
JULAM BANDO HEU, ETC ”

(Biju Biren where, there where there is liquor bottle ; who is vagabond in Orissa—Biju, Biren Routara ; our demands be fulfilled ; police zoolum be stopped, etc.)

They burnt an effigy of the Chief Minister in front of the gate of the police station. They held a meeting in the field of Jagatsinghpur Inspection Bungalow and proceeded towards the Tahasil Office in a procession shouting similar slogans. At the Tahasil Office, ten students offered Satyagraha, obstructed the workers and created commotion in spite of persuasion by the Tahasildar and the police officers present there but the students did not listen. The evidence of C. W. 17 Inspector Waiz Mohammad was that ten students were taken into custody and were forwarded to court when they refused to go on bail; specific cases were started against them in which charge-sheet was submitted against them (C. W. 17 Inspector Waiz Mohammad Q. 7).

19. On the following day October 27, again 500 students of different educational institutions of Jagatsinghpur, including about 100 girl students went in a procession up to the Tahasil Office raising similar slogans, burnt an effigy of the Home Minister in front of the Tahasil Office. On that day 50 students forcibly entered into the Tahasil Office in spite of the persuasion of the Tahasildar, the Block Development Officer and the police officers present at the spot. The students did not allow the staff to work and declared that they would paralyse the Government by stopping the work. They did not desist from such action in spite of persuasion by the officers as aforesaid. Thereupon the students were taken to custody, specific cases were started against them and they were also forwarded to court in custody as they refused to go on bail (C. W. 17 Inspector Waiz Mohammad Q. 9).

20. On October 28, the day before the date of the incident at about noon, about 500 students, including about 100 girl students, came in a procession to Jagatsinghpur police station compound raising similar slogans, surrounded the police station and the Sub-Registrar's Office which were in the

same building, kept the staff confined as a result of which free ingress and egress from the police station and the Sub-Registrar's Office were hampered; the staff were virtually confined. After long and sustained persuasion by the Sub-Registrar, police officers and local staff, the students finally dispersed at about 4-35 P. M.; while dispersing they announced that they would intensify their activities more vigorously on the following day; they declared that they would come in large number to see that the police station would not function; they were demanding to close the police station and the Sub-Registrar's Office and to join them in plain clothes (C. W. 17 Inspector Waiz Mohammad Qq. 12, 13, 15, 16 and 17).

21. In the meantime, intimation was sent by the local police to their headquarters at Cuttack about the brewing trouble at Jagatsinghpur. On October 28, at about afternoon the ADM directed the Magistrate C. W. 16 Mr. S. N. Swain to proceed to Jagatsinghpur immediately to remain in charge of the APR force there and to maintain law and order. Accordingly the Magistrate Mr. Swain left Cuttack in the afternoon and reached Jagatsinghpur in the evening; he first went to the police station and remained in charge of the APR force. The local police officers met the Magistrate and discussed the law and order situation at Jagatsinghpur and the incidents of the day October 28.

22. The strength of the force on October 28, which was also the strength on the date of the incident— was that there was 1 Circle Inspector, 2 Sub-Inspectors, 1 ASP who was an IPS Officer on training, 3 ASIs and 13 or 14 ordinary reserve constables; besides these, the magistrate had one section of armed police reserve consisting of 1 Havildar and 8 constables; the total strength would be about 30. This was all the force with which the situation on the date of the incident had to be dealt with by the magistrate and policemen at Jagatsinghpur. In this context, it may be noted that the Magistrate C. W. 16 Mr. S. N. Swain is a comparatively young and energetic officer. However, he had the advantage of having good counsel of Inspector Waiz Mohammad, an experienced police officer, who appeared to be sober and reliable. Inspector Waiz Mohammad was, throughout during the incident on October 29, the young magistrate's standby, on whose suggestions the Magistrate safely and rightly relied.

C. Broad account of the sequence of events inside the police station premises and places nearby ending with gunshot firing on October 29: 9 30 a. m. to 4-15 p. m.:

23. The Magistrate Mr. Swain, who already arrived from Cuttack the previous evening, was apparently prepared for the apprehended situation that he was to deal with in course of that day. It was from this feeling of reasonable apprehension of some trouble, which the students threatened the previous day at 4-35 p. m. before they dispersed from the police station premises, that early in the morning at 7 A. M. the Magistrate Mr. Swain came to the police station. He directed the Circle Inspector to keep the APR force in 'stand to position' in front verandah of the police station building with long lath's. The Circle Inspector carried out the order as directed; the Magistrate checked the APR force. Thereafter he discussed the available information about the students' programme on that date. The Magistrate was informed by the police officers that a procession was very likely to come to the police station on that date.

24. At 9-30 A. M. about 500 students including about 100 girls came in a procession by shouting the same slogans as on the previous day under the leadership of Mr. Gourang Hota, a student of BJB College, Bhubaneswar, who apparently came to Jagatsinghpur for the purpose and others. They surrounded Jagatsinghpur police station and Sub-Registrar's Office, which are situated in one building, by forming a strong cordon all round the police station by keeping the girls in the front with a view not to allow any one either to come in or to go out of the building. The boy students remained behind the girl students and gradually the gathering increased up to one thousand including some outsiders, who were found moving amongst the students and talking to them; some of the outsiders were reported to be SSP workers; the demonstrators did not allow the offices to function and went on shouting slogans continuously. Thus the staff of the police station including the armed police reserve force and other officers, on the spot including the Magistrate, remained confined inside the police station; the mob kept on increasing and in spite of repeated persuasions by the magistrate and the police officers they did not move.

25. In the meantime at about 1-15/1-30 P. M., the ADM of Cuttack Mr. S. N. Rath arrived at the Inspection Bungalow, Jagatsinghpur and called for the Magistrate Mr. Swain and the local police officers. Then the Magistrate, the ASP and

the Inspector went to the Inspection Bungalow by clearing their way through the mob with some difficulty and discussed about the prevailing situation with the ADM Mr. Rath. The ADM wanted to come to the police station building but the mob did not allow him to go inside it. Thereupon, the ADM went round the mob and explained to them to desist but it was of no avail. The ADM having failed to go to the police station returned to the Inspection Bungalow and told about the position to the Magistrate Mr. Swain and the ASP Mr. Mallik who both at the time were still in the Inspection Bungalow. Thereafter, the ADM left Jagatsinghpur for Balikuda after having given necessary instructions to the local officers at the spot.

26. At about 3 p. m. the situation further deteriorated; a group of students attempted to force entry into the police station office room by shouting to enter into it and to destroy the police station records; some more people joined the mob armed with deadly weapons such as lathis, kataris and a.c.s. The Magistrate and the police officers asked the mob to be calm and to disperse peacefully as they were violent. The unruly mob did not listen but continued to push towards the police station building and the verandah.

27. It was in view of this situation that the constables were made to form a cordon in front of the police station with a view to prevent forcible entry by the mob. The mob however tried to break the cordon and enter into the police station; in the process a section of the mob came to the front from behind and the girls in the front fell back to the rear.

28. It was noticed that at the instigation of some of them, the mob gradually became violent and started pelting stones as a result of which the Magistrate and a Junior Sub-Inspector were injured and some of the glass panes of the police station office doors were broken. The mob was trying to enter into the police station office room forcibly where there were valuable records, Government properties, arms and ammunitions, postal cash, revenue cash and other valuables. The Magistrate warned the mob to desist from lawless acts, not to resort to violence and to disperse within five minutes. In spite of these warnings, the mob did not stop from lawless acts and continued to throw brickbats and to force their way to get inside the police station building. Finding the situation very tense and grave, the Magistrate declared the assembly unlawful and again warned them loudly

and repeatedly to disperse immediately. At this a section of the mob advanced shouting at the Magistrate and the police personnel saying—

“YE SALANKU MARA, BIHDI ANA, JAHA HEBA
DEKHA JEBA.”

(Beat these Salas, drag them, we will see what happens)

29. At about 3-10 P. M. as the situation gradually deteriorated and finding no other alternative than to disperse the mob by force and having been satisfied that use of force was necessary, the Magistrate ordered the Circle Inspector to disperse the mob by lathi charge. There was no scope to use teargas at that point of time because the mob by then was very close to the verandah of the police station. C. W 17 Inspector Waiz Mohammad directed the Havildar and six constables to lathi charge. As a result of lathi charge one Chittaranjan Pradhan was injured and was taken to custody. One Muralidhar Sahu was also arrested and taken to custody. On account of lathi charge, the crowd receded a few steps but again moved forward in a more violent manner and hurled brickbats and glass bottles, as a result of which several police personnel were injured.

30. It was at that stage that the Magistrate finding the situation still grave ordered use of tearsmoke and accordingly some tear shells and grenades were used. But this was not of much effect; the mob continued to surge forward throwing brickbats and shouting violently

31. At about 3-25 P. M. the use of tearsmoke having been found not effective, the Magistrate ordered dispersal of the mob by lathi charge; they were charged accordingly. The mob then receded only to a little distance but remained encircling the police station. They were shouting in a frenzied manner and throwing brickbats all the time. By this time, the mob had increased to about 2,000. They were threatening that they would kill the police personnel and their families, burn and destroy their houses and properties including the police station.

32. Then the mob made a sudden attack on the police station and the staff quarters from different directions in separate groups having been armed with Kataris, lathis, axes and other deadly weapons. They began to shower stones and brickbats and simultaneously set fire to the quarters of the two ASIs situate in front of the police station on the north-western side as aforesaid. They also set fire to the cattleshed

of the Inspector attached to his quarters. The mob started removing the properties from these quarters and assaulted some of the inmates. In so doing, some members of the mob forcibly carried away the brother of one ASI from his quarters; other members of the mob remained surrounding the quarters which were ablaze with the family members of the ASI inside.

33. The mob huddled brickbats inside the quarters of the Inspector and attempted to enter by breaking open the door. All along, the Magistrate and the police personnel were shouting and warning the mob to disperse but it did not listen. Thus the situation became very grave and alarming; it endangered the life and property of the Government and police personnel; the three police quarters were still burning.

34. This was the dangerous situation round about 3-45 P. M. The Magistrate consulted the police officers at the spot. There was no other way to control the situation; it was decided that firing was necessary. Thereupon the Magistrate ordered Inspector Waiz Mohammad in charge of the police force to open fire to disperse the mob. Under the command of the Inspector, two rounds were fired by two constables—one each—towards the quarters of the ASI which was then ablaze; and two rounds were fired by two other constables—one each—towards the Inspector's quarters where a big mob was still attempting to break open the house; the quarters were still burning. No casualty was noticed as a result of firing of these four rounds but the mob withdrew to the rear of the quarters. Thereupon the Magistrate ordered to cease-fire.

35. In the meantime, upon seeing the lives of the family members of the police officers inside the quarters, which were burning, in danger, Inspector Waiz Mohammad along with three constables rushed to rescue them. The officer-in-charge Mr. Fakir Charan Mohanty was left in command of the armed police at the police station. While the Inspector and his men were rescuing the family members, the mob which had receded to the rear of the quarters on the western side again rushed towards the police rescue party with brickbats and other deadly weapons. It was in that predicament that the Inspector, in self-defence, fired four rounds to the air from his revolver to scare away the mob and brought the family members to the police station building. The Inspector then remained at the police station.

36. The time by then was about 4-15 P. M. The mob had swelled up to 5,000. Suddenly a section of the mob in front side of the police station rushed towards the police station as well as to the quarters of the Inspector and the ASIs by throwing brickbats and shouting violently,

“ SALANKU KHATAM KAR ”

(Finish these people)

and by brandishing lathis. The mob was warned but it did not listen. In such a situation the Magistrate was satisfied that firing was necessary ; he ordered the Inspector to open fire to disperse the mob. Then two rounds were fired. As a result of this firing one person fell down dead ; he was taken charge of by the police ; the deceased was holding a brickbat in his hand. Another person was injured having been hit by the bullet ; he was carried away by some members of the mob to the nearby hospital. As a result of this firing, the mob receded from the police station compound but still remained surrounding it, shouting violently, apparently waiting for an opportunity to launch further attack. After the firing of the two rounds when the mob started receding, the Magistrate gave cease-fire order to the Inspector.

37. Thereafter, the violent mob, which had thus so receded after the second firing, cut off the electric lines as a result of which the entire police station area was in darkness. Apparently, the electric lines were cut off by the mob with the object that they would be in an advantageous position to attack the police station and the staff during night. The mob then went to the Inspection Bungalow and set fire to the door screens.

38. Thus, by the end of the day, the situation became calm after the two firings. Throughout the night the Magistrate and the police remained on watch guarding the police station and staff quarters by posting armed sentries. The mob kept on shouting violently ; at intervals surged forward ; attempted to set fire to the quarters of the Junior Sub-Inspector ; they also attempted to rush through the police station compound. It was in this situation that the Magistrate and the police officers had to direct firing in the air at intervals to scare away the mob. During the night seven rounds were fired in the air to avoid further harm and destruction.

39. Apart from the happenings inside the police station premises, the mob also attacked the post office. At about 3-45 p.m. a mob of about 100 in number—most of them students and some public—attacked the post office ; first cut off the telegraph and telephone lines ; then they went on throwing brickbats to the windows of the post office and Sub-Postmaster's quarters as a result of which the members of the post office staff were frightened and compelled to stop work to save their lives.

40. The mob also damaged some culverts on the road with the obvious object of stopping the arrival of the reinforcement of police force by road from Cuttack.

D. Was use of force from stage to stage—tearsmoke, lathi charge and ultimately firing—justified :

41. With this general picture of the incidents throughout day and night on October 29, it is now to be considered in detail how the situation was developing from stage to stage since the morning and whether or not the use of force—tearsmoke, lathi charge and ultimately firing—as resorted to by the police against the mob was justified.

42. *Unruly mob since 9-30 a.m. : declared unlawful assembly at 3-05 p.m. :* At 9-30 A.M. in the morning the students surrounded the police station ; kept the police staff and the Magistrate confined, did not allow anybody to go out or come in. The Sub-Registrar's staff was not also allowed to come to the office. Practically, the police station and the office of the Sub-Registrar could not function. In this context, the Sub-Registrar Mr. Balaram Padhi filed an affidavit describing how he and his staff were obstructed from attending office. He came to his office at about 10-30 A.M. and found that a large number of students including girls had already surrounded his office and also the police station. The students had posted a black flag on the approach road of the police station in front of the building ; they also fixed a mike to the volley-ball post inside the compound of the police station. They were shouting similar slogans as on the previous day. By the time the Sub-Registrar reached there, his entire staff had arrived but they were waiting outside ; they were not allowed by the students to enter into the office. The Sub-Registrar then made an attempt to enter but the students did not allow him to do so. The girl students had formed a cordon around the building below the verandah by holding hands and the boy students were standing in groups at

different places. When the Sub-Registrar approached them, the girl students did not allow him to enter. Besides, the boy students came up and advised the girl students not to allow the Sub-Registrar to enter unless some harm was done to them. The Sub-Registrar and his staff tried their best to persuade the girl students to allow their passage but in vain ; they tried for about an hour to get access into the office from the front and the rear but everywhere they faced the same obstacle ; policemen were posted on the edge of the verandah on both sides ; the police officers present explained to the students not to cause any obstruction and allow the Sub-Registrar and his staff to enter into their office but to no effect. When at last it was found that the students were determined and were not amenable to reason, the Sub-Registrar went back to his quarters. He also told his staff to go back to their quarters. This was about 11-30 A. M.

43. The student demonstrators were creating disturbance by bringing black flag and posting it at the police station, shouting slogans by raising their fists and hands. They were also obstructing the public offices—Sub-Registrar's Office and the police station—from functioning. All these activities on the part of the demonstrators were illegal—not permitted by the law. On the question why the Magistrate did not declare the assembly unlawful earlier if the crowd was in his opinion unlawful from the very moment they reached the police station, the explanation of the Magistrate (C. W. 16 Mr. S. N. Swain) was that he did not declare it unlawful at about 9-30 A. M. or a little later because the mob did not then carry any weapons, they were not violent at that time and they did not throw brickbats nor did they set fire to the houses nor resort to looting. The Magistrate said that the crowd were only shouting slogans and obstructing the passage, he declared the assembly unlawful only when the mob pelted brickbats and attempted to break the police cordon (C. W. 16 S. N. Swain Qq. 262 and 263).

44. In course of the disturbance, the Magistrate and the police officers went to different points all around the mob, gave repeated warnings and told them to disperse within five minutes. The unruly mob did not listen but continued to push inside the police station building and came upon the police station verandah. As the mob was trying to enter into the police station room forcibly where there were valuable records, Government properties, arms and ammunitions, postal cash, revenue cash, the Magistrate warned the

mob to desist from lawlessness, not to resort to violence and to disperse. In spite of the warnings, the mob did not stop from lawlessness but continued brickbattling and tried to force their way inside the police station building. In view of this grave situation the Magistrate declared the assembly unlawful at 3-05 P. M. and again warned them loudly and repeatedly to disperse immediately.

45 The manner in which the assembly was declared unlawful was this: The Magistrate explained to the mob in Oriya language. He directed the Sub-Inspectors—one Sub-Inspector on the northern side and another on southern side—to explain his order in Oriya. Then the Magistrate himself, the ASP and the Circle Inspector also moved on two sides and explained to the mob to disperse within five minutes. After the passage of five minutes—one or two minutes more time was given to the mob to disperse but it did not disperse.

46. *First lathi charge at 3-10 p. m.:* In spite of repeated warnings by the Magistrate and the police personnel, the mob did not show any sign of receding; the mob went on pelting brickbats continuously and shouted slogans. It is in evidence that some of the members of the SSP instigated the mob thus:

“ PASA THANA BHITARE : POLICEBALA KICHHI
KARI PARIBE NAHI : BIHDI ANA JAHAIIEBA
DEKHAJIBA ”

(Enter into police station; Police people cannot do anything; drag out- -we will see what happens).

In this very grave situation, the Magistrate ordered the Circle Inspector to disperse the mob by use of force, that is, mild lathi charge. The Inspector accordingly directed the Havildar to disperse the mob by lathi charge. Thereupon the Havildar with six APR constables with long lathis jumped from the verandah and resorted to lathi charge. As a result of this lathi charge, the mob receded to a distance of about 100 feet. The mob on the southern side were pushed back and came to the front, that is, on the northern side and joined the mob there. Then the mob surged forward towards the police station pelting brickbats, broken glass pieces and shouting violently (C. W. 17 Waiz Mohammed Q. 86).

47. The exact manner, in which the first lathi charge was conducted as stated by witnesses, was that while the charging police party advanced with long lathis the mob cleared and the APR men were not mixed up with the crowd: lathi charge started from the north and thereafter lathi charge was

done on the east and west side. The charging party (APR force) while conducting the lathi charge went about 100 feet towards the north; towards the east and west the lathi charge was conducted to a distance of about 70 to 80 feet approximately. As regards the south there was no lathi charge towards the south in the true sense of the term; the mob in the south were simply pushed away by the ordinary reserve constables. During the lathi charge Mr. Chittaranjan Pradhan, a member of the public was injured; the mob attacked the charging APR force with brickbats and lathis as a result of which a number of police personnel were injured.

48. After lathi charge the APR force returned and took position on the ground on the northern side of the main police station building. On the question why the APR force did not charge the mob further the reasons given were these: At that stage the number of the mob was large. The police officer, who led the APR force during the charging operation, directed them to return after charging about 100 feet away from the main police station building. Only one Havildar and six constables charged the mob with lathi; they were about to be over-powered; it was thought proper to get retreat of the charging party for their safety.

49. In spite of the first lathi charge, the mob were throwing brickbats and were brandishing their lathis. Thereupon the entire police force at the police station was mobilised. Although by the first lathi charge the mob receded to a distance of about 100 feet from the main police station building, still at the end of the lathi charge the mob again closed in and threw brickbats heavily. The attack by the mob was going on—it was a continuous process; the mob was closing in up to the distance of the barbed wire fencing or a little further towards the police station.

50. *Use of tearsmoke at 3-15 p. m.* : Thus although as a result of the first lathi charge the mob receded to some distance as aforesaid, they continued surrounding the police station on three sides—east, west and north—and heavily brick-batting. Due to such brickbatting some more police constables and officers were injured. The evidence of the Magistrate is that at that stage the Magistrate consulted Inspector Waiz Mohammad and other police officers; the Magistrate further said that he himself was satisfied that the use of tearsmoke was then absolutely necessary. At that point of time there

was no other alternative than to disperse the mob by the use of tear smoke. Accordingly, he ordered the Circle Inspector to disperse the mob by the use of tear smoke at about 3-15 p. m. The Inspector carried out the order; about ten tear shells and three grenades were fired (C. W. 16 S. N. Swain Qq. 42, 43).

51. The manner in which the use of tear smoke was conducted and its effect on the mob were these: The tear gas party, that is, two constables who were in charge of tear shells fired tear shells and threw hand grenades at the mob. The mob then receded to a distance of about 140 or 150 feet towards the north, east and mostly towards the west, that is, towards the police quarters; some members of the mob put wet clothes and wet napkins on the shells and took them away towards the tank on the northern side. The mob was still throwing brickbats continuously from eastern side, northern side and southern side also.

52. As a result of use of tear smoke, the mob receded towards the northern and western directions of the main police station building; they receded from the front of the police station to a distance of 120-130 feet approximately towards the north, and to only about 40-45 feet approximately from the place where the mob was standing before the use of tear smoke. The throwing of 10 shells and three grenades was not fully effective (C. W. 16 Magistrate S. N. Swain Qq. 42 and 43).

53. Here the questions arose: Why was it that more tear gas shells and grenades were not used until it was effective to disperse the mob? Why was it that more tear smoke shells were not fired when it was found that the mob was receding as the effect of tear smoke? The explanation of the Magistrate in his evidence was that as far as he could recollect the entire stock was used; they were almost at the end of their stock of tear smoke ammunitions. The Magistrate could not recollect the exact number of tear smoke shells or grenades that were in stock at the police station at the time; he however denied the suggestion that because the quantity of tear smoke shells or grenades was limited he had almost no choice but to use anything that was there. He said that it was the Circle Inspector Waiz Mohammad who chose out of the stock the shells or grenades that were to be used (C. W. 16 S. N. Swain Qq. 640-643).

54. *Second lathi charge at 3-25 p. m.* : As hereinbefore stated, the use of tear smoke did not have much effect although the mob receded about 40 or 50 feet from the place where they

had closed in. The mob was continuing to close in and was throwing brickbats and brandishing their lathis; in that process about 13 to 14 police personnel were injured. As the use of tearsmoke had not the desired effect, the Inspector reported to the Magistrate that there was necessity for the use of lathi and he wanted the Magistrate's order accordingly. After considering the circumstances the Magistrate was satisfied and agreed with the Inspector that the second lathi charge was absolutely necessary. There was no other alternative than to disperse, by further lathi charge, the mob which was advancing with brandishing lathis and throwing brickbats. At about 3-25 p. m. the Magistrate ordered the Inspector to disperse the mob by lathi charge for the second time. The Inspector directed 1 Havildar, 6 APR constables and 7 or 8 ordinary reserve constables who charged the mob with long lathis for the second time after 3-25 p. m. approximately. The total number of policemen in the charging party was about 14 or 15. The charging party advanced towards the north approximately 170 to 180 feet; towards the east and west about 80 to 90 feet. The second lathi charge continued for about 4 to 6 minutes.

55. The manner in which the second lathi charge was carried out was this : These 14/15 policemen in the charging party did not separate themselves but they went in a batch and charged the mob from north side, then to the east side, then to the west side—so on. They first charged towards the north up to the Gandhi statue; towards the east they went about 120 feet; and to the west about 110 or 120 feet; evidently the estimate of these distances as stated by the witness was only approximate and could not be precise. The policemen went straight up to the Gandhi statue on the north; after charging the mob at the north side, they immediately charged the mob on the eastern side, instead of returning to the police station; thereafter they went to charge the mob on the western side—all in about a circular way; the entire movement of the police charging party was in a circular manner during the second lathi charge. While thus charging in a circular manner, during their movement from one side to another, they were changing their face in different directions. In further clarification, as to the manner of the second lathi charge, it was stated in evidence that after reaching the Gandhi statue in dispersing the mob on the north side, the charging party dispersed the mob on the east side and thereafter they came almost near- but did not return to- the police station; thereafter they charged the mob at southern end of the western side; then they charged the mob on the northern end of the

western crowd. As a result of this lathi charge in this manner, the mob receded to about 200 feet from the main police station building but continued surrounding the police station; they were still throwing brickbats.

56. *First gunshot firing at 3-45 p. m. : situation prior to firing: setting fire to police quarters at about 3-35/3-40 p. m. and mob carrying away brother of an ASI:* After the second lathi charge it was noticed that the mob, which receded from the police station compound, again surrounded the quarters of the Inspector and the two ASIs. The mob came from the north, west and east and partly south-western direction. It appeared from the huge number of the mob which was greatly increasing that gradually outsiders (non-students)—looking like Goondas and loafers—were coming in. The evidence is that they were not students; they were undesirable elements of society who took advantage of the situation to loot properties. It was these elements who evidently by this time came into picture for the first time; they were shouting to burn the quarters, to loot the properties and to kill the family members of the police officers at the police station. After sometime, it was noticed that the mob were taking away properties from these quarters. Thereafter it was noticed that the two quarters occupied by two ASIs were on fire.

57. It would be approximately 3-35/3-40 p. m. when the first of the quarters was set on fire. Thereafter the cattle-shed of the Inspector was set on fire. The evidence is that all the three quarters were set on fire almost simultaneously—immediately one after the other. The evidence of C. W. 17 Inspector Waiz Mohammad was that the house of ASI Sisir Kumar Mohapatra was seen on fire first; at that point of time neither Inspector's quarters nor ASI Bhagawan Mohanti's quarters were on fire; after he found the ASI Sisir Kumar Mohapatra's quarters on fire, Inspector Waiz Mohammad saw the kitchen of ASI Bhagawan Mohanti and his (Inspector's) cowshed on fire almost simultaneously (C. W. 17 Inspector Waiz Mohammad Qq. 900 to 902).

58. When the police quarters were seen on fire, the family members who were inside the quarters brought out their belongings like bedding, suit-cases and other things outside the quarters. The quarters of ASI Bhagawan Mohanti was vacated after his kitchen, the house of the ASI Sisir Kumar Mohapatra and the Inspector's cowshed were set on fire by the mob. The evidence of Inspector Waiz Mohammad was that

he saw trunks and suit-cases being removed from the quarters of ASI Bhagawan Mohanti by him and his brother immediately after the house of the ASI Sisir Kumar Mohapatra was set on fire and prior to the kitchen of the ASI Bhagawan Mohanti was seen on fire. It was apprehended that the ASI Bhagawan Mohanti's quarters which was very close and in fact adjacent to the quarters of ASI Sisir Kumar Mohapatra might also catch fire, so ASI Bhagawan Mohanti began to remove his belongings outside. It is in evidence that the mob snatched away these belongings and went away. There is direct evidence of the eye-witnesses who saw the members of the mob carrying away the personal properties of the Inspector, namely, his clothes, which were drying outside and some of the personal belongings of the ASI which were brought out when the house was set on fire and that the mob carried away these properties.

59. That apart, the mob also physically carried away the brother of ASI Bhagawan Mohanti and assaulted him. It was seen that the wife of the ASI was crying and shouting aloud in front of the verandah that his (ASI's) brother had been taken away by the mob from his quarters.

60. Then seeing that there was grave danger to life and property of the family members of the police personnel there, the Magistrate consulted Inspector Waiz Mohammad and other police officers who advised that firing then was very necessary. It is not that the Magistrate ordered firing as soon as he saw flames in the police quarters; he discussed the situation with Inspector Waiz Mohammad and other officers at the spot for a few minutes and then ordered firing (C. W. 16 S. N. Swain Q. 743).

61. The officers at the spot did not get panicky; they carefully considered the situation and then ultimately decided firing. The situation was that there was no other alternative than to disperse the mob by firing. The Magistrate then ordered the Inspector to open fire to disperse the mob at about 3-45 P. M. The Inspector gave necessary directions to the APR Havildar. Four rounds were fired at that time: two rounds were aimed towards the ASI's quarters on fire and two rounds were aimed towards the Inspector's cattleshed on fire where there was a huge crowd. These four rounds of bullets were fired simultaneously by four constables - two constables faced towards the quarters which was completely burnt and the other two constables were facing towards the Inspector's quarters. No casualty was noticed as a result of this firing.

62. The question here arises: Why was not further lathi charge or use of tear-smoke in the direction of the police quarters, then ablaze, tried before resorting to firing? The explanation given in evidence was this: The Magistrate, some police officers and about 12 to 14 other police personnel were injured by that time. The mob was in a huge number. The Inspector told the Magistrate that if police party charged the mob with lathis again, the policemen would certainly be overpowered; so there was no other alternative than firing bullets to disperse the mob who set fire to the police quarters. That is why firing had to be resorted to without taking recourse to lathi charge again. Then on the question why more tear-smoke shells were not thrown in order to disperse the mob around the police quarters the explanation was that it was not possible because it was reported that there was almost no other stock of tear-smoke with the force at that point of time; the stock was almost exhausted. That apart, assuming there was sufficient stock of tear-gas shells, even so, firing could not have been avoided because it was thought that further use of tear-smoke shells might not have any effect on the mob then consisting of Goondas and other undesirable elements.

63. In this situation firing was necessary to disperse the mob (C. W. 16 S. N. Swain Qq. 738 to 742). It cannot be found that firing in such a grave situation was a rash act as alleged.

64. *Rescue of women and children from the burning police quarters by Inspector Waiz Mohammad with a few constables: four rounds of revolver firing by Inspector in self-defence:* After the first firing the mob receded to the rear of the police quarters and towards the Gandhi statue. Finding the life of the inmates of the police quarters in danger, steps were taken to rescue them. The Inspector, with the permission of the Magistrate, with three constables armed with .410 muskets rushed towards the quarters. The Inspector had his own revolver with him loaded. By the time he was about to reach his quarters, some members of the mob, near the Gandhi statue, rushed towards him pelting brickbats. Then the Inspector fired two rounds to the air from his revolver to scare away the mob. After reaching his quarters he knocked at the door and shouted to his wife. She opened the door and he brought all the inmates consisting of his wife, three grown-up daughters and four minor children. Then the Inspector shouted towards the adjacent quarters of ASI Bhagawan Mohanti from where the cries of panic were coming for help. ASI Bhagawan Mohanti immediately came out with his family members.

By that time his kitchen and the quarters of ASI Sisir Kumar Mohapatra and the Inspector's cattle-shed were all burning. The Inspector thus rescued the inmates of the police quarters and brought them to the police station building where they were given shelter for the night.

65. As to why the family members of the police officers could not be rescued earlier, the explanation on evidence was this : There was at the time a small force at the police station, that is, one section of the APR which was guarding the main police station building; there were the arms and ammunitions, postal cash, Tahasildar's cash and valuable properties; it would not have been wise to use the available APR force at the police station building by sending some of them out for rescuing the family members of the officers before the first firing. That apart, although as a result of the second lathi charge the mob dispersed to a certain extent, they, however, continued to surround the police quarters; the mob shouted to kill the family members and to burn the quarters; in fact the mob set fire to the quarters, assaulted the inmates and looted their belongings. The situation then was such that without first dispersing the mob from around the police quarters by firing, it was not at all possible to reach the quarters and rescue the family members who were inside the quarters then burning.

66. *Second gunshot firing at 4-15 p. m. : situation after the first firing and before the second firing :* By that time the strength of the mob swelled up to about 5,000 people. The questions were raised : Why was this spectacular swelling of the mob at the later stage ? Why did the public join in the attack on the police which was initially started by the students ? The evidence is that even as early as when teargas shells were fired, there was a rumour in the Bazar that police opened fire and that some students were killed; hearing this news the bazar shop-keepers closed their doors and ran towards the police station having been armed with lathis, bamboo poles, kataris, axes and other weapons. The mob included the Goondas and undesirable elements who wanted to take advantage of the situation to burn the police quarters, to loot property and to kill the police personnel.

67. After the policemen left the quarters with the family members, the swelled mob made a sudden rush from the north, west and east side towards the police quarters and the police station building : they were shouting "*Salanku khatam kara*" (finish the Salas): the mob wanted to loot the

properties which were left in the vacant police quarters at that point of time. The mob—armed with lathis, kataris and axes—were—brandishing the weapons in their hands and throwing brickbats heavily; they damaged the pucca post of the main gate of police station; they were throwing the brickbats; they also used the stone chips which were lying near the hospital just east adjacent to the police station.

68. At this stage, the Magistrate again consulted Inspector Waiz Mohammad and other police officers at the spot who advised that further firing was absolutely necessary. The Magistrate satisfied himself that there was no alternative other than by opening fire to disperse the mob in that situation. The Magistrate then ordered the Inspector to open fire to disperse the onrushing mob. The Inspector directed the Havildar. Thereafter two rounds were fired on the mob towards the north side. As a result of this firing of two rounds, one person fell dead having been hit by bullet. The dead body was taken charge of by the police; it was found that the victim was still holding a brickbat in his grip; the dead body was brought to the police station. Another person who was injured, as hit by bullet, was carried away by some members of the mob to the hospital. The mob then went out of the police station compound but still remained surrounding on all sides of the police station shouting violently.

69. The name of the deceased was Krishna Prasad Mohanty, a student of Capital High School, Bhubaneswar, and the name of the injured was Purna Chandra Behera, a student of Tarikud High School.

70. The manner in which the order for the second firing was executed was this : The order was given by the Magistrate in writing on plain paper; out of the police personnel who fired the two rounds one was a constable and the other was a Havildar; they were standing at a distance of about 15 to 22 feet approximately from the edge of the main police station verandah towards the north. The Havildar and the constable who fired came out of the main formation of the police force, went one or two feet ahead and they fired from a spot a little distance away from the place, from which the other constables fired during the first firing; they fired in a kneeling position. The exact direction in which they each fired and all details in this context were fully described by the Magistrate (C. W. 16 S. N. Swain Qq. 992-1008).

71. The position and the manner in which the deceased boy fell down were described by the Inspector and the Magistrate. The boy was hit over his very face and he fell down at that very second. Immediately the Magistrate and the police officers with some armed police constables ran and took charge of the deceased. The victim was in front of the mob said to have been trying to pick up a brickbat from the ground bending his body; the bullet struck him at that point of time while he was having his face towards the police station and his hand towards the ground. The evidence is that the brickbat was still in his hand. The evidence of C. W. 17 Inspector Waiz Mohammad is that the victim was picking up brickbat from the ground while he was hit by the bullet. The position of the gunshot injury shows that it was a frontal injury. The inquest and post-mortem reports, hereinafter discussed, also support the view that the deceased was hit by the bullet at a point of time when he was facing towards the police station. This shows that it was not that the crowd was running away when the police fired.

72. There was an attempt by a section of the mob to take away the dead body. The Magistrate and the police officers stopped this by shouting. Thereupon the mob did not dare to take the dead body. Thereafter the dead body was taken to the police station. It is said that the Medical Officer, Jagatsinghpur, came to the police station at about 7-30 or 8 P. M. that night on requisition to certify that the victim was dead.

73. *Why was not the victim Krishna Prasad Mohanty immediately taken to the hospital?* A question arose: Why was not the victim Krishna Prasad Mohanty immediately taken to the hospital? The explanation as given by the Magistrate was to the effect that the Inspector, the officer-in-charge and himself had checked the victim's heart-beating, pulse, breathing from nose and were satisfied that the victim had expired; after they had checked that the life was extinct it would have been of no use to take him to the hospital. That apart, there were difficulties in taking the victim to the hospital immediately. The other victim from bullet injury Purna Chandra Behera was carried away by a section of the mob to the hospital; a large congregation of mob gathered at the hospital premises to know the result of the injury and treatment to him; thus there was a mob of 2,000 to 3,000 persons at the hospital. It would not have been wise to take the victim to the hospital after he was found dead. Even then, if he was to be taken to the hospital

then it would have been necessary to send a section of the force along with the victim to meet any contingency. The Magistrate apprehended that in view of the mob frenzy at the time, there would have been further trouble on the way to or in the hospital. In taking the decision the Magistrate relied on the advice of Inspector Waiz Mohammad a police officer of more than 20 years' experience and the officer-in-charge also an officer with experience who both expressed to the Magistrate that the deceased Krishna Prasad Mohanty died instantaneously at the spot where the bullet had hit him. That apart, the Magistrate personally checked and was satisfied that no useful purpose would be served to carry the dead body to the hospital. The Magistrate also said that in any case if there would have been life in the body he would have taken the risk; he with some constables would have taken the victim to the doctor and any possible treatment to save him would have been given to him. Inspector Waiz Mohammad said that after the second firing when the mob had receded, immediately he himself, Magistrate and the officer-in-charge with two other constables rushed to the spot where the victim fell; they examined him, found that the victim's pulse-beating, respiration and heart-beating had stopped, then they removed him to the police station building (C. W. 16 S. N. Swain Q. 305; C. W. 17 Waiz Mohammad Q. 126).

74. It was alleged by P. W. 15 Dhruba Charan Patnaik that after the deceased fell down having been injured by the bullet, one constable rushed to the victim, pierced him with a bayonet and dragged him holding one of his legs towards the police station (P. W. 15 Dhruba Charan Patnaik Q. 15). It was argued on behalf of the public that he died from loss of breath (Asphyxia) because of the alleged dragging; he did not die instantaneously; in support of this, reliance was placed on the inquest report (Ext. C/100) showing that the tongue came out between the rows of teeth. The post-mortem report Ext. 36/A (1) does not support this view. It shows fracture of third cervical vertebra. Death is almost instantaneous if cervical vertebrae are fractured. The post-mortem report further shows that the bullet entered the mouth and was lodged inside. There is also no injury showing that the victim was pierced by a bayonet as alleged. The opinion of the doctor in the post-mortem report is that all the injuries were probably caused by gunshot. There is therefore no basis for the allegation that death was caused either by piercing with bayonet or by dragging as alleged.

75. In course of argument on behalf of the public it was suggested that the Magistrate and the police officers were negligent in handling the victim Krishna Prasad Mohanty after he fell down with bullet injury. There is no evidence in support of this charge against the Magistrate and police personnel on the spot. It appears to be a case of instantaneous death from bullet injury and there was nothing which could be done to save the victim ; he died immediately right at the spot from the bullet shot and nothing could be done

76. *Was second firing unavoidable* : On the question whether the second firing was necessary the Magistrate gave his reasons in support of his order for firing thus : A mob of about 5,000 people —armed with lathis, kataris and axes — were advancing in a violent manner ; they were throwing brickbats and brandishing the weapons in their hands ; by that time about 14 to 15 police personnel including the Magistrate were injured ; it was apprehended that this huge mob of 5,000 people would certainly overpower the force at the police station, kill the police personnel and their families consisting of women, grown-up girls and children who at that time after rescue were given shelter in the main police station building ; the threatening posture of the onrushing mob with deadly weapons was definitely a danger to the lives and properties of all at the police station building including the police personnel ; it was also a danger to the postal cash, revenue cash, arms and ammunitions at the police station all of which would have been looted. In this grave situation the Magistrate ordered the Inspector to disperse the onrushing mob by opening fire , otherwise there would have been total annihilation of the police personnel and their family members would have been killed (C. W. 16 S. N. Swain Q. 1009). The firing was unavoidable.

**E. Telegraph and telephone lines Cut off :
culverts removed :**

77. About the same time when the mob in huge number attacked the police station resulting in police firing, the post office within about 100 yards from the police station was also attacked by a section of the mob. The telephone and telegraph lines were cut off and damage done to the post office. The Sub-Postmaster, Jagatsinghpur Post Office, C. W. 19 Mr. Banshidhar Mohanti filed an affidavit and also gave evidence ; his description of what he himself experienced at post office is as hereinafter follows.

78. On October 29, at about 3-45 P. M. about 100 persons including students attacked his post office; he was present along with the other staff; he saw the mob cutting the telegraph and telephone lines of the post office; the mob simultaneously started throwing brickbats to the windows of the post office and his quarters which was in the same building as a result of which members of the postal staff were frightened and took shelter in safe places inside the office. The Sub-Postmaster also remained in a safe place at the office and then went to his quarters; such throwing of brickbats continued till about 5 P. M. as a result of which glass windows were broken. He could not come out of his quarters as the glass splinters were coming from the windows due to brickbatting by the mob.

79. Subsequently after he came out he learnt from his staff that 3-4 persons of the mob armed with lathis entered into the post office, threatened the staff that they would set fire to the records and would damage the furniture. The postal staff became panic-stricken at the attitude of the mob and requested them with folded hands that as they did not do anything wrong to them, they should be spared. The mob carried away a bench from the verandah of the post office and broke into pieces; they also removed the gates and threw them on the road thereby blocking the road; he found that most of the glass panes of the post office buildings had been damaged; he also learnt from his staff that a section of the mob entered into the telephone booth, damaged the telephone and snapped it from the wires.

80. The Sub-Postmaster sent a written report that very evening after 8 P. M. about the incident, which took place at the post office, to the police through his postman but he (postman) returned and informed the Sub-Postmaster that he could not reach the police station as the entire police station was still surrounded by the highly agitated mob, although he made all efforts to somehow reach the police station and hand over the report (C. W. 19 Banshidhar Mohanti Qq. 25-27). The Sub-Postmaster said that next morning he sent the report to the police and requested them to render help in case there was further attack.

81. The next morning the Sub-Postmaster sent a man to Anakhia Post Office for sending a telegram in his hand to the Senior Superintendent of Post Offices, Cuttack, with

copy to Postmaster, Cuttack and SDO, Telegraphs, Cuttack. He sent the man to Anakhia Post Office because Jagatsinghpur was cut off on the telegraph and telephone lines. The telegram sent by him Ext. C/40 was this :

“ XP

930/30

Sr. Supdt Posts Cuttack

Copy (1) Postmaster Cuttack

(2) SDO Telegraphs Cuttack.

Several youngmen probably students attacked this post office yesterday at about 15-45 *aaa* Continued attack till about 17 hrs with stoppages in middle *aaa* Broke glass windows one telephone and several other articles *aaa* Cut off telegraph telephone lines *aaa* Cash valuables safe *aaa* Work stopped *aaa* Request necessary action for safety.

Sub-Postmaster Jagatsinghpur through Anakhia

Sd. Illegible

SPM.”

82. In evidence the Sub-Postmaster Mr. Banshidhar Mohanti clearly described the situation then prevailing at the post office, within a few yards from the police station; about the same time when the mob attacked the police station with deadly weapons and set fire to the police quarters.

83. In view of the close proximity of the post office to the police station it is evident that it was a section of the same violent mob operating in the police station compound which had attacked the post office and cut off the telephone and telegraph lines. Their obvious object was to isolate Jagatsinghpur from the headquarters at Cuttack so that reinforcement could not be called for from the headquarters in the grave situation.

84. The evidence of the Sub-Postmaster was substantially corroborated by C. W. 18 ASI Brahmaanda Naik, DIB at Jagatsinghpur. He said that he saw at first 100 to 200 boys rushed towards the post office shouting---

“ let us go, post office *Bhangiba Tara Chhindaiba, Pola Bhangiba*”
(let us go to break post office, snap wires, break bridges).

While thus shouting 7 to 8 boys got on the wall of the post office and threw stones at the white fixtures at the top of the telephone poles through which telephone wires are taken; the white tops were broken; at this time some other boys and

public snatched away four bamboo poles with which they tried to hit the telephone wires. Ultimately telegraph and telephone wires were cut off in the manner stated by him.

85. It is also in evidence that some of the culverts on Jagatsinghpur-Cuttack road were also damaged by the mob at about the time when the mob attacked the police station in huge number between 3 and 4 P. M. After cutting of telegraph and telephone wires at about 3-45 or 3-50 P. M. a section of the mob ran towards Badabazar to damage culvert No. 10 which was about half a mile from the police station. The mob shouted—

“CHALA SE POLASABU BHANGI DEBA. JEMITI KOUNSI MOTOR KI GADI ASI PARIBANI”

(Let us go to break those bridges so that no motor or car can come).

The mob damaged the culvert by crowbars and the people of the nearby villages were running towards the police station with lathis, kataris saying—

“CHALA SALA THANA BAIANKU AHI JEEBANARE MARIDEBA”

(Let us go to take away the life of Sala Thanawalas today).

This culvert was damaged by the mob at about 4-10 or 4-15 P.M

86. Apart from the culvert on Jagatsinghpur-Cuttack road, some students were found on Kandarpur side on cycles; they came there and damaged other culverts on the road. Ext. C/38 is the Index map of Kandarpur-Machhagaon road and Jagatsinghpur-Jeypore road showing the existing culverts and damaged culverts during the students' agitation in 1964. The apparent object of the mob to damage the culverts was to isolate Jagatsinghpur from the headquarters so that no reinforcement could be sent by any vehicle.

F. Alleged assault on Jyotirmoyee Patnaik:

87. P. W. 15 Mr. Dhruba Charan Patnaik is the father of Shrimati Jyotirmoyee Patnaik who is alleged to have been assaulted by the police in the manner as stated by the father in paragraph 33 of his affidavit quoted above. Apart from this affidavit and the evidence given by the father, she herself did not even file an affidavit in support of the charge against the police. The case of the administration is

that there was no complaint from her at any time about the alleged merciless assault on her; she might have been injured during the lathi charge by the police inside the police station.

88 There are certain material discrepancies in the evidence of P. W. 15 Mr. Dhruba Charan Patnaik. In evidence he said that he heard that his daughter Iyotirmoyee Patnaik was assaulted on the Dak Bungalow road by police lathi and was being carried to the dispensary; then he ran towards the Dak Bungalow road and found his daughter there being carried to the hospital in a rickshaw; he found her on the turn of Kandarpur-Machhagaon road and the road leading to the Dak Bungalow; he left her in charge of his son-in-law and other boys and came back. In the cross-examination of the Magistrate it was suggested that after the meeting dispersed the police called Shrimati Iyotirmoyee Patnaik, she came as a result of this call and at the police station she was mercilessly beaten. This suggestion was denied by the Magistrate (C. W. 16 S. N. Swain Qq. 1069-1070). Thus the case, as stated in the affidavit and in evidence by the father P. W. 15 Mr. Dhruba Charan Patnaik was demolished by this suggestion that she was called and assaulted inside the police station.

89. It is significant that although the charge was that the police had mercilessly beaten her, there was no injury report from any doctor. It appears from the Out-door Register of the Jagatsinghpur Hospital that she had sustained a simple contusion on her back; it was reported that she sustained this simple injury by lathi. It was suggested in cross-examination of Inspector Waiz Mohammad that the Radiologist Dr. G. B. Mohanti had come to Jagatsinghpur with X-ray plant to examine her. The Inspector answered that he heard that the Radiologist came to Jagatsinghpur to examine her but she refused to be examined by the Radiologist and he went back (C. W. 17 Waiz Mohammad Qq. 1097, 1099). It is not understandable why she refused to be examined by the doctor if in fact she had been mercilessly assaulted by the police as alleged.

90. There is no evidence that she was called and assaulted at the police station as alleged. She might have been injured during the lathi charge on the mob. There is however no evidence as to how she came to sustain the simple injury; this is also a surmise. In any event the possibility of her having been injured during the attack by the mob which was chased by the police with lathis cannot be ruled out.

G. Is the story of the policemen having set fire to the three police quarters inside the police station after everything was over acceptable ?

91. The specific case, as suggested on behalf of the public while cross-examining the Magistrate, was that in order to cover up the Magistrate's misdeeds and the excesses of the police, the Magistrate in combination with the police officers staged the arson of the three quarters. It was also suggested on behalf of the public that as a result of setting fire to the quarters, little property was lost; all the belongings of the police officers were removed by the officers themselves before the houses were set on fire by the police people under the Magistrate's orders (C. W. 16 S. N. Swain Qq. 1071 to 1073). These suggestions by themselves are no proof of the facts suggested in the questions put to the Magistrate. There is no evidence in support of these suggestions.

92. The only question is : Is the version given by the State officials acceptable or is it so improbable and incredible as to merit rejection ? In this context Dr. Harish Chandra Misra, Medical Officer, Jagatsinghpur Hospital, which is adjacent to the police station, in his affidavit stated that he came to the hospital that day at about 3 P. M. and found a big gathering in the police station. The mob was pelting brick-bats towards the police station. He said that when he came to the verandah of the Out-door he found some thatched houses of the police officers on fire and thereafter he heard some sounds of firing ; subsequently two injured—Purna Chandra Behera with bullet injury and the ASI's brother Sanatan Mohanti with injury—were brought to the hospital for treatment. The doctor said that he also attended others who were injured. He said that he went to the police station at night at about 8 P. M. and rendered medical aid to the police personnel, the Magistrate Mr. S. N. Swain and the said Chittaranjan Pradhan; while at the police station the doctor also saw the family members of the police officers having taken shelter at the police station.

93. It is clear from the affidavit of Dr. Harish Chandra Misra that it was not until after he saw some thatched houses of the police officers were on fire that he heard sounds of firing. Thus there can be no truth in the allegation that the police people manipulated and arranged to set fire to the police quarters by way of creating evidence in justification of the firing.

94. This view that the alleged story of police having set fire to the quarters is false is further supported by Mr. Raghunath Mohanty, Sectional Officer (Roads & Buildings), Jagatsinghpur at that time who, in his affidavit, stated that on October 29 afternoon on his return from tour he found a big gathering of students and outsiders in the police station compound around the police station building and they were shouting violently. It was at about 3-30 P. M. he came out of his quarters to see what was happening in the police station compound and found the use of teargas to disperse the mob. He asked the Inspection Bungalow Choukidar to close the Bungalow lest the unruly mob might attack the Inspection Bungalow and damage it. Mr. Raghunath Mohanty said that some of the people set fire to some of the police quarters; then he heard gunshot sounds from police station compound; he found the thatched quarters of the ASI and the cowshed of the Inspector were still burning; the mob were shouting violently at different places. It is clear from his affidavit that the police quarters were set on fire by the mob before the police had to resort to firing to disperse the violent mob.

95. It was about the same time, before the police firing, that telegraph and telephone lines were being cut off at the post office, and culverts on the road were being damaged to isolate Jagatsinghpur from the headquarters — all as described above.

96. It is clear from the evidence that different sections of the mob were operating at different places simultaneously—the main attack was on the police station; the other sections of the mob were cutting off all means of communication.

97. The very fact that the family members of the police officers, including women and children, had to be removed to the police station building is itself a telling circumstance. The evidence of C. W. 23 ASI Bhagawan Mohanti, who was inside one of these burning quarters, was this: While he was inside his quarters he heard a lot of noise from behind the quarters of ASI Sisir Kumar Mohapatra. Wondering what was happening he came out of his house to see; he saw one or two persons carrying away things from inside the house of ASI Sisir Kumar Mohapatra by back door; also he found a large number of persons setting fire to the thatch of the kitchen of ASI Sisir Kumar Mohapatra on the northern side. Finding that the house of Sisir Kumar Mohapatra was on fire and apprehending that his (Bhagawan Mohanti) house might also catch fire. Bhagawan Mohanti entered inside his

house to bring out his effects and family members. While he was inside his house and was thinking what to do he found that smoke was coming out from the northern side of his kitchen room. He fully described his experience of how the three quarters were set on fire by the mob in his answers to Qq. 15 to 19.

98. A very pertinent question was raised : How was it that as a result of the fire in the kitchen of ASI Bhagawan Mohanti his living-rooms were not on fire ? On this point the explanation, as given by Bhagawan Mohanti himself who was inside the quarters at the time the house was set on fire, was this: Between the kitchen and his bedroom there was a gap of 10 to 15 feet; this gap was not covered by any thatches: that was why although the kitchen took fire, his living-rooms were not affected by fire.

**H. Is the evidence of the sole witness on behalf
of the public P. W. 15 Mr. Dhruba
Charan Patnaik acceptable ?**

99. The evidence of P. W. 15 Mr. Dhruba Charan Patnaik a contractor was in substance this: There was a gathering by the students offering peaceful Satyagraha around the police station. It was while this gathering returned from near the police station to Gandhi Padia to attend a meeting there was simultaneous teargas, lathi charge and firing. He further said that during the period after 3 P. M. he found the police lost all sense of normalcy and were behaving like uncivilised, mad, barbarous, rabid dogs and jackals; the police went round the area, indiscriminately hit the persons with lathis, caused firing and teargassing without any situation at all warranting such action; this took place for one or two hours (Qq. 16, 173). He also said that he saw a constable firing from the road leading to the Inspection Bungalow towards the bus stand and saw a boy hit in his palm near about the bus stand. He further stated to have seen Krishna Prasad Mohanty shot and fallen on the ground; that one constable rushed near the victim and pierced him with a bayonet and dragged him holding one of his legs towards the police station (Q. 15). He also said that he saw Purna Chandra Behera having been injured and carried away. His further evidence is that at about 5 to 6 P. M. a broken and neglected house inside the police station was found on fire; it was long after lathi charge and firing that this house in the police station premises was set on fire; that as there was no possibility of any outsider living within the premises of the compound of the police station, none were there; nobody obstructed the police; the students dispersed (Qq. 17, 18).

100. The question is : Is the version given by this witness acceptable? On a careful analysis of the evidence, it appears that there are some material discrepancies which make his evidence not reliable as hereunder discussed.

101. According to him, he reached the cordon inside the police station at 2 P. M. and stayed there 5 to 10 minutes. Thereafter he again went to a tiffin shop. He stayed there for one hour and thirty minutes approximately till firing, tear-gassing and lathi charge (Qq. 81, 82). So after he had come back from the police station after 2 P. M. he did not go to the police station; therefore he could not have seen what was happening inside the police station compound when he was not there.

102. Then the questions arises : Could he have seen from the shop what was happening inside the police station? Where was this shop? His evidence is that this shop was in front of the Dak Bungalow (Q. 174). It is quite clear from his answers to the several questions put to him that the shop was on the north side of Kandarpur-Machhagaon road in front of the Dak Bungalow. It is clear from the Sketch Map Ext. C/32 that from the shop nothing was visible as to what was happening inside the police station. Apart from distance and other intervening houses, there were police quarters on the north-western side of the police station which obstructed the view from the shop where he was sitting while tearsmoke, lathi charge and firing were going on inside the police station. His evidence, in answers to Qq. 124 to 163 that he heard from such a distance the alleged filthy abuses made by the Magistrate and the police officers inside the police station, is not acceptable.

103. As regards the boy hit at the bus stand, his evidence in answer to Qq. 191 to 200 is to the effect that he saw firing by one constable from the Dak Bungalow road aimed at the bus stand. The witness went to the extent of pointing out the place on the Dak Bungalow road where the constable was standing and marked the position by blue cross mark. He said that he actually saw the boy having been hit: his evidence was this :

“ Q. 197 Did you see anybody being hit by the bullet of this constable.

A. Yes, I saw a boy standing at the bus stand and his palm being hit.

Q. 198 Did you know the boy.

A. Yes, he is a student of Tarikud High School.

Q. 199 Which side palm was hit.

A. I cannot remember."

In examination-in-chief however he said that he learnt about a boy having been hit; the material portion of his answer to Q. 16 was this :

" Q. 16 Then what happened.

A. On my return from the dispensary I learnt at the bus stand that police have hit one boy in his palm near about the bus stand....."

These answers in his evidence speak for themselves.

104. As regards his charge of alleged indiscriminate use of tearsmoke and lathi charge by the police in answer to Q. 16 he said that the police indiscriminately hit the persons by lathi and caused firing and teargassing ; he reiterated this in answer to Q. 173 ; but later on in answer to Q. 245 he said that he had not seen lathi charge through his own eyes ; in reply to Q. 207 he said that he had not seen teargas shells being fired or falling. Thus he cannot claim to have seen what was happening inside the police station compound.

105. Then, as regards the attack by the mob on the post office, C. W. 19 Mr. Banshidhar Mohanti, Sub-Postmaster described what he himself saw between 3 45 and 5 P. M. ; the telegraph and telephone lines were cut off ; his evidence was supported by documents as aforesaid. P. W. 15 Mr. Dhruva Charan Patnaik however in his answer to Qq. 118 and 119 said that the post office was not attacked on October 29 up to 6 or 7 P. M. when he left the place. When asked how he could say categorically that the post office was not attacked, his explanation was that he was going and coming there very frequently; that the post office was close to the bus stand; his point was that if, in fact, any violence occurred at the post office within the time from 3 P. M. to 7 P. M., it would not have escaped his notice as stated by him. There is nothing to show that the Sub-Postmaster was telling which was not true. In fact his version that the mob attacked the post office between 3-45 and 5 P. M is supported by the fact that he had sent through a postman an intimation to the police station although the postman could not reach the police station building because of the mob still surrounding the police station at that time. That part, the telegram, which the Sub-Postmaster sent to his superiors at Cuttack mentioned that the mob attacked the post office at 3-45 P. M. It is not possible not to accept the evidence of the Sub-Postmaster supported by contemporaneous documents.

106. There are certain other discrepancies in the evidence of P. W. 15 Mr. Dhruva Charan Patnaik which it is unnecessary to deal with herein. In the ultimate analysis his evidence is not acceptable.

I. Findings of the Commission :

107. On a careful scrutiny of the evidence before it, the Commission finds:

(i) *Re: Background : position prior to the incident :*

- (a) that Jagatsinghpur is a stronghold of SSP, the SSP, led by certain important leaders of the party at Jagatsinghpur at the time, took active part in instigating the students and in helping them to make their agitation a success ;
- (b) that the Students' Unions at Jagatsinghpur were well organised, evidently financed by the political parties ;
- (c) that on October 3, 1964 during the Puja vacation 10 students of Jagatsinghpur College informed the officer-in-charge, Jagatsinghpur Police Station that they would launch a hunger-strike in front of the police station from the following morning as a protest against the police action at Cuttack;
- (d) that immediately on receipt of the notice leading public men of the locality were contacted by the police, on October 4, these gentlemen persuaded the students; the students agreed not to launch hunger-strike and to wait for the opening of the educational institutions ;
- (e) that on October 26, about 400 students of different schools and colleges at Jagatsinghpur took out a procession and moved in the Bazar shouting slogans and burnt an effigy of the Chief Minister in front of the gate of the police station ;
- (f) that at the Tahasil Office, ten students offered Satyagraha, obstructed the workers and created commotion in spite of persuasion by the Tahasildar and the police officers present there but the students did not listen ;
- (g) that on the following day October 27, again 500 students of different educational institutions of Jagatsinghpur including about 100 girl students

went in a procession up to the Tahasil Office raising similar slogans, burnt an effigy of the Home Minister in front of the Tahasil Office; on that day 50 students forcibly entered into the Tahasil Office in spite of the persuasion of the Tahasildar, the BDO and the police officers present at the spot; that the students did not allow the staff to work and declared that they would paralyse the Government by stopping the work;

- (h) that on October 28, the day before the incident at about noon about 500 students including about 100 girl students came in a procession to Jagatsinghpur Police Station compound raising similar slogans, surrounded the police station and the Sub-Registrar's Office which were in the same building, kept the staff confined as a result of which free ingress and egress from the police station and the Sub-Registrar's Office were hampered; the staff were virtually confined;
- (i) that the strength of the force on October 29 was that there were 1 Circle Inspector, 2 Sub-Inspectors, 1 ASP on training, 3 ASIs and 13 or 14 ordinary reserve constables; besides these, the Magistrate had one section of armed police reserve consisting of 1 Havildar and 8 constables; the total strength would be about 30;
- (ii) *Re: Unruly mob^s since 9-30 a. m. declared unlawful assembly at 3-05 p. m. :*
- (a) that on October 29, at 9-30 A. M. in the morning the students surrounded the police station, kept the police staff and the Magistrate confined, did not allow anybody to go out or come in; when at last it was found that the students were determined and not amenable to reason the Sub-Registrar went back to his quarters; he also told his staff to go back to their quarters; this was about 11-30 A. M. ;
- (b) that the student demonstrators were creating disturbance by bringing black-flag and posting it at the police station, shouting slogans by raising their fists and hands; they were also obstructing the public offices—Sub Registrar's Office and the police station—from functioning;

- (c) that in course of the disturbance, the Magistrate and the police officers went to different points all around the mob, gave repeated warnings and told them to disperse within five minutes; the unruly mob did not listen but continued to push inside the police station building and came upon the police station verandah;
- (d) that as the mob was trying to enter into the police station room forcibly—where there were valuable records, Government properties, arms and ammunitions, postal cash, revenue cash—the Magistrate warned the mob to desist from lawlessness, not to resort to violence and to disperse;
- (e) that in spite of the warnings, the mob did not stop from lawlessness but continued brickbattling and tried to force their way inside the police station building;
- (f) that in view of this grave situation, the Magistrate declared the assembly unlawful at 3-05 p. m. and again warned them loudly and repeatedly to disperse immediately;

(iii) *Re: First lathi charge at 3-10 p. m.:*

- (a) that in spite of repeated warnings by the Magistrate and the police personnel, the mob did not show any sign of receding; the mob went on pelting brickbats continuously and shouted slogans; it is in evidence that some of the members of the SSP instigated the mob thus:

“PASA THANA BHITARE : POLICEBALA KICHHI
KARI PARIBE NAHI: BHIDI ANA—JAHHEBA
DEKHAJIBA”

(Enter into police station ; police people cannot do anything ; drag out—we will see what happens):

- (b) that in this very grave situation, the Magistrate ordered the Circle Inspector to disperse the mob by use of force, that is, mild lathi charge;
- (c) that as a result of the lathi charge, the mob receded to a distance of about 100 feet; the mob on the southern side were pushed back and came to the front, that is, on the northern side and joined the mob there; then the mob surged forward

towards the police station pelting brickbats, broken glass pieces and shouting violently;

- (d) that the charging police party while conducting lathi charge went about 100 feet towards the north; the lathi charge was conducted to a distance of about 70 to 80 feet approximately towards the east and west; there was no lathi charge towards the south in the true sense of the term; the mob in the south were simply pushed away by the ordinary reserve constables; during the lathi charge a member of the public Mr. Chittaranjan Pradhan was injured;
 - (e) that the mob attacked the charging APR force with brickbats and lathis as a result of which a number of police personnel were injured; at that stage the number of the mob was large; only one Havildar and six constables charged the mob with lathi; they were about to be overpowered; it was thought proper to get retreat of the charging party for their safety;
 - (f) that in spite of the first lathi charge the mob were throwing brickbats and were brandishing their lathis; although by the first lathi charge the mob receded to a distance of about 100 feet from the main police station building, still at the end of the lathi charge the mob again closed in and threw brickbats heavily;
 - (g) that the attack by the mob was going on—it was a continuous process; the mob was closing in up to the distance of the barbed wire fencing or a little further towards the police station;
- (iv) *Re : Use of tearsmoke at 3-15 p. m. :*
- (a) that although as a result of the first lathi charge the mob receded to some distance, they continued surrounding the police station on three sides—east, west and north heavily brickbatting; due to such brickbatting some more constables and officers were injured;
 - (b) that the Magistrate consulted Inspector Waiz Mohammad and other police officers; the Magistrate himself was satisfied that the use of tearsmoke was then absolutely necessary;

- (c) that at that point of time there was no other alternative than to disperse the mob by use of tearsmoke; accordingly he ordered the Circle Inspector to disperse the mob by the use of tearsmoke at about 3-15 P. M.;
 - (d) that as a result of the use of tearsmoke the mob then receded to a distance of about 140 or 150 feet towards the north, east and mostly towards the west, that is, towards the police quarters;
 - (e) that some members of the mob put wet clothes and wet napkins on the shells and took them away towards the tank on the northern side; the mob was still then throwing brickbats continuously from the eastern side, northern side and southern side also;
 - (f) that the throwing of 10 shells and three grenades was not fully effective; the entire stock was used; they were almost at the end of their stock of tearsmoke ammunitions;
- (v) *Re: Second lathi charge at 3-25 p. m.:*
- (a) that as the use of tearsmoke had not the desired effect, the Magistrate was satisfied and agreed with the Inspector that the second lathi charge was absolutely necessary; there was no other alternative than to disperse, by further lathi charge, the mob which was advancing with brandishing lathis and throwing brickbats;
 - (b) that at about 3-25 P. M. the Magistrate ordered the Inspector to disperse the mob by lathi charge for the second time; the total number of policemen in the charging party was about 14 or 15; the charging party advanced towards the north approximately 170 to 180 feet towards the east and west about 80 to 90 feet; the second lathi charge continued for about 4 to 6 minutes; the entire movement of the police charging party was in a circular manner during the second lathi charge;
 - (c) that as a result of this lathi charge in this manner, the mob receded to about 200 feet from the main police station building but continued surrounding the police station; they were still throwing brickbats;

(vi) *Re: First gunshot firing at 3-45 p. m. : situation prior to first gunshot firing; mob setting fire to police quarters at about 3-35/3-40 p. m. and mob carrying away brother of an ASI:*

- (a) that after the second lathi charge, it was noticed that the mob, which receded from the police station compound, again surrounded the quarters of the Inspector and the two ASIs; it appeared from the huge number of the mob which was greatly increasing that gradually outsiders (non-students) looking like Goondas and loafers were coming in; they were shouting to burn the quarters, to loot the properties and to kill the family members of the police officers at the police station; after some time it was noticed that the mob were taking away the properties from these quarters; thereafter it was noticed that the two quarters occupied by two ASIs were on fire at about approximately 3-35/3-40 P. M.;
- (b) that all the three quarters were set on fire almost simultaneously- immediately one after the other; the family members who were inside the quarters brought out their belongings like bedding, suitcases and other things outside the quarters; the mob snatched away these belongings and went away;
- (c) that the mob also physically carried away the brother of ASI Bhagawan Mohanti and assaulted him; the wife of the ASI was crying and shouting aloud in front of the verandah that his (ASI's) brother was taken away by the mob from the quarters;
- (d) that seeing that there was grave danger to life and property of the family members of the police personnel, the Magistrate consulted Inspector Waiz Mohammad and other police officers who advised that firing then was necessary; it is not that the Magistrate ordered firing as soon as he saw flames in the police quarters: he discussed the situation with the Inspector and other officers at the spot for a few minutes and then ordered firing;

- (e) that the officers at the spot did not get panicky; they carefully considered the situation and then ultimately decided firing; the situation was that there was no other alternative than to disperse the mob by firing; the Magistrate then ordered the Inspector to open fire to disperse the mob at about 3-45 P. M.;
- (f) that four rounds were fired at that time, two rounds were aimed towards the ASI's quarters on fire and two rounds were aimed towards the Inspector's cattleshed on fire where there was a huge crowd; no casualty was noticed as a result of this firing;
- (g) that the Magistrate, some police officers and about 12 to 14 other police personnel were injured by that time; the mob was in a huge number; if police party charged the mob with lathis again the policemen would certainly be overpowered; so there was no other alternative than firing bullets to disperse the mob who set fire to the police quarters;
- (h) that was the reason way the firing had to be resorted to without taking recourse to lathi charge again; it was also not possible to throw more tearsmoke because it was reported that there was almost no other stock of tearsmoke with the force at that point of time; the stock was almost exhausted; that apart, further use of tearsmoke shells might not have any effect on the mob then consisting of Goondas and other undesirable elements;
- (i) that in this situation firing was necessary to disperse the mob; it cannot be found that firing in such a grave situation was a rash act as alleged;
- (vii) *Re: Rescue of women and children from the burning police quarters by Inspector with a few constables: four rounds of revolver firing by Inspector in self-defence.*
 - (a) that after the first firing the mob receded towards the Gandhi statue; finding the life of the inmates of the police quarters in danger, the Inspector, with three constables armed with 410 muskets rushed towards the quarters; the Inspector had his own revolver with him loaded;

- (b) that by the time he was about to reach his quarters some members of the mob near the Gandhi statue rushed towards him pelting brickbats; then the Inspector fired two rounds to the air from his revolver to scare away the mob;
- (c) that after reaching his quarters he knocked at the door and shouted to his wife; she opened the door and he brought all the inmates consisting of his wife, three grown-up daughters and four minor children; then the Inspector shouted towards the adjacent quarters of ASI Bhagawan Mohanti from where the cries of panic were coming for help ; ASI Bhagawan Mohanti immediately came out with his family members;
- (d) that the Inspector thus rescued the inmates of the police quarters and brought them to the police station building where they were given shelter for the night;
- (e) that the situation then was such that without first dispersing the mob from around the police quarters by firing, it was not at all possible to reach the quarters and rescue the family members who were inside the quarters then burning;
- (viii) *Re: Second gunshot firing at 4-15 p. m.:*
- (a) that at about 4-15 P. M. the strength of the mob swelled up to about 5,000 people ; the reason of the spectacular swelling of the mob at the later stage was that even as early as when teargas shells were fired, there was a rumour in the Bazar that police opened fire and that some students were killed; hearing this news the Bazar shop-keepers closed their doors and ran towards the police station having been armed with lathis, bamboo poles, kataris, axes and other weapons; the mob included the Goondas and undesirable elements who wanted to take advantage of the situation, to burn the police quarters, to loot property and to kill the police personnel ;
- (b) that after the policemen left the quarters with the family members, the swelled mob made a sudden rush from the north, west and east side towards the police quarters and the police station building; they

were shouting “*Salanku khatam kara*” (finish the Salas); the mob wanted to loot the properties which were left in the vacant police quarters at that point of time ; the mob— armed with lathis, kataris and axes—were brandishing the weapons in their hands and throwing brickbats heavily ; they damaged the pucca post of the main gate of the police station ; they were throwing brickbats ; they also used the stone chips which were lying near the hospital just east adjacent to the police station ;

(c) that at this stage the Magistrate again consulted Inspector Waiz Mohammad and other police officers at the spot who advised that further firing was absolutely necessary; the Magistrate satisfied himself that there was no alternative other than opening fire to disperse the mob in that situation ;

(d) that thereafter two rounds were fired on the mob towards the north side ; as a result of this firing of two rounds one person fell dead having been hit by bullet ; the dead body was taken charge of by the police ; it was found that the victim was still holding a brickbat in his grip ; he was in front of the mob said to have been trying to pick up a brickbat from the ground bending his body ; the bullet struck him at that point of time while he was having his face towards the police station and his hand towards the ground ;

(e) that another person who was injured, as hit by bullet, was carried away by some members of the mob to the hospital ;

(f) that the mob then went out of the police station compound but still remained surrounding on all sides of the police station shouting violently ;

(ix) *Re: Why was not the deceased victim immediately taken to the hospital:*

(a) that on check it was found that the life of the victim was extinct ; it would have been of no use to take him to the hospital ; that apart, there were difficulties in taking the victim to the hospital immediately for reasons stated in paragraph 73 ;

- (b) that in taking this decision the Magistrate relied on the advice of Inspector Waiz Mohammad a police officer of more than 20 years' experience and the officer-in-charge also an officer with experience who both expressed to the Magistrate that the deceased victim died on the spot where the bullet hit him ; the Magistrate personally checked and was satisfied that no useful purpose would be served to carry the dead body to the hospital ;
- (c) that there is no basis for the allegation that one constable rushed to the victim, pierced him with a bayonet and dragged him holding one of his legs towards the police station as alleged ; there is no basis for the allegation that death was caused either by piercing with bayonet or by dragging as alleged ;
- (d) that there is no evidence in support of the charge against the Magistrate and police personnel that they were negligent in handling the deceased victim after he fell down with the bullet ; it appears to be a case of instantaneous death from bullet injury and there was nothing which could be done to save the victim ; he died immediately right at the spot from the bullet shot and nothing could be done ;
- (x) *Re: Was second firing unavoidable :*
- (a) that a mob of about 5,000 people armed with lathis, kataris and axes were advancing in a violent manner ; they were throwing brickbats and brandishing the weapons in their hands ;
- (b) that by that time about 14 to 15 police personnel including the Magistrate were injured ; it was apprehended that this huge mob of 5,000 people would certainly overpower the force at the police station, kill the police personnel and their families consisting of women, grown-up girls and children who at that time after rescue were given shelter in the main police station building ;
- (c) that the threatening posture of the onrushing mob with deadly weapons was definitely a danger to the lives and properties of all at the

police station building including the police personnel ; it was also a danger to the postal cash, revenue cash, arms and ammunitions at the police station which all could have been looted ;

(d) that in this grave situation the Magistrate ordered the Inspector to disperse the onrushing mob by opening fire ; otherwise there would have been total annihilation of the police personnel and their family members would have been killed ; the firing was unavoidable ;

(xi) *Re: Telegraph and telephone lines cut off : Culverts removed :*

(a) that at about the same time 3-45 P. M. when the mob in huge number attacked the police station resulting in police firing, the post office within about 100 yards from the police station was also attacked by a mob of about 100 persons including students ;

(b) that the telegraph and telephone lines of the post office were cut off and damage done to the post office ; the mob simultaneously started throwing brickbats to the windows of the post office and the Sub-Postmaster's quarters which was in the same building as a result of which members of the postal staff were frightened and took shelter in safe places inside the office ;

(c) that such throwing of brickbats continued till about 5 P. M. as a result of which glass windows were broken ; the Sub-Postmaster could not come out of his quarters as the glass splinters were coming from the windows due to brickbating by the mob ;

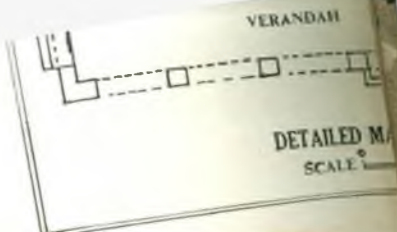
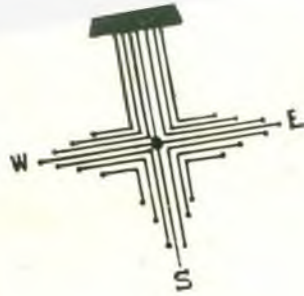
(d) that 3-4 persons of the mob armed with lathis entered into the post office, threatened the staff that they would set fire to the records and would damage the furniture ; the postal staff became panic-stricken at the attitude of the mob and requested them with folded hands that as they did not do anything wrong to them, they should be spared ;

(e) that the mob carried away a bench from the verandah of the post office and broke into pieces ; they also removed the gates and threw them on the road

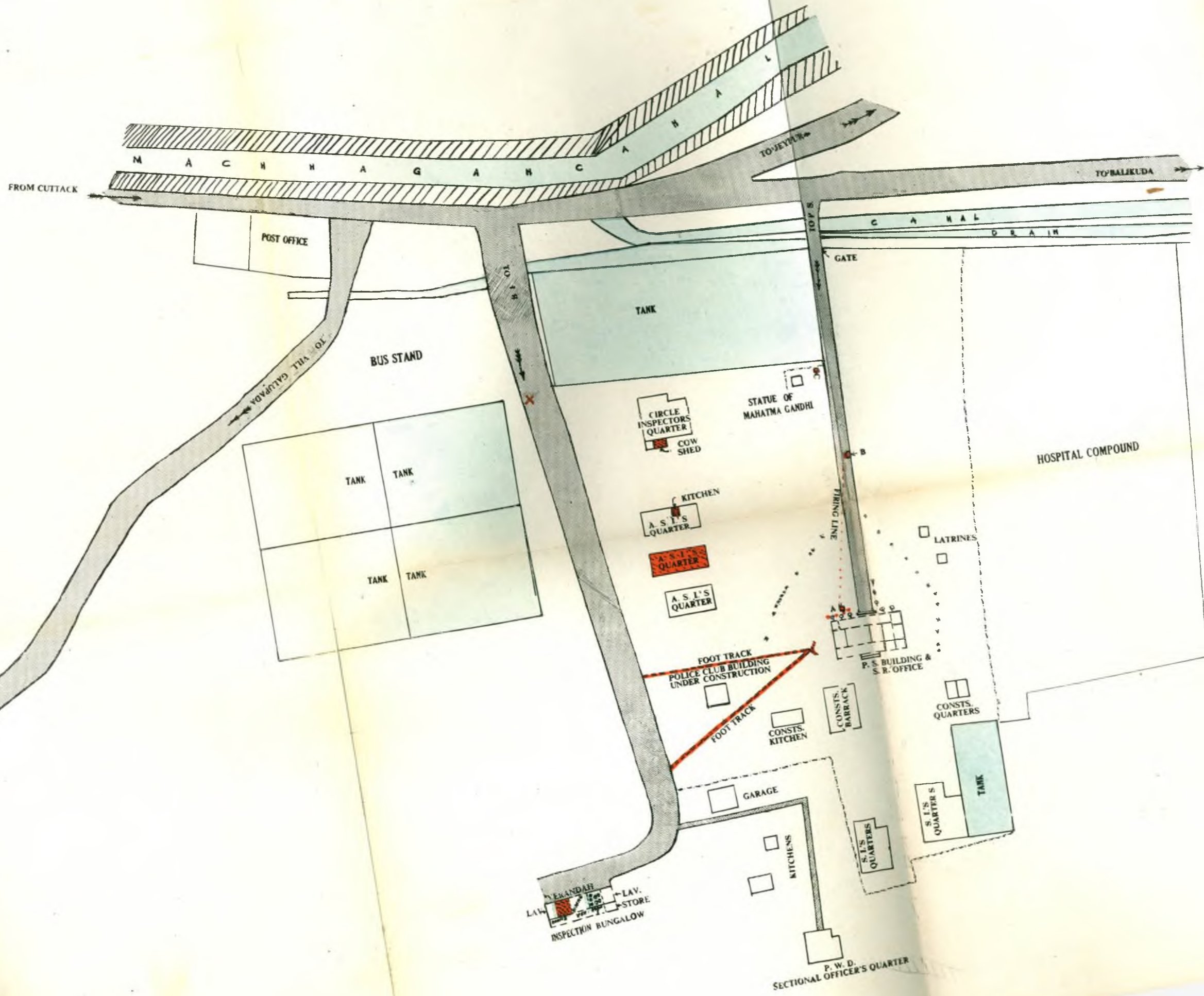
thereby blocking the road; most of the glass panes had been damaged; a section of the mob entered into the telephone booth, damaged the telephone and snapped it from the wires;

- (f) that it is also in evidence that some of culverts on Jagatsinghpur-Cuttack road were also damaged by the mob at about the same time when the mob attacked the police station in huge number between 3 and 4 P. M.; that after cutting off telegraph and telephone wires at about 3-45 or 3-50 P. M. a section of the mob ran towards Badabazar to damage culvert No. 10 which was about half a mile from the police station;
- (g) that the mob damaged the culvert by crowbars and the people of the nearby villages were running towards the police station with lathis, kataris shouting that they would take away the life of Sala Thanawalas (policemen) that day; this culvert was damaged at about 4-10 or 4-15 P. M.; apart from the culvert on Jagatsinghpur-Cuttack road, some students were found on Kandarpur side on cycles; they came there and damaged other culverts on the road;
- (h) that in view of the close proximity of the post office to the police station it is evident that it was a section of the same violent mob operating in the police station compound which had attacked the post office and cut off the telephone and telegraph lines;
- (i) that the obvious object of the mob in cutting off the telephone and telegraph lines and removing the culverts was to isolate Jagatsinghpur from the headquarters at Cuttack so that reinforcement could not be called for from the headquarters by any vehicle by the roadway in the grave situation;
- (xii) *Re: Alleged assault on Jyotirmoyee Patnaik :*
- (a) that the charge that Shrimati Jyotirmoyee Patnaik was assaulted on the Dak Bungalow road by police lathi, as stated in the affidavit and evidence of her father, was demolished by the suggestion in the

EX-C/32



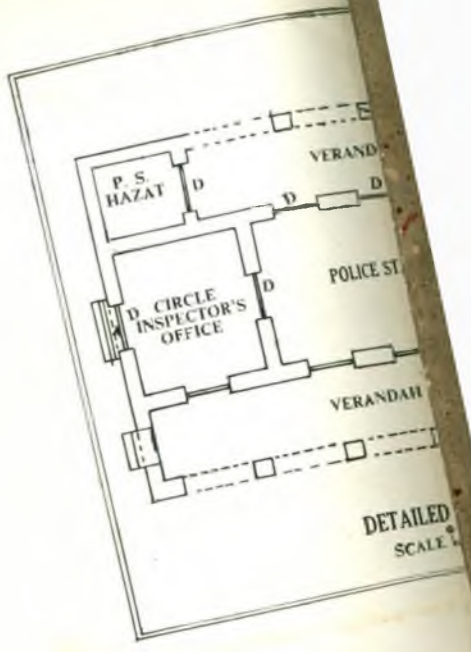
- COLOUR INDEX
- PLACE WHERE
 - PLACE WHERE
 - BURNT HOUSE
 - ROOM OCCUPI
 - ROOM OCCUPI
 - BIRBED WIRE
 - ROADS



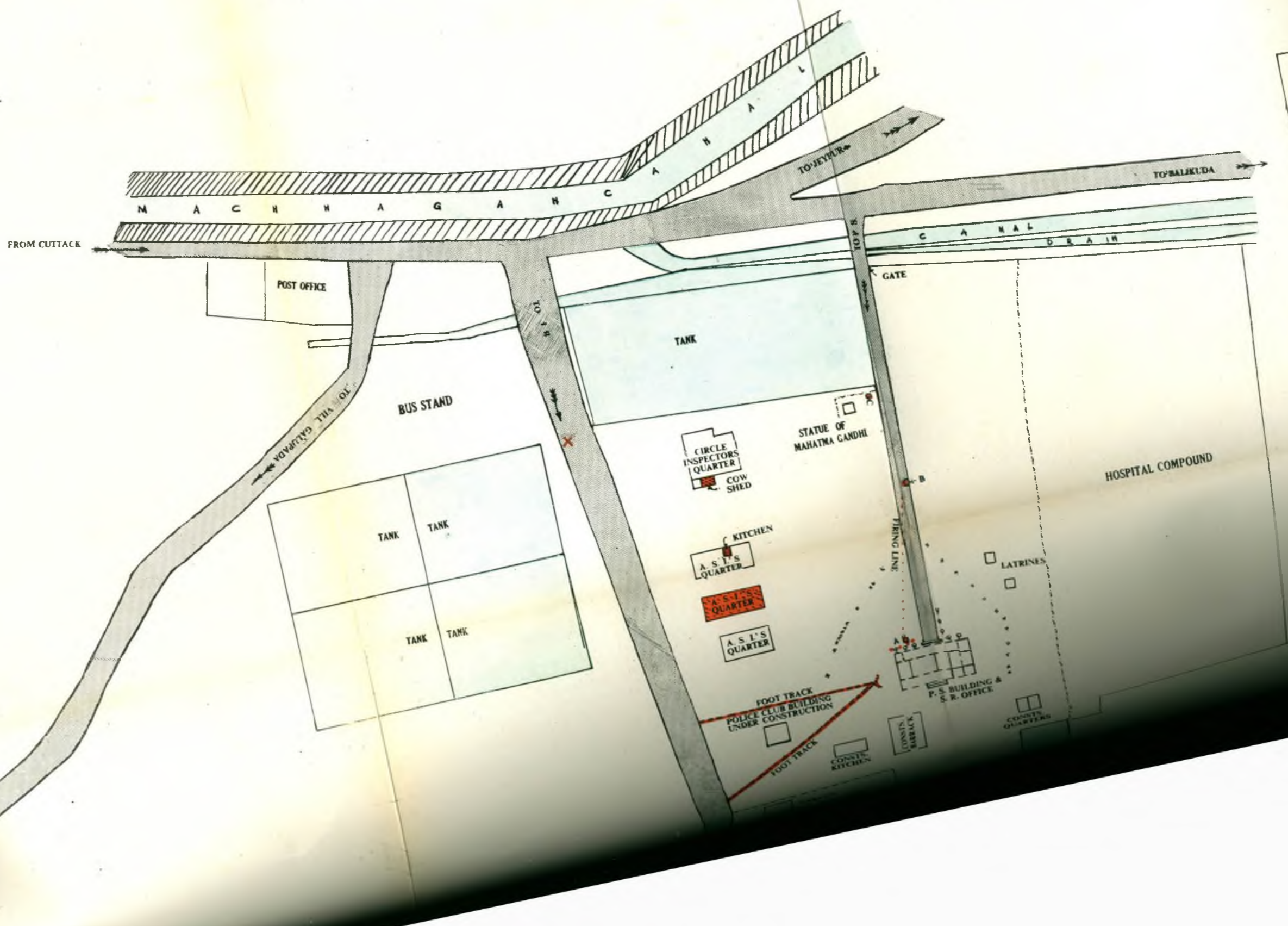
SPOT MAP OF POLICE FIRING AT JAGATSINGPUR ON 29.10.64.

SCALE 1" = 220 FT

EX-C/32



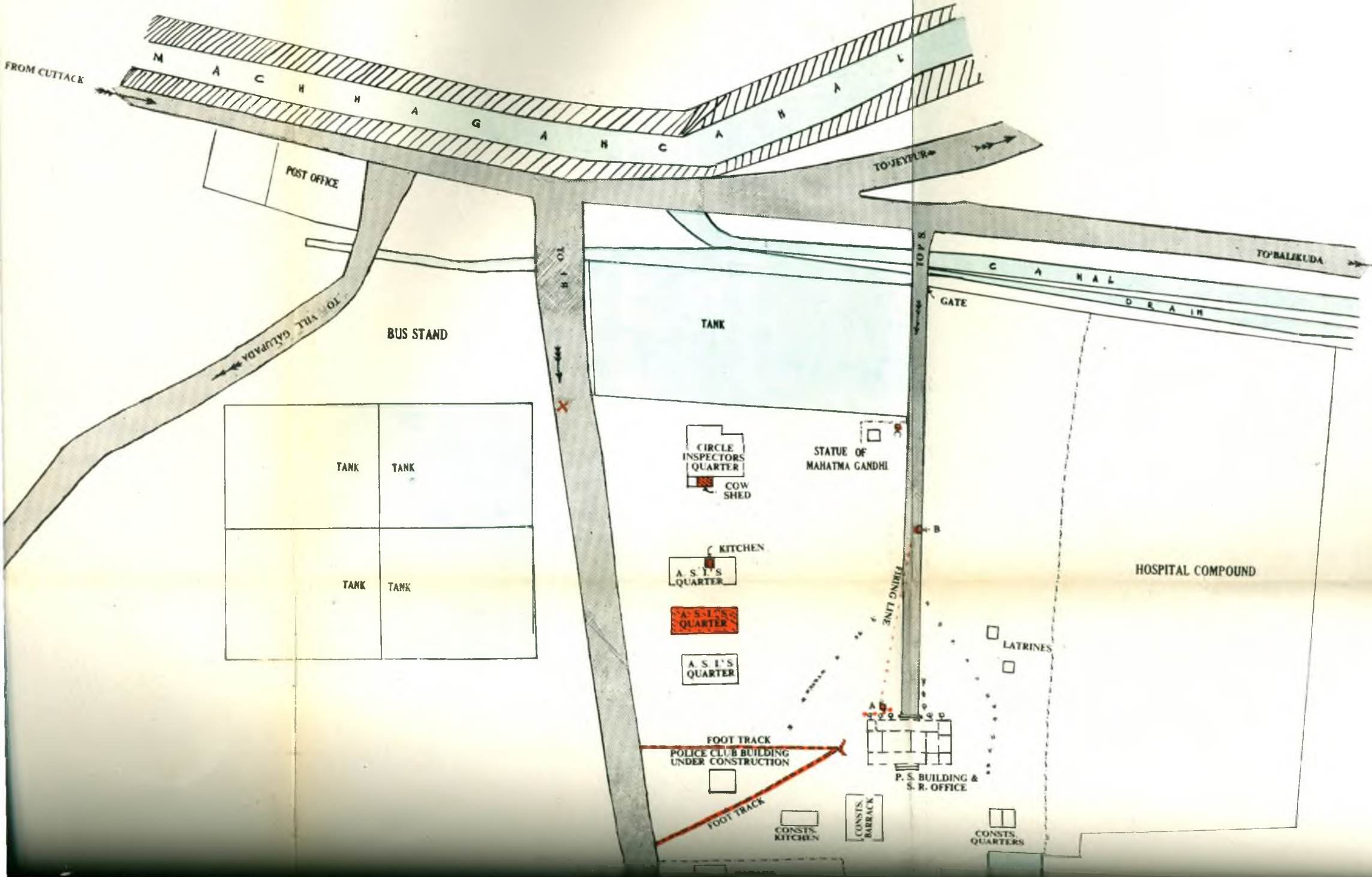
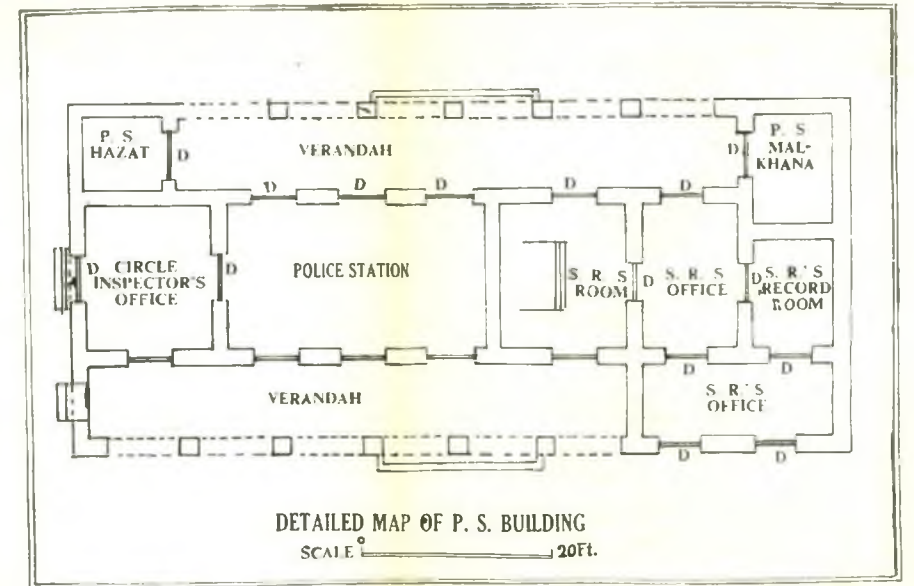
COLOUR KEY
 PLACE WHERE
 PLACE WHERE
 BURNT HOUSE
 ROOM OCCUPIED
 BURIED WITNESSES
 ROADS



OF POLICE FIRING AT JAGATSINGPUR ON 29.10.64.

SCALE 0 220 FT

EX - C/32



COLOUR INDEX

PLACE WHERE BULLET WAS FIRED	A	[Red square]
PLACE WHERE BULLET HIT THE DECEASED	B	[Red square]
PLACE WHERE BULLET HIT THE INJURED	C	[Red square]
BURNT HOUSES		[Red square]
ROOM OCCUPIED BY A. S. P. IN I. B.		[Red square]
ROOM OCCUPIED BY MAGISTRATE IN I. B.		[Red square]
BIRBED WIRE FENCING (BROKEN)		[Red square]
ROADS		[Red square]

INDEX MAP OF KANDARPUR MACHHAGAON AND JAGATSINGPUR JAIPUR ROAD.
SHOWING THE DAMAGED OF CULVERTS DURING STUDENTS AGITATION.

Ex-C/38

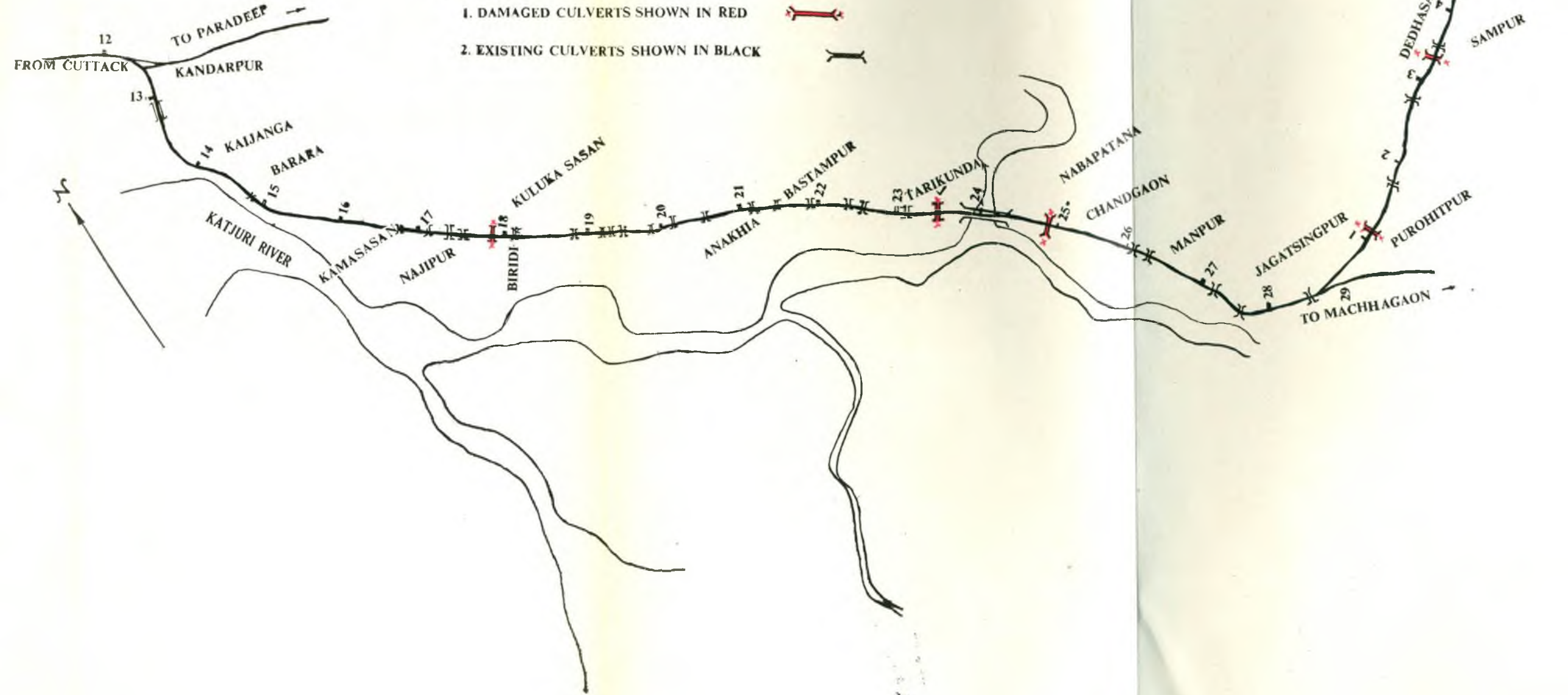
SCALE 0 2 MILES

REF. :

1. DAMAGED CULVERTS SHOWN IN RED



2. EXISTING CULVERTS SHOWN IN BLACK



cross-examination of the Magistrate C. W. 16 Mr. S. N. Swain that she was called and assaulted inside the police station;

(b) that it is significant that although the charge was that the police had mercilessly beaten her, there was no injury report from any doctor; it is not understandable why she refused to be examined by the Radiologist Dr. G. B. Mohanti, who came to Jagatsinghpur with X-ray plant to examine her;

(c) that there is no evidence that she was called and assaulted at the police station as alleged; in any event the possibility of her having been injured during the attack by the mob which was chased by the police with lathis cannot be ruled out;

(xiii) *Re: Alleged story of the policemen having set fire to the three police quarters and having removed their belongings before setting fire :*

(a) that there is no evidence in support of the suggestions on behalf of the public that in order to cover up the Magistrate's misdeeds and the excesses of the police, the Magistrate in combination with the police officers staged the arson of the three quarters;

(b) that there is no evidence in support of the further suggestion made on behalf of the public that as a result of setting fire to the quarters, little property was lost or that all the belongings of the police officers were removed by the officers themselves before the houses were set on fire by the police people under the Magistrate's order as alleged;

(c) that it is clear from the evidence that the police quarters were set on fire by the mob before the police had to resort to firing to disperse the violent mob;

(d) that, therefore, the charge against the policemen and the Magistrate is without any foundation whatsoever; the suggestions are not acceptable.

CHAPTER XIII

BANKI INCIDENT

	Paragraph		Paragraph
Introduction ..	1—4	E. Third phase : from little before 2 P.M. : Attack by mob of 400 500 strength including students and non-students who joined	29—36
A. Allegations against the police : case of the administration	5-8	Why firing was not ordered by Magistrate	34-36
B. What was the situation prior to the date of the incident on October 29	9—20	F. Fourth phase : Khasmahal Office record room, Magistrate's court and office room on fire : what happened thereafter	37—40
C. First phase: 12/12-30 noon : persuasion failed : dispersing by chase with show of lathi	21—26	G. Is the evidence of P. W. 14 Dhruba Charan Lenka acceptable: Did he see the alleged assault on certain individuals including females as stated by him	41—47
D. Second phase : from 1-30 P.M. : arrival of 10/12 non-student outsiders	27-28	H. Findings of the Commission ..	48

INTRODUCTION

Banki is a Tahasil of Cuttack Sadar Subdivision intervened by two rivers, namely, the Kathjuri and the Kuakhai. Banki Tahasil consists of two Thanas; one is Banki Thana with a population of 85,009, and the other one is Baideswar thana with population of 27,115. There is a fair-weather road over the Kuakhai. Along this road Banki is 35 miles from Cuttack proper. There is another road via Khurda which is all-weather and by that way it is nearly 62 miles. What is notionally known as Banki town includes Churchika village, Banki officers' colony, school and the college; the population of this area according to 1961 census is 4,956. Banki town as such lies on the right side bank of the Mohanadi. Churchika village is contiguous to and almost a part of what is known as Banki town. Churchika is important because of the famous old temple in it.

2. There are certain Government official quarters inside the town. There is a police station and also a dispensary at Banki. One Tahasildar Magistrate who is a Deputy Magistrate is the highest executive head of the place. There is also a Judicial Magistrate posted there. The offices of the Tahasildar Magistrate and the Judicial Magistrate, the State Bank and Record Room are located within one compound which was the scene of occurrence. It is to be noted that there are no compound walls around any of these offices. These offices are in four rows of pucca houses—each detached from the other—forming a quadrangle.

3. There is one High School in the heart of Banki town. There is also a college beyond Churchika village.

4. In October, 1964 Banki, like many other places in Orissa, was disturbed because of the agitation which the students supported by the people had launched as a protest against the alleged police assault on the students in Cuttack town in the month of September. The educational institutions, which had closed because of the agitation, reopened on October 26, 1964 after the Puja holidays.

A. Allegations against the police : case of the administration :

5. The charge against the police at Banki relates to the incident on October 29, 1964. The specific allegations against the administration at Banki are contained in the affidavit filed by Mr. Dhruba Charan Lenka. He also deposed before the Commission as P. W. 14. The relevant portion of his affidavit is this :

- “ 6. That on 29-10-1964 the students went in a procession through Churchika village, just at the end of the village a batch of police armed with big lathis attacked the students with lathi and teargas. The students as well as some public onlookers being afraid of firing and lathi charge ran to the nearby houses and the police chased them and beat them mercilessly entering into the nearby houses.
7. That during this lathi charge the police assaulted one Shri Laxminarayan Misra a student of First Year B. A. causing an injury at his right back, Rohit Kumar Roy, P. U. Science at the back of the head, Ajit Bose of P. U. Science became senseless on the spot due to the assault on his person, Sitansu Sekhar Nandy had also become senseless on the spot. The mike and the rickshaw were broken. The Rickshaw puller, the mike owner, Shri Prahallad Sahu and one Janardan Pati who was speaking in the mike were severely assaulted. Two females of the locality were also assaulted. Besides many public those who had come to the spot hearing the hullah were also severely assaulted.
8. That just after the people had dispersed the police, being afraid of their illegal conduct, set fire to the Court rooms in spite of the protests of some local people. This was most likely done to have a show of justification of the illegal conduct of the police ”

In substance the charge is that the police assaulted the people in Churchika village by entering their houses. In support of the charge of alleged assault they relied on Ext. 33 being copy of the discharge certificate given by the Government Hospital to Mr. Laxminarayan Misra a student alleged to have been assaulted by the police during lathi charge.

6. Apart from the affidavit and evidence of Mr. Dhruva Charan Lenka P. W. 14, the case of the students as suggested to the witnesses from the side of the State was in substance this : On October 29, 1964 a procession of the students was going through Churchika village. The procession was going on the road from Churchika village towards Banki-Cuttack road and from there 12 to 15 students went to the Deputy Magistrate to submit their demand at about 11 A. M. It is alleged that the police had inhumanly assaulted these 12 to 15 students who had come to meet the Deputy Magistrate and chased them up to Churchika village, that the police also assaulted some of the students in the procession and also some of the litigants who had run into the village for protection ; also that the police had assaulted some females who were moving about in the village. The further charge against the police is that they entered into houses of some of the villagers of Churchika and assaulted them ; that the police had entered the house of Sanatan Misra and Jagannath Misra and assaulted their female folk.

7. The administration denied all these charges. Their case is that nobody was assaulted in course of lathi charge by the police. Their case is that the crowd was dispersed by show of lathi charge and teargassing ; it is not that the police assaulted the crowd indiscriminately as alleged. In support of their case, the Tahasildar Deputy Magistrate Mr. L. C. Pradhan C. W. 22, the Judicial Magistrate Mr. B. N. Patnaik C. W. 21, Inspector M. Sahu C. W. 20 filed affidavits and also deposed before the Commission. Apart from these three persons who had filed affidavits, the officer-in-charge Mr. C. S. Patnaik, the Additional District Magistrate (Judicial) Mr. M. J. Rao also filed affidavits in support of the case of the administration. All these five officers were eye-witnesses to the incident in general. The District Magistrate had submitted a report to the Revenue Divisional Commissioner, Central Division, about the incidents and the background of the movement at Banki at that time based on information received by him from official sources.

8. The documents on which the administration relied are Ext. C/44 the copy of First Information Report at Banki Police Station, Ext. C/45 copy of the injury reports in respect of the police officers and the magistrates said to have been injured during the incident ; Ext. C/43 Joint Report by Deputy Magistrate Mr. L. C. Pradhan and Inspector M. Sahu ; Ext. C/46 Report dated October 29, 1964 submitted by

the Judicial Magistrate Mr. B. N. Patnaik to the Registrar, High Court, regarding the students' unrest and lawlessness at Banki; Ext. C/47 Report dated October 31, 1964 by the Additional District Magistrate (Judicial) Mr. M. J. Rao regarding destruction of records, furniture, etc. on October 29, 1964 in the court of the Judicial Magistrate, Banki by the mob; Ext. C/48 a copy of the resolution passed by the local Bar Association expressing their grief for the destructive activities of the mob at Banki on October 29, 1964 which was produced by the Deputy Magistrate Mr. L. C. Pradhan C. W. 22 and lastly Ext. 42 the spot map.

B. What was the situation prior to the date of the incident on October 29 :

9. The District Magistrate in his report dated November 13, 1964 to the Revenue Divisional Commissioner, Central Division, Cuttack, gave a detailed account how the situation developed at Banki. In his report he stated that the incidents at Banki took a visible shape for the first time as early as on September 29, 1964, though the educational institutions were closed the previous day on September 28, 1964. Banki College was closed with effect from September 28, 1964 earlier than the time scheduled for the Puja vacation. How the situation developed from time to time is stated hereunder.

10. On September 29, 1964 about 200 students of Banki College took out a procession to the local High School where about 500 school students joined them. The total strength of the procession became about 700. This was stated to be a market day at Banki. The processionists marched through the market and held a meeting in Kutchery Padia at about 1-30 P. M. on September 29, 1964 which lasted for about half an hour. Mr. Dhruba Charan Lenka, President of Banki College Un on presided. The students gave out anti-Government and defamatory slogans against the Chief Minister and gave slogans to the effect that the police oppression must cease. This was stated to be by way of reaction to the incidents at Cuttack on the 26th and 27th September. Thereafter the meeting dissolved.

11. During the Puja holidays, no overt activities could be noticed at Banki. On October 20, 1964 however Mr. Antaryami Das of Ravenshaw College, who belongs to village Rahama in Tirtol Police Station, came to Banki and exhorted the local students to go on strike till their demands were fulfilled. Mr. Dhruba Charan Lenka, President of the local

College Union at Banki is said to have been persuaded by Mr. Antaryami Das to organise lawlessness but Mr. Lenka did not agree at the first instance.

12. Then on October 25, 1964 Mr. Dhruva Charan Lenka and other students went round and collected subscriptions from shop-keepers and others. It is said that they collected about Rs. 500, mostly by threats and intimidations.

13. On October 26, 1964 Banki College reopened after Puja holidays. The students took out a procession from Banki College from about 11 A. M. carrying the effigy of the Chief Minister ; vulgar and defamatory slogans were given out by the processionists. The college students went up to the local High School, that is B. K. Bidyapitha, which opened on that very day after Puja holidays. The college students abused the teachers of the school in filthy and vulgar language. The school students protested at this and demanded the college students to apologise for their misbehaviour. The school students however did not join the college students. At this, the college students became crestfallen and did not do anything further ; they came back with the straw effigy of the Chief Minister which they were carrying.

14. On October 27, 1964 the students of Banki College gathered at the local High School early in the morning at about 6-30 A. M. The school students were coerced and cajoled to join and they were made to join the college students at about 10 A. M. This time the effigy of the Chief Minister was being carried on a cot; an earthen pitcher and a liquor bottle were also being carried ; the college students were shouting slogans, among others, like "RAM NAM SATYAHE" as is done when accompanying a funeral procession. The procession came up to the Banki Court premises. The processionists were carrying black-flags and putting on black ribbons as badges. They were also shouting vulgar and filthy slogans in a frenzy. When the procession passed by the Banki Police Station, which is situated at a by-pass, the High School students pelted brickbats at the police station. The effigy of the Chief Minister was burnt at about 1 P. M. on October 27, 1964 and shouts were given "POLICEWALA MURDABAD". There was a police sentry standing : some among the processionists were shouting "DRAG OUT THE SALA". They also put up a black-flag, left the police station at 4 P. M., and came to the football field near Banki Court where a meeting was held denouncing the Government. This meeting was attended by about 500 students but no member of the public, except some sight-seers, was present.

15. On October 28, 1964 one section of the APR in charge of Inspector M. Salu of Cuttack Sadar, arrived at Banki at about 3 A. M. (night of 27th-28th October) from Cuttack. They had left Cuttack at about midnight ; a police cordon was put up in the Banki Court premises at about 11 A. M. on October 28, with the APR force joined by three constables from Banki Police Station. There were eight constables available ; five of them were left at the police station and three joined the APR force at Banki Kutchery. This excludes the treasury guards and the Court police staff.

16. On that date (October 28, 1964) a mob of about 300 students, which proceeded from Banki College to the local High School, arrived at Banki Court premises at about 12 noon. Some of the processionists waited beyond the buildings and about half of the processionists marched towards the office of the Deputy Collector. Those who entered the court premises, tried to break the police cordon. The local officials and two lawyers tried to persuade the mob not to become violent. The students however were in no mood to listen and were giving out slogans in vulgar language. It is said that 12 of the processionists forcibly entered into the police cordon ; they were arrested; they had earlier given a charter of demands to the Deputy Collector Tahasildar.

17. Among the 12 persons, who were arrested, 11 belonged to Banki College and 1 to the local High School. The mob was shouting slogans. The policy of the student agitators was to court arrest in large numbers and to fill up the jail. It is said that these 12 persons were arrested under Section 151 Criminal Procedure Code to prevent them from committing cognizable offences ; they were released at about 4 P. M. when the situation became a little calm. The mob then left the place at about 4 P. M. on October 28, 1964 after shouting slogans. It was reported that group discussions went on among the students of Banki College in the evening of October 28, 1964 till about 1 A. M. on October 29, 1964.

18. On the date of the incident October 29, 1964, the Tahasildar Deputy Collector, who was the President of the Banki College, asked the Secretary of the Banki College to close down the college with immediate effect. But the Secretary did not agree to the proposal. At that point of time Banki College had on its rolls 220 students out of whom 80 were residents of the hostel.

19. Apprehending trouble on that date October 29, 1964, a police cordon was put up in Banki Kutchery at about 11 A. M. The APR force was reinforced by four constables from Banki Police Station. The treasury guard and the court police were also in position.

20. This, in short, was the background of the incident in which police had taken resort to lathi charge and teargassing in the situation which gradually developed as hereinafter stated. For convenience of appreciation of the sequence in which the events occurred in succession on the October 29, 1964, the entire incident is described under different phases as developed from stage to stage throughout that day.

**C. First phase : 12/12-30 noon : persuasion failed :
dispersing by chase with show of lathi :**

21. On October 29, at about 12 noon the college and school students numbering 150 to 200 came in a procession to the court premises shouting anti-Government slogans. When they came near the Court building of the Deputy Collector, a police cordon was again put in front of the court building. It is said that the Deputy Collector had also requested two members of the local Bar to explain to the students. They tried their best to persuade the students not to do any illegal act in the court premises. Inspector M. Sahu who was also on the spot joined the Deputy Collector and others in persuading the students from lawlessness. The students were not however prepared to listen to any persuasion. Thereupon, the Deputy Collector put a police cordon in front of the main Court building in order to prevent the students from committing any mischief to the court building.

22. It is said that, while they were thus trying to persuade the students, another batch of students 200 to 300 in number came and joined the first batch of students numbering about 150 to 200 as aforesaid. The latter batch which joined also brought with them a microphone mounted on a rickshaw. Through it, they were shouting to the other students who had come earlier not to be deceived by what the officers were saying; they were all determined not to allow the office to function. After a few minutes, some one from the students started throwing brickbats to the front side of the court building where the Deputy Collector and others were all standing and explaining to the students. The brickbats were all falling just where the police constables and police officers were standing.

23. The Judicial Magistrate C. W. 21 Mr. B. N. Patnaik, who deposed before the Commission, said that he saw a few brickbats and small stone chips were hurled towards the police; that the brickbats were coming from the students who had gathered there, that is, the east of the Deputy Collector's building inside the quadrangle; that a few brickbats also came to his building, namely, the court building of the Judicial Magistrate (C. W. 21 B. N. Patnaik Qq. 9, 10, 12).

24. The evidence of the Deputy Collector C. W. 22 Mr. L. C. Pradhan was that at that stage he warned the students not to indulge in such illegal or unlawful acts; he told them that he had already explained to them at length and if still they do not desist from such acts, then action would be taken against them. Even thereafter, when the students still persisted in their unlawful acts, the Deputy Collector, who then was in charge of the law and order situation at the time, declared the assembly unlawful. Thereafter, when the students showed determined behaviour not to move away from the court premises and wanted to enter inside the court building, the Deputy Collector directed the police to drive the mob away by show of lathi, and if show of lathi was not effective, then by lathi charge, if necessary. Accordingly, the police chased the students. He said that the moment they raised lathi, all students ran away hither and thither. The evidence of the Deputy Collector Mr. Pradhan was that while chasing, the police did not strike the mob with lathis as there was no necessity. He said that when the police raised lathis, the mob ran away and went away to a distance (C. W. 22 L. C. Pradhan Qq. 13 and 18).

25. This was also supported by the Judicial Magistrate C. W. 21 Mr. Patnaik who said that he saw the chasing by the policemen, but he did not see any of them assaulting the crowd with their lathis; he had seen the students running away as soon as the police chased (C. W. 21 B. N. Patnaik Qq. 158, 159).

26. Due to this chase the mob receded to a distance of about 200 yards from the main court building up to the tank as appears in the spot map Ext. C/42. There, in the open field and near the tank, the students again congregated here and there. Thereafter the police who were chasing the mob returned (C. W. 22 L. C. Pradhan Q. 17).

D. Second phase : from 1-30 p.m. : arrival of 10/12 non-student outsiders:

27. It is said that at about 1-30 p.m., 10 to 12 outsiders, some of whom were said to have been heavily drunk, entered the inner courtyard from western side about 15 to 20 minutes after the first chase by the police was over and the mob had receded up to the tank and the open field. Those people came and shouted that they would kill all the police people there as the police had assaulted their females. Seeing this the Deputy Collector approached them even though they were heavily drunk ; they were holding brickbats. In order to pacify them, the Deputy Collector assured them that he would enquire into their allegations and asked them to disperse. But they were not prepared to listen to his advice, they again threw brickbats towards the police personnel. When the Deputy Collector warned them that unless they dispersed immediately force would be used, the mob again gave threats.

28. In this context, the Deputy Collector C. W. 22 Mr. Pradhan, while giving a detailed description of what had happened at that stage, said to this effect : 15 to 20 minutes after the police returned to the inner compound after the first chasing was over and the mob receded as aforesaid, about 10 to 12 persons immediately came from the western side of his court building through the gap in between the Khasmahal office block and his main court building, and shouted that they would kill all the police people there because they had assaulted their females. He was just on the front side, that is, eastern side of his court room. Hearing a halla on that side he went to that place ; he went to them direct and enquired from them what was the trouble about ; they told him that police people assaulted their females. The evidence of the Deputy Collector further is that he saw some of these persons heavily drunk ; he patted two of them on their back ; he told them that he himself had seen the police while chasing the mob --the police had not exceeded the limits beyond the well which is just outside the court premises on the southern side. These persons who had entered were outsiders : they were still adamant and said that the police had assaulted their females and they would kill those police people. The Deputy Collector then told them that if that was a fact, then that was not the time for him to enquire and give a decision immediately. He said that after the students were pacified and they dispersed, he would look into their grievance, if any. Thereafter these non-student outsiders quickly went away from the presence of the Deputy Collector. But 2 to 3 persons out of the mob, who

had brought brickbats with them, started throwing brickbats towards the police who were standing at a distance. Then the Deputy Collector told the mob that if they did not disperse peacefully and went on with such illegal acts, he would be forced to use force ; immediately they returned saying "all right, we shall see" and left the premises (C. W. 22 L. C. Pradhan Qq. 21-26, 340).

**E. Third phase : from little before 2 p. m. : attack
by mob of 400-500 strength including students
and non-students who joined :**

29. Thus some time after the 10-12 persons had left giving threats to the Deputy Collector as aforesaid, a little before 2 p. m. the mob of 400 - 500 strength including students and non-students—armed with lathis, sharp cutting weapons, such as, axes and kataris—came from Churchika village side and joined the student mob that had come earlier as aforesaid ; the entire mob then numbering more than one thousand rushed towards the Court building with heavy brickbatting ; they shouted filthy abuses and slogans. As a result of the brickbatting, many of the police personnel about twenty-three in number and the Deputy Collector Mr. Pradhan were injured. On this point the affidavit and evidence of the Deputy Collector C. W. 22 Mr. Pradhan is that he himself as an eye-witness saw what have been hereinbefore stated (C. W. 22 L. C. Pradhan Qq. 27, 30, 31, 350).

30. This entire mob, numbering between 500 and 1,000 approximately, came rushing towards the Court premises, armed with lathis, kataris, axes, big boulders and brickbats. They made thundering shouts, encouraging the students to make an attack on the police and other officials, saying that they had come to help the students. As soon as the mob joined the students who were already there, there was vigorous attack on the police, other officials and on the court and office buildings by pelting heavy boulders and brickbats. It was at that stage that teargas shells were fired but without any effect.

31. The Judicial Magistrate Mr. Patnaik C. W. 21 was an eye-witness to this part of the incident. He was inside his office room, and saw, through the panel gaps of the door, what was happening outside. He said that he found a number of outsiders coming from the southern side with various shouts ; they shouted that they had come to help the students ; the number of the crowd would be 400 to 500 ; they were hurling brickbats, stones and boulders which he saw were being thrown towards his court building on the southern side ; by continuous

pelting of boulders the southern, door of his office broke. His evidence about what happened was this :

“ Q. 18 After that what happened.

A. The mob joined the students. Most of the persons of that mob were armed with lathis, kataris, axes and a few boulders. In the meantime while I was in the office room within closed doors there was firing of teargas shells. It appeared, that had no effect. When those teargas shells probably failed in action, these mob made vigorous attack on the few policemen of course who were around there. In their attack they threw those boulders to the doors of my court room and office room. The doors being panel doors they easily gave way. Thereafter, a mob of about 50 came rushing towards my office room and the court room. They forcibly broke open those doors, entered into the court room and the office room as well.

Q. 19 What was the time then.

A. It was between 1-30 to 2 p. m. Then they forcibly drove us on pain of assault. Then I myself with my staff who were inside the office room came outside. In my very presence they started carrying away those furnitures, records, etc.

Q. 20 Who were those people—were they students or members of the public.

A. Most of them were members of the public as they appeared.”

In such a situation the Judicial Magistrate felt a little panicky. There is ample evidence that the mob, which came from Churchika village armed with deadly weapons, joined the students who had come earlier and thereafter committed all the mischief, incendiarism and vandalism in the nature of attacking the offices, breaking open the doors, windows, and later on they made a bonfire of official records and furniture as hereinafter described.

32. In the meantime, finding the mob violent, the Deputy Collector Mr. Pradhan C. W. 22, along with the police force, proceeded towards the mob up to the beginning of the approach road and warned them to disperse ; as they did not disperse he declared the assembly unlawful and ordered the firing of teargas shells ; accordingly the police fired two teargas shells and one grenade but all the three shells were not at all effective—they did not explode.

33. After teargas shells were fired, the mob receded a few yards but when they found that the tear shells did not burst and were ineffective, the mob—presumably emboldened by the fact of ineffective teargas shells—surrounded the entire Court building covering both executive and judicial courts ;

there was continuous brickbatting. Most of the mob went to the western side and northern side; some went also to the eastern side; some remained on the southern side, that is, behind the Judicial Magistrate's Court building. The mob also surrounded the Deputy Collector's Court building from western and northern side; they did not enter inside; they were all outside; the main target of the mob was however the court building of the Deputy Collector. Apprehending more danger to that Court building, the police force was withdrawn from the approach road and sent to protect the court building of the Deputy Collector on the western and northern side. All this time heavy brickbatting was going on.

34. *Why firing was not ordered by Magistrate* : It was at this stage the Deputy Collector consulted Inspector M. Sahu C. W. 20 whether they should resort to firing when on all sides the mob had already surrounded. They considered whether it would be prudent to open fire in such circumstances. It is said that at that stage the onlookers, who were standing on the road about one thousand in number, also came and joined the mob which surrounded on all sides of the court building as aforesaid. Both Inspector M. Sahu and the officer-in-charge requested the Deputy Collector to order for opening fire, but the Deputy Collector Mr. Pradhan explained that due to the peculiar situation—court building having no compound wall proximity of the staff quarters and the quarters of the magistrates nearby, strength of the mob the inadequacy of the available force who had already been injured and sustained bleeding injuries—it would not be wise to open fire.

35. There was no hope of getting reinforcement of force from the headquarters at Cuttack which is about 60 miles from Banki. Besides, during that season there was no fair-weather road. Telephone and telegraph communications were also cut off (C. W. 20 M. Sahu Q. 49). In fact, it was even during the first phase of the incident between 12 noon and 1-30 P. M. that finding the situation gradually deteriorating, the Deputy Collector wanted to contact the District Magistrate at Cuttack on the phone but he found that the telephone line had already been cut off. The Deputy Collector sent a clerk of his to the post office to send a message to the District Magistrate either by telephone or by telegram to send extra force; the clerk returned and informed him that the telephone and telegram lines had been cut off and as such no message could be sent to the District Magistrate (C. W. 22 I. C. Pradhan Q. 94).

36. The strength of the police force at Banki on the date of the incident was also inadequate ; in all there were 12 constables at Banki Police Station. The previous day one section of APR consisting of one Havildar and eight constables were brought by Inspector M. Sahu who reached Banki at about 3 A.M. on October 28, 1964. On the date of the incident Inspector M. Sahu with the officer-in-charge and a section of armed police force, 4 constables of Banki Police Station were on duty who had formed the cordon. This was all the force.

**F. Fourth phase : Khasmahal office record room,
Magistrate's Court and office room on fire :
What happened thereafter :**

37. About this time, the Deputy Collector was informed by some members of his staff that smoke was coming out from inside the Khasmahal office room, which is in the same building where the Judicial Magistrate holds his court. He immediately proceeded to the Khasmahal office room and finding smoke coming from the said room, asked some peons to bring out the records and files from the same. On opening the doors of the office, it was found that some files were burning inside the office. The peons and some clerks were directed to bring out the records. It is said that smoke was also coming out from the office room of the Judicial Magistrate. The evidence is that later on, it was found that the miscreants had burnt the records and furniture of the Judicial Magistrate's office and Khasmahal office. It is said that records were taken behind the court building. The mob is alleged to have broken open the panels of the doors on the backside and removed the records and furniture from the backside. A heap of papers was also found burning in front of the court building of the Judicial Magistrate. This aspect of the case was made amply clear in the affidavits of the Deputy Collector Mr. Pradhan and Inspector M. Sahu as also in their deposition before the Commission (C. W. 22 L. C. Pradhan Qq. 38, 422, 424 ; C. W. 20 M. Sahu Qq. 56 -65) .

38. In the meantime, after smoke was found coming out from inside the Khasmahal office, some members of the staff of the Deputy Collector, who were in the main court building, shouted at him, the Additional Tahasildar and others, who were just in front of the Khasmahal Record Room, to come away to the main building. that is to say, the court building of the Deputy Collector, as the mob were

shouting at them. Thereupon, the Additional Tahasildar immediately jumped from the verandah where he was standing and ran away to his (Deputy Collector's) court building. At that moment a section of the mob rushed in through the gap in between the Khasmahal block and the Judicial Magistrate's Court ; another batch came also from the side of the approach road. These people, who were rushing in through the gap in between the Khasmahal office and the judicial block, saw the Additional Tahasildar running in their front ; the mob shouted to catch hold of him and kill him (C. W. 22 L. C. Pradhan Q. 42).

39. It is in evidence that the mob dragged away the Deputy Collector from the court premises to his quarters and humiliated him. The circumstances and the manner in which he was so dragged and humiliated are these : At about 2-30 p. m. or so the mob had already come closer to the Deputy Collector Mr. Pradhan where he was standing on the verandah. Finding no other way to escape, he immediately came down the verandah and faced the mob. The Deputy Collector told the mob that they had already done enough mischief and if they did not disperse peacefully, consequences might be serious. Finding him in their presence, some members of the mob who were just close to him shouted to assault him ; but some others told not to assault the Deputy Collector but to carry him away and lock him up in his quarters. The mob then gave the Deputy Collector pushes from his back. The Deputy Collector resisted saying that in such a situation he could not leave the court premises. The demonstrators then said that he would otherwise give order for firing ; so they would take him to his quarters, lock him, up and then kill the police. Then without listening to him, two students caught hold of the hands of the Deputy Collector and more than 100 surrounded him and forced him to his quarters in spite of his reluctance to go. Thereafter, while the Deputy Collector was thus being carried to his quarters, on the way near the Block office, someone put a waste-paper basket on his head. The Deputy Collector could not throw it off from his head because two persons were holding his hands. Ultimately, while the Deputy Collector was thus being humiliated by the demonstrators, somebody lifted the basket from his head. Evidently, as the Deputy Collector himself is said to have told Inspector M. Sahu, he (Deputy Collector Mr. Pradhan) was taken away towards his quarters only to separate him

from the APR force so that he would not be able to give any order for firing. He was confined in his quarters for sometime when the demonstrators demanded to send back the police from Banki (C. W. 20 M. Sahu Q. 52).

40. Inspector M. Sahu, while so supervising the duties of the force deployed on various sides, had received information that the Deputy Collector Mr. Pradhan had been taken away by a section of the mob towards the riverside. From the attitude shown by the mob, the Inspector apprehended great danger to the life of Mr. Pradhan and so he rushed with four APR men to rescue him. It is said that while they were thus proceeding to rescue, the police party were chased and stoned by a section of the mob. As the safety of Mr. Pradhan was then at stake, the police party did not stop to deal with the miscreants. Ultimately, the Inspector found Mr. Pradhan on the embankment in front of his house; he (Mr. Pradhan) was persuading the miscreants not to indulge in brickbattling the police and other lawless activities. Then, the Deputy Collector Mr. Pradhan and Inspector M Sahu both returned to the court premises and found fire on the backside and front side of the court building of the Judicial Magistrate. They extinguished the fire which they found burning the records and furniture as aforesaid.

G. Is the evidence of P. W. 14 Dhruva Charan Lenka acceptable: Did he see the alleged assault on certain individuals including females as stated by him :

41. The case of the administration is supported by the affidavits of the Deputy Collector Mr. L. C. Pradhan C. W. 22, the Judicial Magistrate Mr. B. N. Patnaik C. W. 21 and Inspector M. Sahu C. W. 20 who all deposed before the Commission in support of their version of the incident at various stages as hereinbefore described. As against their testimony as eye-witnesses, the only witness called on behalf of the students is P. W. 14 Mr. Dhruva Charan Lenka, President of Banki College Union who filed an affidavit and also deposed before the Commission. It is clear from his evidence that he did not see what was happening in the court area after 1-30 p. m. on the date of the incident. He said that he left the court premises when the police charged lathi which was at about 1-30 p. m. He admitted in his answer to Qq. 202 and 203 that he did not know what was happening in the court premises after 1-30 p. m. The witness further said that after he left the court premises, he went to the house of

Sanatan Mista and remained there for 4½ hours; that he could not say what happened during these 4½ hours and had not seen anything personally (Qq 157, 158, 166).

42. The position therefore is that Mr. Dhruva Charan Lenka having left the court premises at 1-30 P. M. there is no evidence from the side of the students about what actually happened in the court premises after 1-30 P. M., namely, during the subsequent phases of the incident. Therefore, the evidence of the Magistrates and the Circle Inspector about the situation, during the subsequent phases of the incident after Mr. Dhruva Charan Lenka left, stands uncontradicted. It was a serious allegation made by Mr. Dhruva Charan Lenka, both in paragraph 8 of his affidavit and in his deposition before the Commission, that just after the people had dispersed the police, being afraid of their illegal conduct, set fire to the court rooms to justify police action; he had verified his statements in paragraph 8 as true to the best of his knowledge. Mr. Lenka having left the court premises at 1-30 P. M. he could not have seen nor have any personal knowledge of setting fire by police to the records and furniture of the court. The material portion of Mr. Lenka's evidence is this :

- “ Q. 222 You said now that you left the court premises at 1-30 P. M. on 29-10-1964.
- A. Yes.
- Q. 223 You do not know what was happening in the court premises after you left at 1-30 P. M. on 29-10-1964.
- A. No.
- Q. 224 Are you aware that there was setting of fire to the records of the court and other violent action in the court premises after you had left at 1-30 P. M.
- A. Just after 1-30 P. M. I could not come to know.
- Q. 225 Did you ever come to know about these violences that happened in the afternoon of 29-10-1964.
- A. I came to know after 7 P. M. at night.
- Q. 226 What did you come to know.
- A. I came to know from public as well as from students a.l.o.
- Q. 227 What is it you came to know.
- A. I came to know that police had committed excess upon the students as well as on some public onlookers. So in order to justify their cause they have set fire to records in the court room,

Q. 228 Who told you that police had set fire.

A. Some public.

Q. 229 Please name them.

A. I cannot tell the names of the public.

Q. 230 When were you told.

A. At 7 P. M. "

His allegation against the police is mere hearsay. He could not also tell the names of the persons or the source of his information on which he made this charge.

43. In his affidavit, he did not mention that he was among the students in the procession that had gone to the Deputy Collector. In his deposition before the Commission, however, he said that he himself with some other students—nearly ten or twelve—had gone to the Deputy Collector to place their demand (P. W. 14 Lenka, Q. 18). It is a material omission in his affidavit. In his affidavit, there is also no mention even of anybody having approached the Deputy Collector to give the students, demand. The reasonable inference, that one can draw from this, is that Mr. Dhruba Charan Lenka, was not one of the ten or twelve student deputationists who had gone to the Deputy Collector ; that in any event he was not there and did not see the incident.

44. As regards the alleged assault on different individuals, as stated in paragraph 7 of his affidavit and also in his deposition before the Commission, the evidence of Mr. Dhruba Charan Lenka is far from convincing. In paragraph 7 of his affidavit, while giving particulars of the persons who are said to have been assaulted by the police during lathi charge, he mentioned that two females of the locality were also assaulted. In his deposition before the Commission, he said that he saw these two women having been hit by police just in front of the Mahadeb temple by the side of the well (Qq 179—199). He also said that next day after these two females were beaten, he had gone to them, asked them and found out their addresses from some members of the public who knew them, that is, the places to which they belonged. He said that he had not remembered their names although at the time of filing the affidavit he knew their names and addresses. If, in fact, these two females had been beaten by the police in the manner as alleged, it is significant that there is no injury report in respect of them nor did any of these females come forward to complain or to file an affidavit to that effect.

45. Mr. Dhruba Charan Lenka also alleged in evidence that another female, namely the wife of Budheswar Panda, a man of Churchika, was also assaulted inside the house between 1-15 and 1-30 p. m. (P. W. 14 Lenka Qq. 203, 204, 205). It is also significant that he did not mention about this alleged assault in paragraph 7 of his affidavit where he gave the particulars of the persons alleged to have been assaulted by the police. Ultimately in cross-examination, he admitted that he had not seen personally the policemen assaulting Budheswar Panda's wife (Q. 206).

46. Mr. Dhruba Charan Lenka made a further allegation in his affidavit and evidence before the Commission that Laxminarayan Misra was severely assaulted by the police (P. W. 14 D. C. Lenka Q. 21). In support of the alleged assault on Laxminarayan Misra, reliance was placed on the side of the students on Ext. 33 Admission and Discharge Certificate of Government Hospital, Banki, in respect of Laxminarayan Misra purporting to show that for "injury back" he was admitted on October 29, 1964 and discharged on the same date and that he left the hospital of his own accord.

47. The possibility of some of the processionists having received minor injuries, while falling down due to lathi charge by the police, cannot be ruled out. P. W. 14 Mr. Dhruba Charan Lenka's evidence is that, while the police pushed back the processionists, one student fell down (Q. 138). He also said that within his view he saw five students having been hit by policemen during the lathi charge (Q. 150). The evidence of the Deputy Collector Mr. Pradhan is also that he saw some of the students falling down on the way and that they got up again and ran away (C. W. 22 L. C. Pradhan Q. 15). The Judicial Magistrate Mr. Patnaik also said that, while the students were running away, he had seen one or two boys falling on the approach road (C. W. 21 B. N. Patnaik Q. 164). Although some of the persons, stated to have been injured, were named in the affidavit and evidence of Mr. Dhruba Charan Lenka, none of such persons however came forward to prove the alleged injury on them. There is, therefore, no proof in support of the charge that they had been assaulted by the police in the manner as alleged.

H. Findings of the Commission :

48. In the result, therefore, on the evidence before it, the Commission finds—

- (a) that on October 29, 1964 at Banki the mob, consisting of students and public, without any provocation

indulged in violence and lawlessness; it was mostly the anti-social elements who were responsible for the same;

- (b) that the students had initiated the agitation and the procession but subsequently the anti-social elements crept in and led the situation;
- (c) that the strength of the police force at Banki, even after reinforcement, was not adequate to deal with the situation effectively; further reinforcement was also not possible in the circumstances as stated in paragraphs 35 and 36 herein;
- (d) that the attempt of the local Magistrate to get reinforcement from Cuttack failed, because he could not contact the headquarters at Cuttack either by phone or by telegram as they had been cut off as aforesaid;
- (e) that the situation at Banki—raid on the court building, burning of court records and furniture, manhandling of the officers and humiliation of the Deputy Collector in the hands of the mob—was grave which demanded police action;
- (f) that lathi charge and throwing of a few teargas shells, which also was ineffective, were the minimum force that the local authorities used at the time. It is unfortunate that the teargas shells and grenades, which were sent for use at Banki, did not burst and proved ineffective. The authorities concerned should have been more careful in scrutinising the potency of such stock with reference to the expiry date at fixed intervals;
- (g) that it cannot be said that such police action was excessive. The Magistrate, who was in control of the situation with inadequate force at the time, had acted wisely in refraining from taking any drastic action which would have precipitated further deterioration in the situation.



Ext. C/99(1)
 Embankment road, postal approach
 road, telegraph post, urinal,
 Mahal tree and P. S. building

Ext. C/99 (2)
 Mahal tree, rain gauge, urinal and firing
 position of P. S. thatch in south-west corner





Ext. C/99 (3)
Embankment road towards
East and approach road

Ext. C/99 (4)
Approach road of Post Office,
embankment road in front of P. S., P S
building and steps and urinal





Ext. C/99 (5)
Gate and steps of P S, embankment road, south-
west corner pillar and thatch of the P. S.

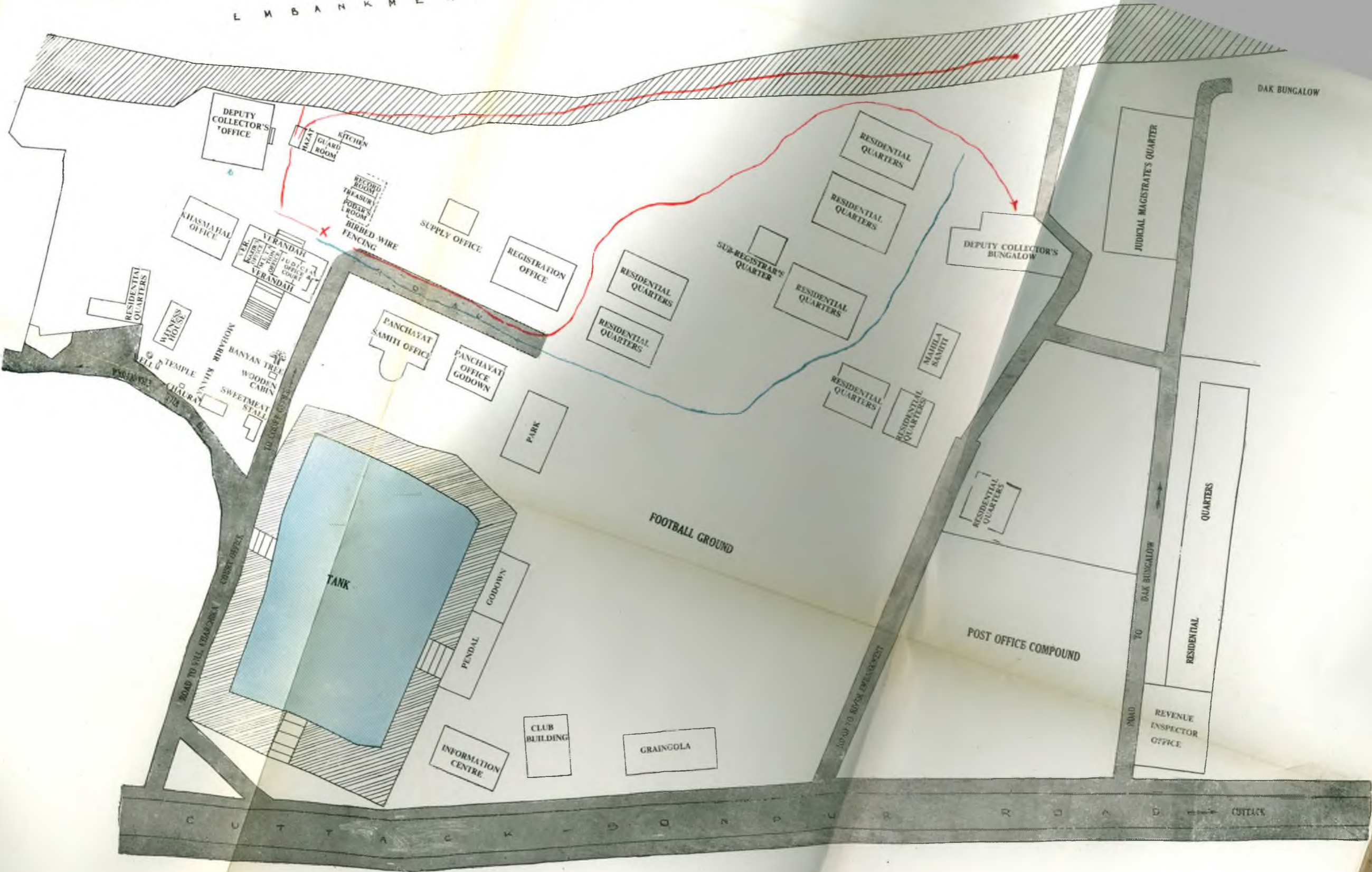
Ext. C/99 (6)
Gate and some portion of P S building



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R I V E R
M A I N
E M B A N K M E N T S I D E O P E N L A N D

VILL CHARCIKA
VILL CHARCIKA



DAK BUNGALOW

ROAD TO VILL CHARCIKA
ROAD TO BOTS EMBANKMENT
ROAD TO DAK BUNGALOW

C U T T A C K R O A D

CHAPTER XIV

BINJHARPUR INCIDENT

	Paragraph		Paragraph
Introduction ..	1— 8	Firing: at what stage ..	49— 51
A. Case of the students ..	9-10	Other improbabilities ..	52— 56
B. Case of the Administration ..	11	Improbability of P. W. 11 Abdul Khalak Khan having seen material part of the incident	57— 59
C. Background: How the situation developed at Binjharpur	12—22	I. Alleged assault on Mr. Radhagobinda Das	60— 63
D. What happened on November 2 prior to firing by the police	23—35	II. The allegation of police setting fire to the police station	64— 67
E. Situation ending with police firing ..	36- 42	I. What do the Inquest and post-mortem reports reveal	68- 74
F. Is the version given by the students in their joint affidavit and subsequently in evidence acceptable	43- 59	J. Why tear smoke was not used at Binjharpur	75—79
Alleged story of only 5 or 7 persons running away to the western side	44-45	K. Was the use of force—lathi charge and firing—justified	80—95
When was the initial lathi charge ..	46— 48	L. Findings ..	96

INTRODUCTION

Binjharpur is a village within Jajpur subdivision in the district of Cuttack. It is situate at a distance of 14 miles from Jajpur. There is a police station. The population of Binjharpur PS area will be about 153,995.

2. There is no High School in Binjharpur proper but there is one M. E. School. The nearest High School is at Sayedpur which is at a distance of about a mile from Binjharpur. There is another High School at Kalyanpur about $1\frac{1}{2}$ miles away from Binjharpur. The Commission had inspected all the schools in the locality.

3. It appeared that in that area there were people with progressive ideas running the various educational institutions; the people were politically conscious. The political parties had also their respective organisations and there were people who were working in the field.

4. Binjharpur itself is a big village which has the look of brisk business in the market area which is not far from the police station. At places, the houses are congested.

There is a good percentage of Muslim population. There is a mosque. There are certain respectable Muslims among the local leaders belonging to different political parties. As a whole, Binjharpur, though a village, gives an impression of progressive outlook, more than what can be expected in an average Indian village.

5. There is no railway communication with Binjharpur. The road leading to Binjharpur is not also good. In fact, in the rainy season the road to its Subdivisional headquarters Jajpur at places remains water-logged, and as a result Binjharpur at times remains cut off from Cuttack and Jajpur. Jajpur is at a distance of 36 miles from Cuttack, intervened by three rivers, namely, the Mohanadi, the Brahmani and the Kharaswan. The Mohanadi has since been bridged. There are fair-weather roads over the other two rivers.

6. The police station is situate at a place, a little off from the market side of the village. It is just below a high embankment as appears from a photograph Ext. C/99 (4) which shows the position of the police station in relation to the embankment. The Commission also visited the place on local inspection. The police station is awkwardly situated at a low level about 8/9 ft. below the embankment. In fact, the eaves of the thatched roof of the police station are almost in the same level with the top of the embankment. For anybody to come from the police station up to the embankment, he has to climb up a few steps, as appears from a photograph Ext. C/99 (5). The roof of the police station is throughout straw-thatched and the risk of its catching fire is always there. The police station, with no compound wall, is too much exposed from the point of view of security and protection. There is no fence except on the north-eastern side. People can enter the police station compound from the embankment side, from the western side, and from the eastern side at the foot of the embankment. People can also enter through the postal approach road inside the compound.

7. The Commission is of the view that police stations of this type as at Binjharpur (thatched houses), wherever they are, should all be dismantled, and new buildings should be constructed. The present ones are unsafe from several points of view.

8. There is a post office adjacent to the police station on the western side. There is an approach road from the post office to the embankment hereinafter referred to as postal approach road. The postal cash is also kept in the

police station in a chest. All postal moneys, being the income of the post office, are kept for safe custody in that chest embedded inside the police station house.

A. Case of the students :

9. The charge against the police is over an incident on November 2, 1964, in which there was lathi charge and firing by the police, as a result of which one person, who was hit by the firing, died. The allegations against the police are contained in a joint affidavit filed by Abdul Khalak Khan P. W. 11 and Gopal Chandra Das P. W. 12 on behalf of the citizens and students of Binjharpur :

“ 3. That on 2-11-1964 some of the students decided to hold a meeting and procession in the public street in protest of the police excess at Cuttack and other places in the State. That on the very day at about 1 O'clock the students marched in a procession giving slogans against the police excess. Unfortunately during the period most likely due to directions from the Ministry which was out to take revenge on all the students of the State which was clear from a communique issued by the Government of Orissa some days before, even the police of the rural area like Binjharpur were moving in a madden spirit to oppress the students. The students while coming in a procession on the river embankment which passes in front of the police station were giving slogans as usual against the police oppression such as “Police Raj dhwangsa heu”, “Police atyachar bandheu”, “Bichai bibhagiya Commission Rasajau”. The Thana Officer Shri Purna Chandra Das by that time was waiting in the police station with a troop of Orissa Military Police and the Circle Inspector of Police, Jajpur was also present. It may be mentioned here that the OMP is never stationed at Binjharpur. This clearly shows that the police were in readiness from before in search of an opportunity to oppress the students by violent attacks.

4. That as soon as the students reached near the P S on the river embankment suddenly the Thana Officer and the other constables of the OMP rushed to the place. They began abusing the students in awfully vulgar language in the name of their mothers and sisters. Some students protested against the abuse and at that time in a twinkle of an eye without any warning, without rhyme or reason, a lathi charge on the students who were unarmed, ensued. When the students were running away they were chased with lathis and boots.

5. Some members of the public such as a local Homeo practitioner of Mashra and many other persons including businessmen who were going either to post office or to the bathing ghat of the river or to their homes were mercilessly beaten by the police.

6. In the confusion the people began running hither and thither. The greatest crime was, thereafter, committed by the police. When the students were so running away two rounds were fired and the students named Sk. Gayasuddin of Class IX, a young urchin of 13 years, was shot dead at a considerably long distance of about 200 yards away from the P S and the shot was fired from the compound of the P S
7. After perpetrating the barbarity they tried to find out the ways and means to make out a case in their favour. At about 4 O, clock a local Sarvodaya leader Shri Prana Krishna Patnaik who has dedicated his life as 'Jeevandani' under Vinobaji organised and presided over a meeting to protest against the unlawful brutalities committed by the police. The meeting was largely attended. At that time a news came that the police people have dragged straw from the thatch of the Thana and were putting fire to them on the ground. Some people went there and saw as to how some policemen were collecting the shoes which were left by the running crowd after the lathi charge and firing.
8. Thereafter, the police started indiscriminate arrests of many innocent people including the local Sarpanch and false cases have been started against them making a capital of the small bonfire which they themselves made of the straw taken out from a small portion of the thatch of the Thana.
9. That the Police committed the maddened crime and it was committed under the direction of the Ministry in Power who were out to take revenge on the students and to clothe up great corruptions practised by the Ministry against which the intelligentsia rose in protest."

They also deposed before the Commission as eye-witnesses to the incident. Sk. Tamizuddin P. W. 13 father of the deceased filed an affidavit claiming compensation for the loss of his son and deposed before the Commission. As regards documents, the only document, filed on behalf of the public, is Ext. 32 Transfer Certificate dated 4-9-1965 in original relating to the deceased student Sk. Gayasuddin granted by the Headmaster, Sribant High School, Kalyanpur, relied on in proof of the actual age of the deceased.

10. In course of deposition before the Commission, Mr. Gopal Chandra Das P. W. 12 and Mr. Abdul Khalak Khan P. W. 11 made allegations against the police. Their specific case, as developed in course of giving evidence, in substance, was this :

- (a) About 200—250 students were leading a peaceful procession on the embankment in front of the police station; they were shouting innocent slogans; there was no brickbatting; they did not enter the police station compound nor did they set fire to the police station as alleged. In fact, according to the student,

policemen came out and stopped the processionists before they reached the gate of the police station and filthily abused the students; within a minute or two of such stopping the police charged them with lathi without any reason; within 2/3 minutes of the commencement of the lathi charge, the police opened two rounds of fire, as a result of which a student Sk. Gayasuddin was killed. From what they said in evidence, the time interval (if calculated) between the stoppage of the procession by police on the embankment and the fatal shot cannot be more than 7 minutes.

- (b) The positive case of Mr. Gopal Chandra Das P. W. 12 is that only 5 or 7 students, including himself and the deceased Gayasuddin, were running on the embankment in the western direction after the police lathi charged on the mob including themselves (P. W. Gopal Chandra Das Q. 95). From what Mr. Gopal Chandra Das said in evidence, his case appears to be that 5 or 7 students, including himself and the deceased, must have crossed or passed through the police party, who had stopped the procession on the embankment in front of the police station, while the procession was coming from the eastern direction.
- (c) It is also evident, from what Mr. Gopal Chandra Das said before the Commission, that except "only 5 or 7" students (as he put it in answer to Q. 95) nobody else was running on the embankment towards the west; the rest of the mob receded back towards the east. He also said to the effect that when these 5 or 7 students, including himself and the deceased, were thus running towards the west, they heard "Dho" sound and soon after heard another such sound; something hissed by him (referring to sound of firing) and he looked back and saw the deceased grovelling on the ground behind him (P. W. 12 Gopal Chandra Das Q. 33).
- (d) He further said that 5 minutes thereafter the officer-in-charge and the Circle Inspector came to the place where OMP people were standing; the

Circle Inspector hit the face of the fallen student with his boot and thereafter the Thana Officer also beat him likewise.

- (e) After about 15 minutes, the Circle Inspector again came to the spot along with 3 or 4 OMP people and lifted the dead body by their hands, the leg touching the ground, while they dragged the body to the police station.
- (f) It was further alleged that after firing, police had set fire to the police station to create evidence purported to be in justification of firing.

B. Case of the Administration :

11. The case of the administration, purported to be in justification of lathi charge and firing in the circumstances they were resorted to, is fully stated in the affidavits filed by the Magistrate Mr. K. C. Misra C. W. 13, Circle Inspector Sayed Mahammad Hanif C. W. 15 and officer-in-charge of Binjharpur Police Station Sub-Inspector Purna Chandra Das C. W. 14 ; they also deposed before the Commission. That apart, supporting affidavits were also filed by the SDO, Jajpur Mr. B. P. Pattnaik, DSP, Jajpur, Mr. B. K. Mohanty, officer-in-charge of Aul Police Station, Mr. B. K. Das and Mr. Balaram Pati, Chairman, Binjharpur Panchayat Samiti. The affidavit filed by the District Magistrate, Cuttack also mentioned about the incident at Binjharpur with particular reference to the background prior to the incident on November 2, 1964 and also what he found when he came to Binjharpur on inspection on November 7, 1964, 4/5 days after the incident. The documents relied on by the administration are Exts. C/19 to C/31(A) (both inclusive) and C/99 series. These include the injury reports, telegrams, post mortem and inquest reports, First Information Report, Station Diary entries, firing orders passed by the Magistrate and other official records in connection with the incident. The version of the incident, as given by the witnesses called from the side of the administration, is as hereinafter stated

C. Background : How the situation developed at Binjharpur :

12. The district authorities at Cuttack and the Sub-divisional authorities at Jajpur were being from time to time reported about the brewing trouble in Binjharpur area, for some time prior to the incident on November 2, 1964. In this

connection the affidavit of the District Magistrate, the contemporaneous reports given by the local police, wireless message sent by the police and entries in the Station Diary on October 30, 31 and November 1 to 3, 1964 (Exts. C/27, C/26, C/22 and C/28) were produced and tendered in evidence.

13. It was reported that the agitation had been going on in Binjharpur area since the student unrest in Cuttack in the month of September. The students of Sayedpur High School stoned two transport buses between Sayedpur and Mainda on September 29, 1964 causing some damage and creating panic among the passengers. This was on the road between Binjharpur and Jajpur. On the same date a constable on duty was also assaulted. It is also in evidence that on that date (September 29, 1964) at about 2 P.M. in the afternoon the student processionists—about 500—came in front of the police station and shouted slogans “MADUA SHASANA LOP HEU : CHHATRA SAMAJ JAGI OOTHA : POLICE LOP HEU : SALE POLICEBALA SALE BAHARIASARE” (C. W. 14 Purna Chandra Das Qq. 16—18).

14. On October 29, 1964 the pre-test examination in Kalyanpur High School had to be abandoned because of the agitation which was still continuing. The Headmaster, Kalyanpur High School is stated to have made his utmost efforts to hold out against the strike and picketting. It is said that Sayedpur High School was another trouble spot in the area. All the schools in the area had by then reopened on October 26, 1964 but there was no attendance in most of the schools and very little attendance in some schools.

15. On October 30, 1964, the students of Kalyanpur High School and girl students of ‘Kanyabidyasram’ High School, Kalyanpur, all numbering about 300, went on a strike, reported to be under the leadership of the Communist Mr. Ananda Chandra Rai of Barapada and Socialist Mr. Radhagobinda Das of Masada. The students came in a procession to Binjharpur at about 1 P.M. with slogans “*Amar dabi puran heu*” and burnt a straw statute of the Chief Minister at Binjharpur Bazar. The students along with the said political workers are said to have come to the front of the police station, shouted slogans and used very abusive words to the police. It was reported that the students held a meeting on October 30, 1964 evening at Kalyanpur and decided to go on strike from November 2, 1964 which was the date of the incident in question.

16. The police had reported that on October 31, 1964 the students of Angals High, School and Kalyanpur High School went in a procession up to Baladukali Hat where about 500 students are said to have burnt the effigy of the Chief Minister ; they held a meeting at Rudrapur field. It was reported that they had decided to come to Binjharpur on November 2, 1964 in a large number to close all shops and that there was likelihood of their coming to the police station; four students of Ravenshaw College, Christ College, and Engineering School (college), Cuttack and one from Bhadrak College came to Kalyanpur and instigated the students of the local High Schools to go on strike, processions and to attack police. It is said that a student of Engineering College was taking the lead in the procession, and some public including some anti-social elements, also joined the crowd, supported their action and instigated them to do overt acts. The CPI and SSP are also stated to have joined hands in this agitation. In such a hostile atmosphere, the police in the interior were already feeling insecure as reported to the authorities. This shows that even a few days prior to November 2, substantial tension was there at Binjharpur area; that the political workers were inciting the students and the public; by then the police had become the target of demonstration.

17. The day before the incident, the local police at Aul sent a wireless message to the SP, Cuttack which appears to have been received at Cuttack Wireless Office at 21-05 hours on November 1, 1964 (Exl. C/22) which was this:

“ ORISSA POLICE MESSAGE FORM

Call Sign NR. (OE) Instruction
S77 9 2 67

To

SP, Cte./C I KDP/DSP Jajpur/SDO Jajpur/SDO KDP.

FROM—S.-I. of Police, Aul.

STRIKE AND DEMONSTRATION CONTINUES AT GOVINDPUR BORDERING BINJHARPUR P S LIMITS. RUMOUR AND INFORMATION HAS SPREAD AT GOVINDPUR AREA THAT STUDENTS MAY SET FIRE TO BINJHARPUR P. S. TOMORROW. SITUATION AT GOVINDPUR UNDER WATCH. NO OVERTACT REPORTED SO FAR FROM GOVINDPUR AND BORDERING AREAS.

C R A S H

2000

1/11

2020/1.

It is clear from this wireless message, received by the district authorities on the previous day, that the local police had

apprehended that students might set fire to Binjharpur Police Station on the following day, that is November 2, 1964 which, actually, was the date of the incident.

18. These contemporaneous records, including the reports, support the view that trouble at Binjharpur was being apprehended from beforehand. In this context, the officer-in-charge of Binjharpur Police Station Purna Chandra Das C. W. 14 stated before the Commission about the situation in Binjharpur area during the period prior to the date of the incident (C W. 14 Purna Chandra Das, Qq. 16 to 18, 21 -27).

19. It was presumably on the basis of the previous reports and information, received from the local police sent to the district authorities at Cuttack, that on the night of November 1, 1964 the Magistrate Mr. K. C. Misra was directed by the SDO, Jajpur to go to Binjharpur as Magistrate in charge of OMP force as there was apprehension of danger. Early next morning at 6 A. M. the Magistrate Mr. K. C. Misra started by jeep for Binjharpur and reached there at 6-30 A. M. on the date of the incident. The force had already gone to Binjharpur the previous night along with the police officer in command. At Binjharpur, the Magistrate after his arrival early in the morning contacted the Circle Inspector and the officer-in-charge of the police station and learnt about the situation at Binjharpur. It was reported to the Magistrate that there was possibility of a Hartal at Binjharpur Bazar that day and that a student procession might come to the police station.

20. In his efforts to pacify the situation, at about 9 A. M. the Magistrate, with the Circle Inspector and the officer-in-charge, went to Binjharpur Bazar, contacted some local people and requested them to persuade the processionists not to be violent, to be peaceful so that any overtact might not be committed. Thereafter the Magistrate and the officers returned to the police station at about 10-30 A. M.

21. About the atmosphere in the village, the evidence of the Magistrate Mr. K. C. Misra C. W. 13 is that there was some tension among the people and some shops were closed; some persons were going to Kalyanpur side; there appeared to be no other disturbance in the morning when he went to the Bazar side; he noticed some students going to Kalyanpur side; at about 11 A. M. the officer-in-charge

of the police station came and informed the Magistrate and the Circle Inspector that he received information over phone from Jajpur that the DSP, Jajpur received a wireless message from Aul Police Station that some processionists might come and set fire to the police station building. Thereupon the Magistrate asked the officer-in-charge and the Circle Inspector to be alert and to keep the force in readiness.

22. The strength of the force, at the time, was only one section of OMP, that is 10 OMP constables and one Havildar; they had rifles and lathis. Apart from one section of OMP personnel, there were 7 ordinary constables at the police station besides Circle Inspector, officer-in-charge, two ASIs and one Writer Constable. The Circle Inspector had a revolver; the thana police staff had long lathis and short lathis. It was with this much of police force at the police station that the Magistrate was to face a situation, created by a violent mob of about one thousand, who are said to have attacked the police station.

**D. What happened on November 2 prior to firing
by the police:**

23. The students' version is as stated in the joint affidavit of Mr. Abdul Khalak Khan and Mr. Gopal Chandra Das quoted above. In course of giving evidence, they made certain variations in their case.

24. The version of the incident as given by the witnesses called from the side of the administration is, in substance, as hereinafter follows.

25. Nearly at about 1 p. m. a noise was heard from Binjharpur Bazar side—slogans—and it was apparent that a procession was coming; the said procession passed by the approach road to the river embankment, hereinafter referred to as the Bazar approach road, just to the east of the police station; the processionists were shouting abusive slogans and they came in that manner to the gate of the police station.

26. The strength of the crowd at the time was about one thousand consisting of mostly students and public about 20 per cent—all combined. The evidence is that some of them had lathis; some had sticks wrapped with cloth and they came to the front of the police station gate; it was at that stage that they shouted slogans in a very agitated manner; thereafter some among the processionists turned towards the police station and proceeded towards the gate.

27. At that time, the Circle Inspector, officer-in-charge and some constables who were near the gate were closing the gate. The crowd came down from the embankment to the gate and demanded to enter into the police station; they insisted and were shouting slogans. As it appears from the photograph Ext. C/99 (5), at that stage, the crowd had already come down from over the embankment on the steps to the gate of the police station where they were resisted by the police officers; the Magistrate was present throughout.

28. The evidence of the Magistrate is that the Circle Inspector and the officer-in-charge explained to the processionists that they should not be violent; they should be peaceful; the Magistrate also explained to them not to be violent and asked them why they had come; the crowd did not say anything but they insisted on coming inside the police station.

29. Then suddenly, the mob pushed the gates as a result of which one gate-leaf was broken and the Circle Inspector fell down; the other police personnel were also pushed back as the mob, rushing from over the embankment, entered into the police station compound—mob rolling down. It is said that in that process about 100 to 200 persons had by then entered into the police station compound.

30. It is clear from the position of the police station in relation to the embankment, from which the mob was rolling down on to the police station and the low level (8/9 ft. below the embankment) in which the police station was situated that it was not possible for the police personnel to resist the mob, who were in an advantageous position, from coming down into the police station. The position was that the mob was simply rolling down. This could only be resisted by police by pushing them up from below to the embankment; evidently this was difficult because of the awkward physical situation of the police station as appears from the photographs.

31. The situation, in which the Magistrate declared the assembly unlawful, was that the mob dashed in, assaulted the police party, and the Circle Inspector fell down. Thereafter the mob rushed into the police station from different sides without paying any heed to the requests of the Magistrate and the police personnel. Thereupon the Magistrate declared the mob unlawful, directed them to disperse and warned them that if they would continue to be violent and would not disperse, there would be lathi charge. The circumstances, in which the

Magistrate declared the assembly unlawful, were described by Magistrate C. W. 13 Mr. K. C. Misra; he said that the mob had just entered half of the police station compound when he declared the mob unlawful; he was just in front of the steps of the police station; the mob was just near the gate and also to the western side. The Magistrate had warned the mob in Oriya and told them that they had become violent and had entered the police station, breaking the doors and assaulting the police people; that he declared the assembly unlawful, and if they should not go away he would use force and disperse them by lathi charge; he told this at the pitch of his voice. The Magistrate made it further clear that immediately just when he fell back and the police were pushed back and the crowd entered into the police station, he declared the crowd unlawful (C. W. 13 K. C. Misra Qq. 31 to 34, 652 to 655, 670, 671).

32. The Magistrate and the police officers present, repeatedly warned the mob to disperse but they did not. Some damaged the thatch; one from the mob thrust an ignited stick to the thatch of the police station on the south-western corner as a result of which the roof caught fire. It was, however, immediately extinguished by the police staff. The Magistrate in his evidence said that he saw one person thrusting one ignited stick but how it was extinguished he did not see; he was informed that it was extinguished by the police staff; he said that he saw fire set to the thatch of the police station.

33. Then simultaneously the mob started brickbatting; 2 or 3 brickbats fell near the Magistrate; he again warned the mob to go away otherwise there would be lathi charge. He ordered the Circle Inspector to start lathi charge. Then lathi charge started and the mob dispersed out of the police station compound and ran to the embankment. From there, the mob ran in the eastern direction, western direction and also southern direction.

34. But immediately, the crowd again closed in with brickbatting, throwing chappals and shoes and shouting abusive slogans; the police personnel chased them towards the east as well as towards the west; there was closing in from the side of the mob and there was chasing from the side of police personnel. The Magistrate said that he found the police personnel very tired and were overpowered and brickbatting was very heavy. The Magistrate had watched this from inside the police station compound just in front of the police station building.

35. It was at that stage that the Circle Inspector, who was in command of the lathi charge, came running to the Magistrate and told the Magistrate that he had a wound on his head and his head was reeling. The Circle Inspector was also hit on the left hand; he entered into the police station; the Magistrate also went with him; there was a swelling on the head of the Circle Inspector and also on his hand; the Circle Inspector then slept and became unconscious; he was left in charge of ASI; the Magistrate came out.

E. Situation ending with police firing :

36. Then what followed thereafter were the circumstances in which the Magistrate had to order firing. From the evidence of the Magistrate and the officer-in-charge the picture, immediately before firing, was as hereinafter follows.

37. After having seen the Circle Inspector unconscious, the Magistrate came out of the police station; found that the Havildar of the OMP force was coming running to him; the Havildar said that his personnel had been injured by brick-batting; that they were overpowered and could not stand further onslaught. The Magistrate also heard the OMP personnel and other police personnel on the embankment shouting that they were unable to bear the assault by the mob and brickbatting, because most of them (police personnel) had been injured (C. W. 13 K. C. Misra, Q. 40). In fact, the injury reports Ext. C/24 series show that 9 policemen, including the Circle Inspector, were injured. There is no evidence of any member of the mob having been injured. It was presumably on account of heavy brickbatting by the mob, police could not strike the mob with lathis; there may have been, however, some cases of injuries on some members of the public during lathi charge about which there is no evidence on record. At that stage, the Magistrate found that it was not possible on the part of the OMP or police personnel on the embankment to stand any longer the attack by the huge crowd. The position was that the crowd was advancing with brickbats and raising their hands and fists with shouts to kill the police personnel and burn the police station building (C. W. 13 K. C. Misra Q. 41).

38. In this situation, the Magistrate gave order for firing. The Sub-Inspector and the Havildar withdrew the armed forces from the embankment and proclaimed about the firing order on the embankment. Then the police personnel were brought

inside the police station compound and they were made to stand in formation in a line in front of the police station. Then the crowd from east and west again came closing in with brickbatting and shouting slogans and in a very agitative manner raising their fists. Then, as already ordered by the Magistrate, the officer-in-charge asked the Havildar to open fire and one round was fired from the south-east corner at the mob that was advancing towards the police station on the eastern side embankment. This firing was not effective. The reaction of the mob to this first round of firing was that they fell back to a little distance and then shouted—

“ EYE SALANKA PAKHARE GULI PHULI KICHHI NAHI :
EMANE PHANKA AAUAJ KARUCHHANTI ; EMANE NIA
NIVALI DALA ASSICHHANTI.”

(These Salas have no ammunitions; they are making blank fire, they are fire-brigade people who have come.)

39. Immediately, a section of the mob on the western flank was found rushing towards the police station with brickbatting; and shouts to attack the police, to burn the police station and to kill the police. The situation after the first round of firing, as described by the Magistrate, was that the crowd which fell back to a certain distance shouted:

“ The police are firing only blank. They have no bullets. They are fire-brigade people.”

The Magistrate further said, that at this the crowd, which was advancing from the western side, were emboldened and became very furious; they were brickbatting and also advancing. It was then that, under instruction of the Magistrate, another round was fired from the south-western corner of the police station and one man out of the mob Sk. Gayasuddin fell on the embankment at a distance of about 105 feet from the police station (C. W. 13 K. C. Misra, Qq. 49,56).

40. The deceased, who was shot, was among the mob on the embankment on the south-western side of the police station engaged in brickbatting along with others. It is thus said that the deceased was actually brickbatting, facing the police station when he was hit by the bullet.

41. As regards the strength of the mob on the embankment at the time the first round was fired, the officer-in-charge C. W. 14 Purna Chandra Das said to the effect that the mob consisting of about 300 to 400 was on the eastern sector while the first round was opened ; at the time the second round was

fired, the number on the western sector was about 400 to 500 (C. W. 14 Purna Chandra Das Qq. 786, 787). He also said to the effect that the strength of the mob, on the western side with the deceased Sk. Gayasuddin when the second round was fired, might be about the same number.

42. As regards the manner in which the firing order covering two rounds was executed, the Magistrate said that at the point of time when the fatal bullet was hit, he was just in front of the police station near the steps and that he was watching the execution of the firing order from that place; the policeman, who fired the second round, was on the south-western corner of the police station, 5 to 6 feet away from the plinth of the police station building, that is to say, on the ground inside the compound about 105 feet from the place where Sk. Gayasuddin, who was killed, fell down (C. W. 13 K. C. Misra Qq. 51 to 56). The details and particulars of the manner, in which the firing order passed by the Magistrate was executed, were fully stated in his answers to Qq 375 to 412, 530—541. The Magistrate explained the manner and position from which the first round was fired to south-eastern direction and subsequently under his instruction to south-western direction. He clearly explained that the second round of firing was covered under the order of firing that he had passed. With regard to the second round, he said that, although there was only one firing order, he gave instruction for the second round which was covered by the firing order. His evidence is also corroborated by the officer-in-charge Purna Chandra Das.

F. Is the version given by the students in their joint affidavit and subsequently in evidence acceptable ?

43. In the ultimate analysis of the evidence, it appears that there are certain inconsistencies in their case as discussed hereunder with particular reference to certain material points.

44. *Alleged story of only 5 or 7 persons running away to the western side.* The various suggestions, made on behalf of the public and the students to the State witnesses, negative the positive case made by P. W. 11 Abdul Khalak Khan and P. W. 12 Gopal Chandra Das that only 5 or 7 persons were running away on the embankment towards the west when Sk. Gayasuddin was hit with bullet. It is significant that the subsequent story of only 5 or 7 boys, including the deceased and Mr. Gopal Chandra Das, running away on the western bank and Sk. Gayasuddin receiving bullet injury is not there in the affidavit or even by way of suggestion.

45. Before the Commission, the consistent evidence of both P. W. 11 Abdul Khalak Khan and P. W. 12 Gopal Chandra Das is that only 5 or 7 persons were fleeing away towards the west when the bullet hit Sk. Gayasuddin. The gist of what P. W. 11 Abdul Khalak Khan said is that at the time of first and second round of firing, except 5 or 7 persons, there was no other member of the public on the embankment right from the police station up to the point where the deceased fell (P. W. 11 Abdul Khalak Khan Qq. 151—157). P. W. 12 Gopal Chandra Das also said that only 5 or 7 persons ran towards the west when the police chased them (P. W. 12 Gopal Chandra Das Qq. 95, 107). The version—that only 5 or 7 students ran towards the west—is contradicted by P. W. 11 Abdul Khalak Khan himself in cross-examination which was this :

“Q. 159 How far the policemen who were running had proceeded towards the west on the Bundh from the approach road to the post office.

A. Police beat the students from thana to post office and after the firing the police went running towards the west.

Q. 160 How many persons were thus pursued by the police.

A. Students were about 250 to 300.”

It is clear from his answer that about 250 to 300 students had gone to the western side of the embankment while pursued by the police. This completely negatives the students' case that only 5 or 7 persons were fleeing away over the embankment on the western side. In fact, his evidence is that the public scattered all throughout as were visible to him ; the students while on the embankment were beaten and they scattered—some went towards the west, some towards the east and some went towards the south. As regards those who went towards the west, he said that they were to the west of the approach road to the post office about 400 cubits from the police station; that he was nearly 200 cubits from the place where the boy was shot dead ; those persons, who ran away towards the west on the embankment, remained at the place where they reached for nearly one hour.

46. *When was the initial lathi charge* . The case of the students, in substance, was that they never went inside the police station ; that there was lathi charge on the procession on the embankment itself before it reached the police station. In his evidence before the Commission, P. W. 12 Gopal Chandra Das said that the rear end of the procession had not come upon the embankment when the students were

confronted by the policemen ; however, the students arranged to bring the procession up on the embankment ; thereafter, the procession extended on the embankment a little beyond the Bazar approach road towards the west ; the procession was detained for a very little time— at the maximum 5 to 7 minutes ; soon after there was lathi charge. According to him, the processionists faced the policemen ; the policemen abused for 3 to 4 minutes ; then the policemen commenced to assault, all these took about 10 minutes ; thereafter there was lathi charge. Immediately the lathi charge started, he ran away towards the west (P. W. 11 Gopal Chandra Das Qq. 84--92).

47. The case of the administration is that a section of the mob had entered the police station ; there was confrontation between a section of the police and 100 to 200 processionists who went inside the police station , the initial lathi charge was ordered immediately ; the processionists, who had entered the police station, were chased and rushed up on the embankment and lathi charge continued on the embankment. The evidence from the side of the administration is that there was no lathi charge on the procession until after 100/200 or more out of the processionists attacked the police station coming down through the gate in the manner hereinbefore stated. Their case is that the processionists, who were on the top of the embankment, had extended up to the postal approach road on the western side of the police station ; some out of them had come to the police station compound ; they as well as those who were on the top of the embankment started brickbatting. It was at the point of time, while the processionists were inside the police station compound, that the Magistrate ordered lathi charge as aforesaid.

48. On this point, P. W. 11 Abdul Khalak Khan contradicted himself thus : In answer to Q. 187 he said that the processionists came from the east, and when they were 10 to 12 cubits from the thana, the policemen came rushing, rebuked them and began beating ; the people then got scattered in all directions—some went towards the east and some went towards the west. In answer to Q. 194 he however said this :

“ Q. 194 Was this patrolling before or after the police pursued the crowd on the embankment up to the approach road to the post office.

A. When the processionists reached the approach road to the office the policemen beat.

(Question explained and repeated)

It was after the police beat the processionists

(By 'patrolling' the witness means 'Jiba Asibu')

It is evident, from what he said, that the policemen did not beat the processionists, until the procession reached, as afore-said, the postal approach road on the western side. This answer contradicts his answer to Q. 187 as also the evidence of P. W. 12 Gopal Chandra Das whose version was this: While the procession was proceeding on the embankment 8 to 10 cubits from the police station, they were stopped by the Circle Inspector, officer-in-charge and 8 to 10 OMP constables who came running on the embankment towards the procession; that immediately, after exchange of words as stated by him, there was lathi charge on the processionists; it was then that the processionists started running towards the west. The inconsistencies are apparent.

49. *Firing : at what stage :* According to the suggestion made in Q. 823 in cross-examination put to C. W. 14 Purna Chandra Das, the first round was fired at the procession in the south-eastern direction when the procession was still passing on the embankment and before it reached the police station, that is to say, at that stage the procession was still on the embankment to the east of the gate.

50. The above contradicts the evidence of P. W. 12 Gopal Chandra Das in answer to Q. 20 where he said this : He came along with the procession on the approach road to the embankment. When they got up to the embankment, they saw the police Circle Inspector, officer-in-charge of the thana, some 7 to 8 Orissa Military Police and some constables in the verandah of the police station. The processionists were giving slogans. While the processionists were thus proceeding on the embankment, they came to a place 10 to 8 cubits from the police station when the Circle Inspector, officer-in-charge of the thana and 8 to 10 OMP constables came running on the embankment towards the processionists. In answer to Q. 21 P. W. 12 Gopal Chandra Das further said that he had a parley with the Circle Inspector as stated therein; that when the parley failed immediately there was a lathi charge on the processionists; then the processionists started running towards the west (P. W. 12 Gopal Chandra Das Q. 22). Then, he described what had followed (Q. 33).

51. If the narration of P. W. 12 Gopal Chandra Das, as stated in answer to Qq. 20, 21, 22, 33, is correct, then the suggestion that the first round was fired when the procession was passing over the embankment and had not reached the police station cannot be correct. In other words, the entire

evidence of P. W. 12 Gopal Chandra Das stands contradicted by the suggestion made in Qq. 823, 824 to C. W. 14 Purna Chandra Das. The suggestions, as made in those questions, were these :

“To Mr. C. V. Murty

Q 823 I put it to you Mr. Das that when the procession was passing on the embankment before it reached the PS the first round was fired.

A. No, it is not a fact.

Q 824 And that when the processionists were fleeing away on the embankment towards the west the second round was fired immediately thereafter.

A It is also not a fact.”

These suggestions by themselves are sufficient to make the version given by P. W. 11 Abdul Khalak Khan and P. W. 12 Gopal Chandra Das, improbable.

52. *Other improbabilities* : Apart from the above, there are certain other contradictions and improbabilities in the students' version.

53. As regards the alleged filthy abuse by the Circle Inspector on the embankment, there is no such allegation against him in the joint affidavit of Mr. Abdul Khalak Khan and Mr. Gopal Chandra Das. Paragraph 4 of the affidavit stated that suddenly the thana officer and the other OMP constables rushed to the place and began abusing the students in awful vulgar language; there was no mention in the affidavit about the Circle Inspector having abused the students—not even that the Circle Inspector came to embankment at that stage. Subsequently in evidence, however, in answer to Qq. 20, 21, 22 P. W. 12 Gopal Chandra Das made specific allegation against the Circle Inspector of having abused :

“SALE KAYANA KAHUCHA POLICE RAJ DHWANGSA
HEBA ; JEUNBATE ASICHHA SEHIBATE SIGHRA
PALAYA ”

(What do you say Sala, police raj will be destroyed. Go away immediately the way by which you have come.)

54. That apart, the story of initial lathi charge on the embankment in the twinkle of an eye without any warning, without rhyme or reason, as alleged in paragraph 4 of the affidavit, is not consistent with what P. W. 12 Gopal Chandra Das said in his evidence. It is clear from his answers that he met the police personnel,

had parley with them and it was thereafter that there was lathi charge on the processionists. In his evidence, he clearly stated the circumstances in which there was exchange of words between him and the Circle Inspector leading to lathi charge on the embankment.

55. Then again, the evidence of P. W. 12 Gopal Chandra Das about the exchange of words between him and the Circle Inspector, as stated in his answer to Qq. 20, 21, was contradicted by his friend P. W. 11 Abdul Khalak Khan who said this :

“ Q. 121 You saw the policemen rushing out of the police station. Did you.

A. Yes. I have seen them running from the police station to the embankment.

Q. 122 After rushing out of the police station straightaway they began abusing and assaulting the members of the public. Is it your evidence.

A. Yes.”

There was no mention by him that there was any exchange of words between the Circle Inspector and P. W. Gopal Chandra Das or any member of the procession. According to P. W. 11 Abdul Khalak Khan, the police after rushing out of the police station “straightaway” began abusing and assaulting the members of the public. He laid emphasis on the word ‘straightaway’; there was no occasion for any exchange of words between the Circle Inspector and any member of the procession. P. W. 11 Abdul Khalak Khan, in answer to Q. 114 as to whether there was any discussion or argument amongst the policemen and the processionists, replied that the students gave slogans, the police people came and started to assault with lathis. So according to his evidence, there was no discussion, no argument, no exchange of words as stated by P. W. 12 Gopal Chandra Das. Accordingly, these two witnesses P. W. 11 Abdul Khalak Khan and P. W. 12 Gopal Chandra Das, who filed a joint affidavit, contradicted each other on material point.

56. The story of policemen, including particularly Circle Inspector Hanif, having kicked with boots the deceased Sk. Gayasuddin after he fell with the bullet wound, is not believable. This allegation was not made in the affidavit. P. W. 12 Gopal Chandra Das said that kicking the deceased boy with boots in the manner it was done was a dastardly act; in cross-examination he was

asked the reason why he did not bring such dastardly act to the notice of the Commission in his affidavit; he was specifically asked why he did not mention this dastardly act alleged to have been committed by the Circle Inspector in the matter of kicking the boy who fell down, by his boot; he replied that all these were dastardly acts; the police had shot the boy; there was no reason why there should be special mention of this (P. W. 12 Gopal Chandra Das Qq. 139-141) His reply, however, was not convincing.

57. *Improbability of P. W. 11 Abdul Khalak Khan having seen material part of the incident* : His evidence was that he was not one among the processionists. He appears to be a chance witness. His evidence about his movements from place to place makes his evidence about the actual occurrence not reliable. In fact, it is not clear from his evidence how he was moving about. He could not explain clearly how he was in a position to see what he deposed to have seen. In any case, his evidence was not convincing. The improbability of P. W. 11 Abdul Khalak Khan's version is further confirmed by the fact that in answer to Qq. 154 to 157 he said that at the time of firing he saw 5 to 7 policemen on the embankment opposite the post office here and there; there were only policemen and none others. It is inconceivable that there could be any firing towards the embankment while policemen were there on the embankment, because, in that case, policemen themselves would be killed. The evidence, however, was that all police personnel were withdrawn before firing was resorted to. The evidence of Abdul Khalak Khan cannot be relied on.

58. From the movement and the position, from which P. W. 11 Abdul Khalak Khan is said to have seen, it is improbable that he saw any material part of the incident, namely, the initial lathi charge, the situation in which the two rounds of firing were resorted to and all that he claims to have seen. In fact, there are certain material discrepancies as to the place from which he is said to have seen the incident. His answers to Qq. 92 and 93 are these :

- “ Q. 92 You witnessed the incident right from the arrival of the procession up to the firing and falling of the deceased from a position on the embankment. Is not it.
 A. I saw from below the embankment on the northern side near the post office.
 Q. 93 Approximately how far would it be from the embankment.
 A. It will be at a distance of 100 cubits.”

From this evidently, he saw the entire incident from beginning to end from below the embankment on the northern side near the post office at a distance of 100 cubits, himself standing there. His evidence is that from this position he saw the arrival of the procession, firing, falling of the deceased. But in answer to Q. 110 he said that he saw the procession from the river-bed. In answer to Q. 109 he said to the effect that he heard the noise while he was making rafts on the river-bed ; then he proceeded towards the embankment ; when he got up to the embankment he saw the procession getting on the embankment ; according to this answer, he saw the procession for the first time on the embankment. His answers to Qq. 110 to 116 clearly show that it was from the river-bed that he had seen 200/250 persons including the members of the public in the procession ; he saw 5 or 7 policemen on the embankment ; the students gave slogans, the police people came and started to assault with lathis. If, indeed, he saw the procession getting on the embankment when he got up to the embankment from the river-bed, then his evidence—that he saw the students shouting slogans and police chasing and assaulting the students with lathis, firing and falling of the deceased when he was on the northern side near the post office (Qq. 92, 93)—cannot be correct. His answer to Q. 109 contradicts his answers to Qq. 92, 93, 110 to 116.

59. The inconsistency in his evidence is further confirmed by his subsequent answers in cross-examination. In answer to Q. 212, he said that he was in front of the post office for about 10 to 15 minutes. If, indeed, he was there for 10 to 15 minutes, as he said, then by then everything must have been over—lathi charge, chasing of the mob by the police, closing in of the mob and ultimately two rounds of firing. But he said that police came running out of the police station on to the embankment; seeing this he went towards the post office and protected himself under a Neem tree (Q. 99) ; he stayed under the Neem tree for about an hour or half (Q. 140). It is quite clear from the position of the Neem tree, which was near the post office on the northern side away from the embankment as appears from the spot map, that he could not have seen what was happening either on the eastern side of the police station on the embankment or in front of the police station; he could not have also seen anything which was happening inside the police station compound. From the demeanour and the manner, in which he deposed, one can reasonably infer that he either did not see the incident or he did not disclose what actually had happened. In any event, his testimony is not acceptable.

G Alleged assault on Mr. Radhagobinda Das :

60. In support of this charge, the only evidence is that of P. W. 11 Abdul Khalak Khan. His evidence is not reliable for reasons discussed above.

61. It was for the first time, in course of evidence, that P. W. 11 Abdul Khalak Khan named and stated that Mr. Radhagobinda Das was assaulted by police. He said that the Military Police beat Mr. Radhagobinda Das. As to the manner in which Mr. Radhagobinda Das is said to have been assaulted by police, P. W. 11 Abdul Khalak Khan said that he saw him on the embankment at the time of the incident coming from the post office; when he (Mr. Radhagobinda Das) approached the embankment, he was beaten, although he told the police that he was not a student and that he was a member of the public. The witness further said that he (Mr. Radhagobinda Das) was not among the processionists, who were coming from the eastern side towards the police station and that he saw him coming from the post office for the first time; then he said that Mr. Radhagobinda Das reached the embankment and advanced to the east; he was beaten along with other processionists (P. W. 11 Abdul Khalak Khan Qq. 195 to 203).

62. It is significant that the name of Mr. Radhagobinda Das was not mentioned in the joint affidavit. When asked as to why he did not mention the name, P. W. 11 Abdul Khalak Khan said that he had told this to his Advocate but he could not say why he (Advocate) did not mention it (P. W. 11 Abdul Khalak Khan Qq. 24, 26, 28, 271). P. W. 12 Gopal Chandra Das also did not say that he saw that Mr. Radhagobinda Das was assaulted by the police. All that he said is that the crowd was approaching the postal approach road when Mr. Radhagobinda Das was coming that way; as soon as Mr. Das crossed him he could hear a 'thud' sound and heard Mr. Das saying "I am a public, I am a public"; then he (P. W. 12 Gopal Chandra Das) ran away to a distance; he did not see that Mr. Das was actually assaulted (P. W. 11 Gopal Chandra Das Q. 33).

63. The evidence of the Magistrate Mr. K. C. Misra, however, is that Mr. Radhagobinda Das, along with Mr. Ananda Chandra Rai, was in front of the mob and they were instigating the people to enter into the police station compound (C. W. 13 K. C. Misra Qq. 305, 306). It is significant that Mr. Radhagobinda Das did not file any affidavit nor did he

give any evidence. There was no injury report nor any complaint about the alleged assault on him. It is significant that Mr. Radhagobinda Das was sitting in the court room while the Commission was holding the enquiry (P. W. 11 Abdul Khalak Khan Q. 198). In these circumstances the alleged assault on Mr. Radhagobinda Das cannot be said to have been proved.

H. The allegation of police setting fire to the police station :

64. In the joint affidavit of Abdul Khalak Khan and Gopal Chandra Das, the charge was that, during protest meeting at 4 P. M. on the same day, news came that the police people had pulled straw from the thatch of the thana and were putting fire to it on the ground; that the police were making a capital of the small bonfire, which they themselves made of the straw, taken out from a small portion of the thatch of the thana— all as alleged in paragraphs 7 and 8 of the affidavit. This allegation was denied; the circumstances in which one of the demonstrators is said to have set fire to the police station with an ignited stick has been hereinbefore described.

65. On this point P. W. 11 Abdul Khalak Khan said that one Babaji named Shyamsundar Das of Goudasahi came to the meeting held at 4 P. M. on the same day after the incident and said at the meeting that the police people were pulling out some portion of the thatch and setting fire to it (Q. 46). In fact in answer to Q. 258 P. W. 11 Abdul Khalak Khan admitted that what Babaji Shyamsundar Das said in the meeting was what he (witness) had heard.

66. The evidence of P. W. 12 Gopal Chandra Das was also to the same effect. He said that while the meeting was in progress, a Mahant of Alarpur near Goudasahi came and informed that he saw the police pulling straw from the thatch and setting fire to it. The name of Babaji Shyamsundar Das was not mentioned in the affidavit; his name was mentioned for the first time in course of evidence before the Commission.

67. It is significant that Babaji Shyamsundar Das did not file any affidavit nor did he give evidence. All that these two witnesses P. Ws 11 and 12 said was mere hearsay and not based on knowledge. There is no other evidence in support of the charge. On such evidence, the Commission is unable to find the charge of police having set fire to the police station established.

I. What do the inquest and post-mortem report reveal:

68. In the inquest report Ext. C/30 in column 6, the cause of death of the deceased boy has been stated to be—

“BANDHUKAR GULIMADADWARA KIMBA PATHARA
MAJADWARA AGHATPRAPTA HOI MARITHIBA
ANUMEYA ”

(Probably death is due to gunshot or brickbatting.)

It is clear from this entry that an alternative suggestion of the cause of death by brickbatting has been mentioned in the inquest report. This naturally raises the question as to why this alternative suggestion has been made. On this C. W. 15 Circle Inspector Hanif was cross-examined. The Inspector knew that the deceased boy was killed as a result of firing. It was suggested to him in cross-examination that in the beginning the police conspired to hush up the death of Sk. Gaysuddin and that was why this alternative suggestion of death by brickbatting had been mentioned in the inquest report. This suggestion was denied by the Circle Inspector. He explained that, so far he remembered, when the officer-in-charge was holding inquest over the dead body, he asked the officer-in-charge as to how the death had been caused; the investigating officer gave demonstration before the Inspector there at the spot showing how the deceased was throwing brickbats towards the thana compound and the bullet hit him at his right hand; at the same time the officer-in-charge apprised him that the injury, sustained on the left forehead of the deceased, had been sustained most likely by brickbats by “his co-brickbatters”(C. W. 15 Inspector Hanif Qq. 495 to 505).

69. On the inquest report, there was a further comment which was this: The entry in column 5 of the inquest report Ext. C/30 about apparent injury marks on the body is this:

“MUTFAR KAPALAI ARE BAMA AAKHI PATA OOPARAKU
DOOI GOTI STHANARE SAMANYA KSHYATASTHANA
THAI O TANHIRU TIKI TIKI RAKTA BAHARUTHAI
—BAMA KAKHA TAI AKU GOTIYE CHHIDI JAITHIBA
DAGA.

(Minor injuries at two places on the forehead above left eye-lid of the deceased and oozing out of blood in small quantity from them— one abrasion below the left arm-pit.)

It appears that there was certain erasure after the word “*Goti*”. It was suggested to C. W. 15 Inspector Hanif in cross-examination that first of all the word was “*Gotiye*” and then it had been subsequently changed to “*Dooi goti*” by adding “*Dooi*” before “*Goti*” and ‘*Ye*’ had been scored through.

The Circle Inspector admitted that he found 'Dooi goti' had been written in Col. 5 and that something was scored through but he was unable to say if it was 'Ye'. It is clear from the document in original that the word 'Ye' was scored through and the word 'Dooi' had been subsequently written before the word 'Goti'. Evidently, initially the entry was with regard to one apparent injury mark on the body with reference to the forehead but subsequently on further examination the investigating officer found that there were in fact two injuries on the forehead and that is why this alteration was necessary. There is nothing which can raise suspicion on the genuineness of the inquest report on this ground. The explanation of C. W. 15 Inspector Hanif—why brickbatting, as an alternative cause of death, has been suggested in the inquest report—is reasonable. There is nothing to show that there was any attempt to hush up the matter as commented, in course of argument, on behalf of the students and the public.

70. As regards the post-mortem report Ex. C/25, the question is: What does it reveal? The material portion of the post-mortem report is this:

"VI. MORE DETAILED DESCRIPTION OF INJURY OR DISEASE

1. Two small adjacent lacerated wounds $\frac{1}{2}'' \times \frac{1}{4}'' \times$ scalp deep each, with a surrounding bruise over the forehead just above the left eye-brow.
2. One abrasion $1'' \times 1''$ over the front of left knee.
3. Multiple abrasions over the olecranon point of the left elbow.
4. One abrasion $1'' \times 1''$ over the left maxillary process.
5. An almost circular shaped wound $1/3'' \times 1/3'' \times$ soft tissue depth on the antero-medial aspect of right arm 4'' below the Rt. shoulder joint.

There was no laceration of the surrounding part. No sign of scorching or blackening surrounding this could be detected. On dissection it was revealed that the following internal injuries have been caused :

- (a) Laceration of biceps, pectoralis major muscles and inter-costal muscles of Rt. sides.
- (b) Fracture of 2nd, 3rd and 4th right ribs. The fractures were comminuted in nature.
- (c) Comminuted fracture of left 1st and 2nd left ribs.
- (d) Fracture of left clavicles at its outer most end.
- (e) Comminuted fracture of the head of left humerus
- (f) Comminuted fracture of 1st, 2nd and 3rd thoracic vertebrae along with complete laceration of the spinal cord inside in that segment.

- (g) Lacerated wound of the apex of the right lung and the apex of the left lung and left upper lobe. Both sides of thoracic cavity filled up with fluid blood
- (h) Laceration of the left deltoid muscle at the level of the neck of the left humerus.

A bullet was recovered near the side of the injury No. 4 (on the left side)

VII. OPINION OF SUB-ASSISTANT SURGEON AS TO CAUSE OF DEATH.

Injury No. 1, No. 2 and No. 3 and No. 4 are possible with brickbats. Injury No. 5 and other corresponding injuries are caused by a gunshot wound with a high velocity projectile.

All the injuries are ante-mortem in nature and the cause of death is due to shock and haemorrhage. Viscera preserved along with a portion of lung

Recovered bullet preserved under my seal.

Sd. S. K. Mohanty
Sub-Assistant Surgeon
Jajpur Hospital."

71. It was argued, on behalf of the students and the public, that the nature of the injury shows that the deceased Sk. Gayasuddin was running away when he was hit by bullet from behind. Their case is that if Sk. Gayasuddin was facing the police station (as is the case of the administration), then the bullet could not have hit the deceased on the right arm, as appears from the post-mortem report. The point of the students and the public is that Sk. Gayasuddin was running away along with 5 or 6 others towards the west on the embankment at a distance of 200 yards from the place of firing (P. W. 12 Gopal Chandra Das Qq. 22, 33, 95—107, 116; P. W. 11 Abdul Khalak Khan Q. 35).

72. On this point, C. W. 14 Sub-Inspector Purna Chandra Das was cross-examined. He said that the deceased was facing towards the police station when he was hit by the bullet; the deceased received the injury on the right arm below the shoulder; the bullet was about to exit on the left side. In Q. 850 he was asked whether he could fire a gun, so as to hit one on the right arm and the bullet to exit by his left side, if the victim was facing him. The explanation of the Sub-Inspector is that at the time of firing of the second round Sk. Gayasuddin, who was hit, was brickbatting and during brickbatting, while facing the police station from the south-west embankment, he received the injury; he further said that,

while Sk. Gayasuddin was on the south-west corner of the police station on the embankment throwing brickbats at the police station, it was possible that he (Sk. Gayasuddin) would show his right arm towards the police station so as to be hit by the bullet on the right arm (Q. 852). The Sub-Inspector denied the specific suggestion made to him that the second round was fired from behind while Sk. Gayasuddin was facing west and was going towards the west.

73. On this point, the case of the administration is that Sk. Gayasuddin was hit with a bullet when he was throwing brickbats towards the police station which necessarily involved facing the police station in a lateral way; there was movement of his arm as C. W. 14 Sub-Inspector Purna Chandra Das explained by demonstration; he (deceased) was hit at a distance of 105 feet.

74. According to the post-mortem report, the wound of entry of the bullet is antero-medial aspect of the right arm 4" below the right shoulder joint. If Sk. Gayasuddin was running towards the west when he was hit by the bullet, as stated by P. W. 11 Abdul Khalak Khan and P. W. 12 Gopal Chandra Das, such a wound of entry of the bullet would be physically impossible, particularly if the position of the policeman who fired be taken into consideration. The post-mortem report makes improbable the evidence of P. W. 11 Abdul Khalak Khan and P. W. 12 Gopal Chandra Das, with regard to the crucial part of their evidence that police people ran after Sk. Gayasuddin while he was fleeing away and fired at him from a distance behind.

J. Why tear smoke was not used at Binjharpur :

75. It is unfortunate that no tear smoke shells were available to the force for use at Binjharpur during the disturbance. The officer-in-charge and the Circle Inspector expressed their helplessness in this matter as apparent from their evidence. C. W. 14 Sub-Inspector Purna Chandra Das said that the Orissa Military Police, who arrived in Binjharpur, had no tear gas equipment with them nor they had got tear gas in Binjharpur Police Station. It is said that no police station is supplied with tear gas; the police personnel are supplied with it when they are deputed to a disturbed area to face any mob where there is apprehension of trouble. It is not understandable why the authorities did not send tear smoke shells along with the Orissa Military Police, who were deputed to Binjharpur, although the authorities had prior information and there was

apprehension of trouble at Binjharpur on November 2, 1964. The officer-in-charge said that he had reported about the apprehension of trouble at Binjharpur to the Circle Inspector and Subdivisional Police Officer and that it was up to them to consider whether or not teargas would be sent along with the reinforcement.

76. There is no explanation why teargas was not sent with the force. It is clear from the evidence of the officer-in-charge that, although he as the man on the spot in charge of the police station thought it necessary that teargas ought to have been brought on November 2, 1964, he was helpless because there was no teargas with the OMP personnel on the date of the incident.

77. In answer to Q 427 put to the officer in charge, he replied to the effect that, in his position as officer-in-charge, he felt that it was necessary that the OMP personnel should have brought teargas equipment with them to deal with the situation which was being apprehended on the 2nd November, 1964, but the OMP personnel had not been supplied with teargas. The officer-in-charge had asked the Havildar in charge of the OMP as to why they had not brought teargas equipment and the Havildar replied that they had not been supplied with teargas. It is also in evidence that the Circle Inspector was also informed of this position. If a message had been sent, there was plenty of time for teargas firing equipment to be received at Binjharpur from either Jajpur or Cuttack.

78. On the question why no such message was sent, the officer-in-charge explained that when the Circle Inspector was present and the armed party which had come to Binjharpur was then in charge of the Inspector, it was for him to requisition for teargas and some other equipments (C. W. 14 Sub-Inspector Purna Chandra Das Qq. 419-427, 436, 442). In answer to a question put to Inspector Hanif, as to whether he thought of taking teargas shells to Binjharpur, he replied that he did not remember. He was also asked whether he considered that teargas shells were effective in controlling the mob; he said that it is sometimes effective and it is sometimes not effective. Ultimately the Inspector had to admit that teargas shells should have been used. His answer was this:

“ Q. 281 Are you of opinion that teargas shells would not be used first to disperse the mob.

A. Yes. It should have been used.”

79. There is no explanation as to why teargas shells were not sent to Binjharpur. There can be no doubt that before lathi charge and firing, use of tearsnake should have been tried. Whether or not the use of tearsnake would have been effective or not is another matter.

K. Was the use of force—lathi charge and firing—justified ?

80. The circumstances—in which the initial lathi charge, which had to continue, and firing were resorted to—have been broadly described above.

81. The ultimate question is: Was such use of force by the police justified ? The sequence, in which the events took place ending in firing, was clearly described by the officer-in-charge P. W. 14 Purna Chandra Das. He narrated the circumstances in which lathi charge and firing had to be resorted to. The case of the administration is that the situation warranted such use of force. According to them, the position, which justified such use of force, was as described hereunder.

82. At about 1 P. M., a procession of about one thousand people came over the embankment in front of the police station from eastern side in an agitative manner with violent slogans; they stopped in front of the police station and shouted—

“AMARA DABI PURANA HEU : MADUA SARKARA IOP
PAU : POLICE ZOOLUM BUND HEU : BIJU, BIREN
KEUNTHI MADAKHATI JEUNTHI.”

(Our demands be fulfilled ; Drunkard Government be ended ; Police zoolum be stopped ; Biju, Biren where ?—there in liquor-stall.)

They also shouted some other slogans.

83. A section of the processionists advanced to the step of the gate of the police station and they wanted to force entry inside the police station compound. Inspector Hanif, officer-in-charge and two constables closed the gate and asked the mob not to be violent and to go away; the crowd, however, did not listen; about 100 to 200 persons demanded to come inside the police station; some of the processionists were carrying lathis, some of them had sticks wrapped with rags, presumably with the object of setting fire to the police station; they immediately rushed inside the police station compound by breaking the gate of the police station; they pushed the police personnel and the

Inspector fell down; the officer-in-charge and the constables were also pushed out; the Magistrate Mr. K. C. Misra, who was in front of the police station near the step, declared them as unlawful assembly.

84. In the meantime, a section of the mob immediately spread towards the west of the police station inside the compound, and some one from the mob thrust an ignited stick on the Oil (eave) of the police station on the south-western corner. It was then the officer-in-charge shouted —

“THANARE NIA LAGAIDELE DOUDIJA A”

(They have set fire to the police station, go running quickly.)

Then a few constables and an ASI ran there and they pulled out the straw by standing on the verandah; it was immediately extinguished.

85. It was at that stage that the Magistrate warned the crowd to disperse, otherwise there would be lathi charge but they did not listen. Along with the Magistrate, the police officers also shouted and asked the mob to disperse. Immediately the mob started brickbatting. Then the Magistrate ordered lathi charge. Inspector Hanif conducted the lathi charge. As a result of the lathi charge, the mob, inside the police station premises, were driven out to the embankment in front of the police station.

86. There was heavy brickbatting. Throwing of shoes and chappals continued. The police chased the mob to the embankment with lathis; the mob went to the east, west and south. The mob was throughout shouting—

“DOUDI ASA DARANAHI : E SAIE POLICE BALANKU MARA . THANARE NIA LAGAI DIYA.”

(Come running don't fear ; beat these *sala* police ; set fire to the thana.)

Inspector Hanif, with some OMP personnel, chased the mob on the western side; the officer-in-charge, along with some OMP personnel and police constables, chased the mob on the eastern side; the mob were violently brickbatting.

87. After a few minutes, Inspector Hanif came running to the police station ; he was hit on his head on the embankment. His evidence is that, while conducting the lathi charge

on the embankment on the western side when he had hardly reached the postal approach road, suddenly he felt a stroke over his head; his head started reeling; he could not stand the strain; immediately after the reeling of the head, he ran to the police station and found the Magistrate standing in front of the police station and told him—

“ MU MADA KHAI GALI ”

(I have been beaten)

Saying this, the Inspector entered inside the police station building ; fell down on the ground ; became unconscious after telling some words to the Magistrate. When the Magistrate went to him and asked him what had happened Inspector Hanif told him—

“ MOTE KANHIKI DEKHUCHIHA. AU SAMBHALI HEBA NAHIN TUMF JAI PADARE DEKHA. FIRING NAKALE AU PARI HEBA NAHIN. SE POLICE BALANKU MARI DEBE ”

(Why do you look after me. It is uncontrollable any longer. Go outside and see. It is unmanagable without firing. They will kill police people)

After telling this, he became unconscious (C. W. 15 Inspector Hanif Qq. 62- -66).

88. The police force, who had gone on lathi charge on the embankment, were shouting—

“ AME AAU SAMBHALI PARIBU NAHIN : AMAKU SEMANE TEKAMARI AGHATA KARI SARIENI ”

(We cannot control any longer : They have wounded us by brickbatting)

The police personnel, including the officer-in-charge, were also hit with brickbats by the violent mob on the eastern side of the embankment. After sometime, the Havildar, OMP went running to the Magistrate who was standing in front of the police station. The Havildar then called the officer-in-charge—

“ BADA BABU AAP WYAPAS AAIYE : MAGISTRATE AAPKU BOLATE HEN ”

(Bada Babu, you come back ; Magistrate is calling for you)

On hearing the shouts of the Havildar, the officer-in-charge came running to the Magistrate. The Magistrate asked him to withdraw the force on the embankment, who were found

already overpowered by the attack of the violent mob. The Magistrate also came on the embankment and he warned the mob to disperse, otherwise there would be firing. Along with the Magistrate, the officer-in-charge and the Havildar also shouted and gave warning to the mob.

89. As, in spite of the warning, the mob did not disperse and continued advancing with brickbatting, the policemen on the embankment were immediately withdrawn by blowing whistle. The Magistrate gave order to the Havildar in charge of the OMP for firing to disperse the unruly mob; at the same time, the Magistrate directed the officer-in-charge to control the firing.

90. Thereupon, the officer-in-charge withdrew the policemen on the embankment and posted them in front of the police station in a flank. The mob was found running towards the police station from the eastern sector with brickbatting and shouts to kill the police and to set fire to the police station building.

91. Then, the officer-in-charge asked the OMP Havildar to open one round of firing on the violent mob on the east. This one round of firing was opened by one OMP personnel. After firing, which was not effective, the mob fell back to a little distance and then shouted to the effect that the police were firing only blank, they had no bullets, they were fire-brigade people. Immediately, a section of the mob on the embankment on the western side, were found rushing towards the police station with brickbatting and shouts to attack the police, to burn the police station and to kill the police. Thereupon, the officer-in-charge ran to the west corner of the police station with the Havildar and the said OMP personnel who had fired the first round. Then, under the instruction of the Magistrate, who was present there, a second round was fired from the south-west corner of the police station towards the embankment. After the second round was fired, Sk. Gayasuddin fell and the mob on the west fell back to a distance of 200 yards.

92. The Magistrate Mr. K. C. Misra was specifically asked whether such use of force could not have been avoided. His reply, in support of the lathi charge, was that it could not have been avoided, because the crowd after coming on the embankment immediately entered into the police station and started violence; there was no other way to disperse them except by lathi charge. As regards the necessity for firing, the Magistrate

explained that, after lathi charge, the mob violently started brickbatting in a very agitative manner and the police personnel were so injured that it seemed quite impossible to disperse the mob without firing. The crowd were advancing with brickbats and raising their hands and fists with shouts to kill the police personnel and burn the police station building. The Magistrate's apprehension was that, if firing was not resorted to, the police station building would have been burnt and also police quarters; Government property inside the police station would have been destroyed, and life of the police personnel would have been at risk; in the police station, there were arms, ammunitions and postal cash chest embedded inside the police station—their security was involved.

93. The total strength of the police force, including OMP reinforcement at the time as stated above, was not very encouraging. There was no teargas shell available to them for use before lathi charge and firing or at all. Injury reports Ext. C/24 series show that many policemen were injured. Apparently, there came a feeling of fear, among the police personnel, of being overpowered, because of, among other circumstances, disadvantageous position in which the police station was situate—the height of the embankment 8-9 feet above the police station level from which the mob in operation was showing violence and the low position of the police station in which the police personnel were placed— all as appear from the photographs Ext. C/99 series. The strength of the mob at the time was one thousand carrying lathis—some carrying lathis with wrapped rags as aforesaid.

94. That apart, the local police at Binjharpur had already got a wireless message from Aul Ext. C/22, by which they had been previously informed that Binjharpur Police Station might be burnt.

95. In these circumstances, the Magistrate and the policemen, placed as they were at Binjharpur at the time with no teargas equipment with them, had no other alternative but to resort to lathi charge and ultimately firing in the situation they had to face.

I. Findings:

96. On consideration of the evidence placed before the Commission and in the light of the foregoing discussion, the Commission finds

- (a) that the district and the subdivisional authorities had prior information that trouble was brewing at Binjharpur area for sometime prior to the incident

on November 2, 1964; there was substantial tension; political workers were inciting the students and the public; by then the police had become the target of demonstration; it was apprehended that students might set fire to Binjharpur Police Station on November 2;

- (b) that on October 30, under the leadership of the communist and the socialist workers, the students—both boys and girls—were going on strike; they were shouting slogans; they burnt a straw statue of the Chief Minister at Binjharpur Bazar; student leaders from Cuttack had gone to the area and instigated the students of the local High Schools to go on strike, processions and to attack the police;
- (c) that the strength of the police force—one section of OMP, 7 ordinary constables, one Circle Inspector, officer-in-charge, two ASIs and one Writer Constable at Binjharpur Police Station on the date of the incident—was not sufficient to face the situation created by a violent mob of about one thousand, who had attacked the police station; the mob consisted of mostly students and public about 20 per cent—all combined; some of them had lathis; some had sticks wrapped with cloth; they shouted slogans in a very agitated manner;
- (d) that suddenly the mob in course of the attack on the police station pushed the gate as a result of which one gate-leaf was broken and the Circle Inspector fell down; the other police personnel were also pushed back as the mob rushing from over the embankment entered into the police station compound,
- (e) that from the position of the police station in relation to the embankment from which the mob was rolling down on the police station and the low level (8/9 ft. below the embankment) in which the police station was situate, it was not possible for the then available police personnel to resist the mob, in such advantageous position, from coming down into the police station; the mob was simply rolling down; this could only be resisted by the police by pushing them up from below to the embankment; evidently this was difficult because

of the insufficient police force at the station and awkward physical situation of the police station as appears from the photographs ; exposed, ill-planned, thatch-roofed police stations of the type at Binjharpur, in their present state, are outdated and unsafe; such police stations, wherever they are, should all be dismantled and new compact buildings constructed in their place;

- (f) that one member of the mob first thrust an ignited stick to the thatch of the police station on the south-western corner as a result of which the roof caught fire; it was, however, immediately extinguished by the police staff;
- (g) that simultaneously the mob started brickbatting ; the Magistrate warned the mob to disperse otherwise there would be lathi charge ; the mob did not listen;
- (h) that then the Magistrate passed order for initial lathi charge to disperse the mob which the policemen carried out and drove up to the embankment the section of the mob which had attacked the police station; on the embankment the mob ran in eastern direction, western direction and also southern direction;
- (i) that immediately, the mob again closed in with brickbatting, shouting abusive slogans; the police personnel chased the mob towards the east as well as towards the west; there was closing in from the side of the mob and there was chasing from the side of the police personnel; in this process, the police personnel got tired and were overpowered as there was heavy brickbatting by the mob both from eastern and western side ;
- (j) that during lathi charge on the embankment, Inspector Hanif, in charge of operation on the western side of the embankment, was hit on the head; he had to return to the police station and became unconscious; the other police personnel were also injured by continuous heavy brickbatting; they were overpowered and could not stand further onslaught ;

- (k) that it was presumably on account of the heavy brickbatting by the mob, police could not strike the mob with lathis; thus the lathi charge on the embankment was not effective; it was not possible on the part of the police force on the embankment to stand any longer the attack by the mob; the mob were advancing with brickbats, raising their hands and fists with shouts to kill the police personnel and burn the police station building;
- (l) that in this grave situation, the Magistrate gave order for firing; armed forces were withdrawn from the embankment and brought inside the police station compound and were made to stand in formation in a line in front of the police station;
- (m) that the mob from east and west again came closing in with brickbatting, shouting slogans and in a very agitative manner raising their fists;
- (n) that the officer-in-charge asked the Havildar to open fire and one round was fired from south-east corner at the mob which was advancing towards the police station from the eastern side of the embankment; this firing was not effective;
- (o) that the reaction of the mob to the first round of ineffective firing was that the mob fell back to a little distance, and then shouted that the police had no ammunitions, they were firing only blank, they were fire-brigade people;
- (p) that immediately a section of the mob on the western flank was found rushing towards the police station with brickbatting and shouts to attack the police, to burn the police station and to kill the police; the mob which were advancing from the western side were emboldened, became very furious; they were brickbatting and also advancing;
- (q) that it was then that, under the instruction of the Magistrate, another round was fired from the south-western corner of the police station and one man out of the mob Sk. Gayasuddin fell on the embankment at a distance of about 105 feet from the police station,

- (r) that at the point of time the first round was fired, the mob consisting of about 300 to 400 were on the eastern sector; at the time the second round was fired, the number on the western sector was about 400 to 500;
- (s) that the story that only 5 or 7 persons were running away on the embankment towards the west when Sk. Gayasuddin was hit with bullet is not acceptable;
- (t) that the story that the policemen, including Inspector Hanif, kicked with boots the deceased Sk. Gayasuddin, after he fell, with the bullet wound is not believable;
- (u) that there is no proof that Mr. Radhagobinda Das was assaulted by the policemen on the embankment in the manner as alleged;
- (v) that the story of policemen having set fire to the police station after the incident is based on mere hearsay ; there is no evidence in support of this charge against the police;
- (w) that it is unfortunate that no tearsmoke shells were available to the force for use at Binjharpur during the disturbance ; there is no explanation why teargas shells were not sent to Binjharpur ;
- (x) that in these circumstances, the Magistrate and the policemen, placed as they were at Binjharpur at the time with no teargas equipment with them, had no other alternative but to resort to lathi charge and ultimately firing in the situation with which they were faced;
- (y) that in the result, therefore, the Commission is not of opinion that the use of force, which had to be resorted to in the compelling circumstances hereinbefore discussed, was in any way unjustified.

SKETCH OF THE SITE OF POLICE FIRING ON 2.II.64. AT BINJHARPUR

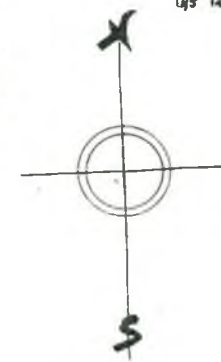
DIST. CUTTACK

Ex-c/19

SCALE 1:100 FT

BINJHARPUR P.S. CASE No 22 DATED 2-11-1964

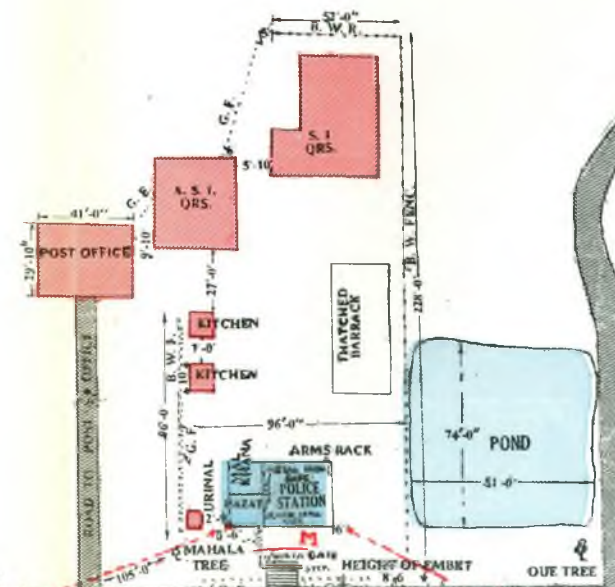
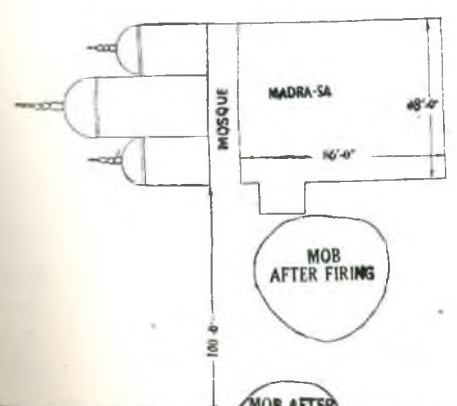
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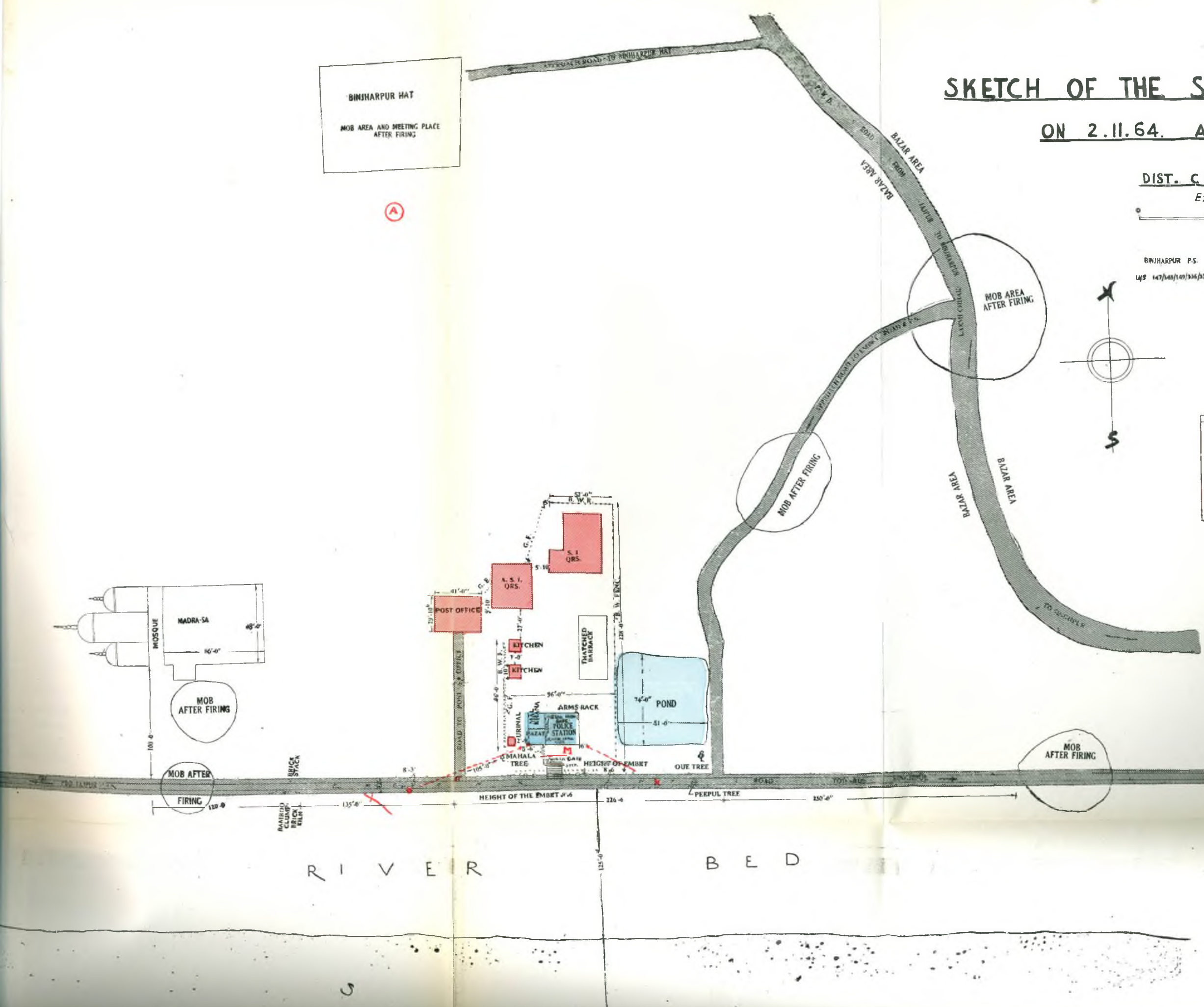
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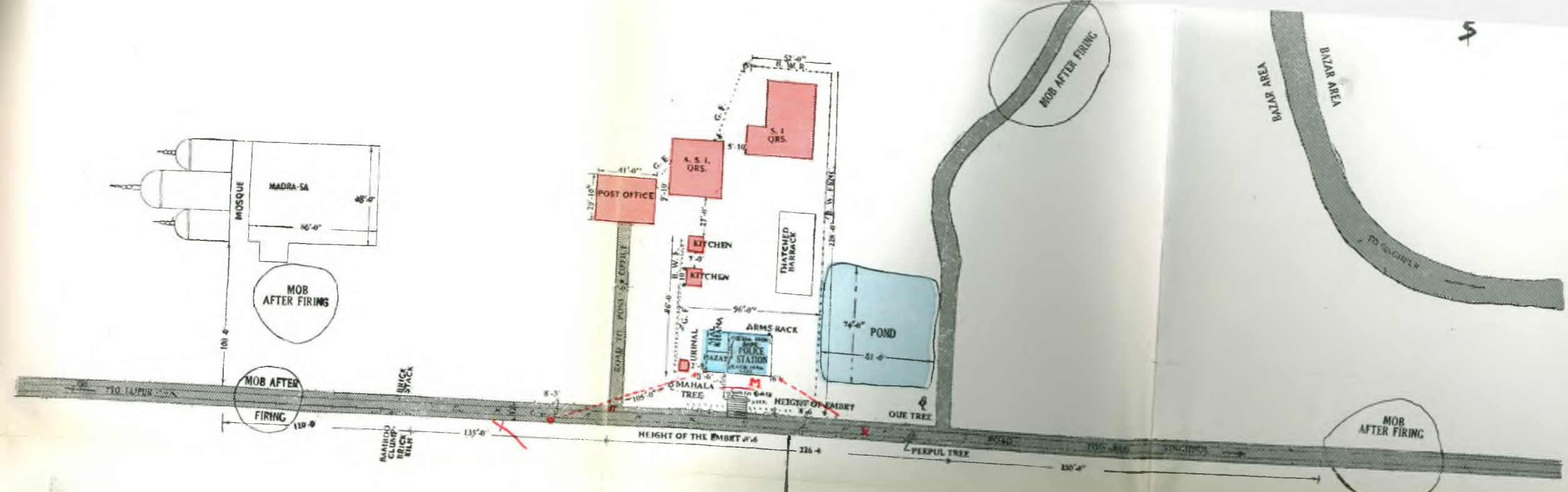
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CHAPTER XV

SAMBALPUR INCIDENT

	Paragraph		Paragraph
Introduction	1—6	C. 25th October incident in the college area (Gangadhar Meher College, Sambalpur) :	65 -90
A. Background prior to the incidents in the court and college area:	7—15		
B. 24th October incident in court area:	16—64	Case of the students : explanation of the administration in support of their action	67 -69
Case of the students : version of the administration	17—24	Why order under Section 144 Criminal procedure Code was promulgated : students' determination to violate the order : preliminary precautions taken by the Deputy Commissioner	70 -72
General picture	25—35		
In what manner the Deputy Commissioner Mr. Kukreja tried to pacify the student-processionists	36-37	Why police cordon was placed on the road outside the college campus : why policemen were posted near the college	73—75
In what circumstances there was cordoning, tearsmoke used and crowd chased	38—44	The immediate situation in which teargas shells were thrown towards and into the college campus	76 -86
Alleged assault on Mr. Tribikram Tripathy	45—47	Discussion of the evidence of the student witness	87 -90
Alleged assault on Md. Abdul Mallak	48—55		
Discussion of the evidence of the public witnesses	56—64	D. Findings	91

INTRODUCTION

Sambalpur town is one of the several places where the student agitation spread. Sambalpur is associated with the rebellion of 1857. There were many vicissitudes through which Sambalpur had passed—Maratha conquest, cession to the British, Maratha rule, British suzerainty, British annexation, rule of native chiefs and feudal system, early British administration and ultimately its absorption as a part of the present State of Orissa.

2. It has also passed through many administrative changes. It was previously a part of the Central Provinces. When in 1905 redistribution of the territories was decided upon, the district (with the exception of the Chanderpur-Padampur estate and the Phuljhar Zamindari) was transferred from the Central Provinces to Orissa Division of Bengal. In 1912, the district was incorporated in the province of Bihar and Orissa, when that province was separately constituted. Since 1936, when Orissa became a separate State, Sambalpur has been a part of the State of Orissa. At present it is the Divisional headquarters of Northern Division of Orissa.

3. Sambalpur town, headquarters of the district of Sambalpur, lies at a distance of 177 miles to the north-west of Cuttack city. It is fairly a big town with a population of about 80,000. With Hirakud Dam Project at Burla,

14 miles from Sambalpur town, there has since been rapid growth of industries in and around Sambalpur. The face of Sambalpur is fast changing because of this industrial growth in the area.

4. Gangadhar Meher College is the leading educational institution situated in the heart of the town, with low compound wall on the road side, near the railway station. That apart, there is an Engineering College and also a Medical College at Burla. It is now one of the important centres of technical education in the State. As a result of this, the student population, consisting of students from all parts of the State, is also fast growing.

5. The court area, where the civil and criminal courts are situate, is almost at the entrance of the town from Cuttack side. The District Magistrate and Collector, Sambalpur is also designated as the Deputy Commissioner. The office of the Deputy Commissioner, the State Bank, the office of the SP and the office of the Judicial Magistrates are all located on one side of the road; on the other side is the court building of the District and Sessions Judge. The residence of the Deputy Commissioner is at the end of the road which leads to his office and terminates at his residence.

6. The incident in respect of which allegations have been made by the public against the local administration are confined to those on October 24 and 25, 1964. It was alleged that on October 24, in the court area, there were indiscriminate teargassing, lathi charge and abuses by the policemen as a result of which one student and one member of the public (a journalist) are said to have been injured; that on October 25, at Gangadhar Meher College area, there was teargassing by the police towards and into the college campus in the circumstances—all as hereinafter stated

A. Background prior to the incidents in the Court and College area :

7. For several years prior to students' disquietude in 1964 at Sambalpur, the students had been indulging in acts of indiscipline and lawlessness. The previous instances of indiscipline have been briefly described in annexure to the affidavit of the DIG, Northern Range, Sambalpur. They would show that the students have all along been feeling that they can take law into their own hands. Over trivial issues, students at Sambalpur raided a doctor's house, chased him up to the police station and harassed him in the manner as hereinafter described.

8. On another occasion, the students in a body marched to the residence of the SP, Sambalpur ; demanded his apology for his having ordered detention of a student for committing rowdism in the local Narisangha Sadan at Sambalpur during the visit of the Governor of Orissa. On another occasion, some students of the Gangadhar Meher College are said to have jeered at some nurses under training in Burla Medical College with abusive, filthy language and pulled their sarees at the Railway station platform, while the nurses were leaving for their homes during the summer vacation ; it is said that when the pharmacists accompanying the nurses protested, they were assaulted by the students.

9. The incident, referred to above about the harassment of a doctor by the students in the manner it was done, was this. On September 14, 1964, at about mid-day, a laboratory assistant of the Gangadhar Meher College along with a student assaulted the peon of Dr. G. N. Nanda of Sambalpur District Hospital, insulted him over an old personal issue and also made counter allegations of assault. Thereafter, students 200 to 300 in number marched in a body to the hospital to force Dr. Nanda to apologise. Dr. Nanda in panic ran away to the police station. The students under the leadership of their Union President Mr. Madhusudan Sahu, in search of Dr. Nanda, marched to the police station at about 2-30 P. M. and demanded surrender of Dr. Nanda to the students. In the meantime, Dr. Nanda had however been taken away elsewhere for his safety. Thus, while demanding the surrender of Dr. Nanda, the students challenged the police force posted there with derogatory remarks about the lathis carried by them and wanted them to leave the police station. The students further reminded the police how, in the presence of a large force in the Assembly incident, the Chief Minister had to apologise to the students and they also threatened the policemen that they were powerless to do anything to them. The students were persuaded and given assurance that the matter would be further enquired into and ultimately the students marched back ; they however again went to the residence of Dr. Nanda where they burnt the name plate in front of his residence, threw paper balls containing obscene writing into his house and also disfigured the walls with obscene writings. Till late at night, the students were moving throughout the town in organised groups searching for Dr. Nanda to take revenge. In view of the fury of the students, the doctor had to be removed with his family away from Sambalpur under police protection.

10. The way the students at Sambalpur reacted to the happenings at Cuttack on September 26 and 27, is evident from the student agitation at Sambalpur apparently on the inspiration they received from the student leaders of Cuttack.

11. After hearing about the police action at Cuttack on September 26 and 27, and under the instigation of Cuttack students' representatives, who had arrived at Sambalpur on September 28, the students of Burla Engineering and Medical Colleges and the High School went on strike and processions, shouting anti-police and anti-Government slogans on September 29, in the morning. There were 800 students in the procession and it ended in a meeting at Burla football ground where resolutions were passed demanding release of arrested students, withdrawal of cases, judicial enquiry; it was also decided that they would continue the strike by forming an action committee.

12. On September 30, Burla Medical College students again went on strike and took out a procession protesting against police action at Cuttack. The Jharsuguda Engineering School also went on strike and procession. Information was also received that certain publications were causing tension, particularly the publications appearing in the daily 'Prajatantra' on September 29 and 30. The Burla Engineering College was, however, closed for Puja holidays on September 29.

13. On October 1, at 11 A. M., three students of Gangadhar Meher College started hunger-strike in front of the college, demanding unconditional release of the arrested students at Cuttack and judicial enquiry into the incident. It is said that there was no public support for the hunger-strike. So the hunger-strike was called off the following day on October 2, at 11 A. M.

14. Then on October 21, the Burla Medical College reopened after the Puja holidays ; the medical college students neither attended the classes nor appeared at the examination. They did not join the classes also on October 22 and continued the strike. The Gangadhar Meher College reopened on October 23 ; the students there also did not attend the classes, and the strike continued.

15. Thereafter, on the following two consecutive days, i.e., October 24 and 25, the incidents in question happened as hereinafter discussed: By then, the situation was tense through-

out the town. In view of the attitude and activities of the students at Sambalpur quite for some time in the past, the local authorities had remained alert. It was in this situation that Deputy Commissioner, Sambalpur, Mr Kukreja in order to ensure public co-operation in maintaining law and order, met a number of public men and also the Principals of the Medical and Engineering Colleges, Burla and the Gangadhar Meher College, Sambalpur. This is the brief introduction to the background of what took place on October 24 and 25 at Sambalpur.

B. 24th October incident in court area :

16. It is said that on October 24 about 400 students of the Gangadhar Meher College, Burla Medical and Engineering Colleges took out a procession without licence under Section 30 of the Police Act, and reached the Collectorate premises at Sambalpur round about 12-30 p. m. As to what exactly happened thereafter, there are rival versions—the case of the students and version of the administration.

17. *Case of the students: Version of the administration:* In support of the case of the students, C. W. 22 Mr. Murarilal Seth, a student of Fifth Year Commerce class of the Gangadhar Meher College and of Law College 1st part filed an affidavit on behalf of the students of Sambalpur as Secretary of the Gangadhar Meher College Students' Union. He also deposed before the Commission. His allegations against the police, as stated in paragraphs 3 and 4 of his affidavit, are these :

“ 3. That thereafter the college reopened on 23-10-1964. On 24-10-1964, the students of the college as a protest against the continued oppression of the police in different parts of Orissa on the students, held a peaceful meeting and thereafter they went in a peaceful procession on the main road of Sambalpur starting from the Gangadhar Meher College and going towards post office.

4 That when the students, who are unarmed and peacefully reached near the bent of the road leading towards the Sambalpur jail, a police party consisting of about 30 policemen along with the Dy. Inspector-General, Superintendent of Police and the Addl. District Magistrate arrived there and they obstructed the procession. Shortly after the Deputy Commissioner, Sambalpur arrived at the spot. Immediately on his arrival, the police without any warning and without any rhyme or reason began shooting teargas at the procession as of effect a journalist Shri Tribikram Tripathy fell down unconscious. When two students went to help him they were beaten severely by the police and both of them were injured, one having a head injury. The people in the procession immediately began running away. By that time, there were about 50 constables along with the officials and the police began throwing brickbats at the persons running away. Several

persons were injured by the brickbats thrown by the police. At that time, two students running away towards the river Mohanadi were pursued by the police and were assaulted."

His case in substance was that students were peaceful; it was the policemen who began throwing brickbats; immediately on arrival of the Deputy Commissioner, there were teargassing and lathi charge by the police as a result of which several persons were injured.

18. There was also a specific charge of assault by policemen. P. W. 23 Sambhulal Jagatramka, a student of the Burla Engineering College, in support of the charge, filed an affidavit and also deposed before the Commission. His charge, as stated in his affidavit was this:

"That on 24-10-1964 the petitioner at about 1 P. M. had come to the office of the Civil Supplies Officer for some urgent work. He found some of his colleagues were near the court premises. He fled away from there and went to the riverside. He sat there for about 10 minutes and found about 10 policemen running towards him with lathis in their hands. They addressed him with very nasty words like "Sala", Badmas, etc., and tore his shirt and the petitioner was also assaulted by them. Two of them held his hands and brought him to the Court Hazat and put him in the Hazat. He up-till now does not know reasons of his being arrested."

19. In his affidavit, he did not mention about the police having chased the student-processionists nor did he mention about himself having joined the procession at any time. Inspector Narendra Kumar Patnaik filed an affidavit stating that Mr. Sambhulal Jagatramka was apprehended and produced before him by Armed Police Sergeant Bimal Chandra Das; there was no lathi charge as alleged by him. Armed Police Reserve Sergeant Bimal Chandra Das also filed an affidavit stating that there was no misbehaviour by anybody as alleged by Mr. Sambhulal Jagatramka.

20. In further support of the allegations against the police and the Deputy Commissioner, another student of the Gangadhar Meher College, Mr. Prem Shankar Trivedi filed an affidavit. The charge alleged therein was this:

"On 24th November 1964 when police had started lathi charge and teargas on the students, at that time all the students began to run away to save themselves. At that time I was present in a hotel in front of Revenue Office. One police Inspector and two constables caught hold of me by arms. On my asking they replied that I was arrested. They took me to the court area and put me in the Court Hazat. On the way I met Mr. Kukreja, the then Deputy Commissioner, Sambalpur, and I asked him the reason of this. He said "Go nonsense in the hazat first". The police and Mr. Kukreja behaved in a rude and uncivilised manner."

He did not depose before the Commission. Apart from the charge as stated in his affidavit, there is no other evidence.

21. The Deputy Commissioner Mr. Kukreja denied the words and conduct attributed to him. Inspector Narendra Kumar Patnaik of Sambalpur, while denying the allegations made in the affidavit of Mr. Prem Shankar Trivedi, stated that Mr. Prem Shankar Trivedi was arrested on October 24 as he was found to be a member of brickbattering assembly of persons who had been declared unlawful; the police was directed to disperse the said unlawful assembly which was actually dispersed by the use of teargas; at the spot, 10 persons were arrested as members of the unlawful assembly of which Mr. Prem Shankar Trivedi was one he along with four others was apprehended by Armed Police Sergeant Bimal Chandra Das; he was produced before the Inspector by Sergeant B. C. Das near Court Hazat and taken into custody. The Inspector has also stated that he was not aware of the Deputy Commissioner having abused Mr. Prem Shankar Trivedi in the manner as alleged or having said anything to Mr. Trivedi; there was no rude and uncivilised behaviour by the police; that there was no lathi charge as alleged. Sergeant B. C. Das also filed an affidavit stating to the effect that there was no misbehaviour meted out by the police or anybody else, as alleged, from the time of their arrest till they were made over to the Inspector in front of the court lock-up.

22. It was also alleged, on behalf of the students, that a journalist Mr. Tribikram Tripathy and a student of the Burla Medical College Md. Abdul Mallak were injured. In support of this, they relied on injury reports Exts. C/75 (1) & (2). Neither Mr. Tribikram Tripathy nor Md. Abdul Mallak has filed any affidavit nor deposed before the Commission. The administration does not admit knowledge of any such assault on either of these persons.

23. According to the version as given on behalf of the administration, the factual position was this. After the student-processionists came to the court area, there was a long parley between the students and the Deputy Commissioner who arrived in the meantime. The students demanded that they would go on hunger-strike at the Deputy Commissioner's residence. Then the five hunger-strikers were taken by the Deputy Commissioner behind the police cordon and given all facilities for going on peaceful hunger-strike there, under a

banyan tree within a few yards beyond the police cordon, which was put as a measure of security. Thereafter the five hunger-strikers suddenly ran towards the Deputy Commissioner's residence; it was also said that there was brickbatting from the student-processionists.

24. In support of the version of the administration, the Deputy Commissioner C. W. 33 Mr. M. K. Kukreja filed an affidavit stating all the circumstances in which tearsmoke had to be used and the processionists had to be chased with lathis. As appears from several other affidavits filed on behalf of the administration, they deny all allegations of any excess either on the part of the police or the Deputy Commissioner.

25. *General picture*: On October 24, some time between 12-30 and 1 P. M., the Deputy Commissioner, Sambalpur received information at his residence that a crowd of about 400 consisting mostly of students had congregated near the court premises and were demanding to meet him. In the meantime, a police cordon had been placed as there was apprehension of breach of peace. Immediately, the Deputy Commissioner came to the spot. The DIG, Northern Range, ADM, SP, SDO, Sadar and other officers were also present at the spot. When the Deputy Commissioner reached the spot, the crowd began to surge forward: students demanded fulfilment of the following conditions :

“ Unconditional release of all students arrested at Cuttack and at other places in connection with students agitation, (2) Judicial enquiry into police excesses at Cuttack, and (3) Payment of compensation to the students who had suffered in the agitation ”

The students further threatened that five of them would go on hunger-strike at the residential office of the Deputy Commissioner.

26. Then there was a parley between the Deputy Commissioner and the students in course of which the Deputy Commissioner told the students that their demands would be conveyed to the Government without delay; he tried to pacify the students with the reasoning and in the manner as hereinafter stated. The students, however, did not listen to any reasoning. They appeared to be determined to create a situation near the court premises and force the hands of the administration to take action and arrest them.

27. Then, the Deputy Commissioner told the students that he had no objection to their going on hunger-strike but it would not be proper for them to come into his residential

office and go on hunger-strike there because that would very much disturb Government work. He also told them that if they would go on hunger-strike at his place, a large crowd would follow them and there would be dislocation and confusion at his residence-cum-office. He also told the students that if they were allowed to proceed to his residence, they would be followed by a large and unruly crowd, the security of the Treasury and the State Bank of India which were adjacent to the office might be in danger. He also appealed to the students for their co-operation to ensure that the crowd did not break the police cordon.

28. While this parley was going on, the crowd, instead of being pacified, were getting more and more agitated. There were lot of shouting and confusing noise. The situation was gradually becoming tense. In order to avoid use of force, Mr. Kukreja told the students that, if they were so determined to go on hunger-strike, they might go under the banyan tree nearby behind the police cordon. Accordingly, five among the students, who wanted to go on hunger-strike, were allowed to go behind the police cordon, and they occupied a place under the banyan tree. It was said that these five students were treated with courtesy and consideration; they were provided with a bench and also a jar of water.

29. Soon thereafter, there was shouting from the crowd in front of the police cordon instigating the five hunger-strikers, then under the banyan tree, to violence; the temper of the crowd was rising; they began hurling abuses at the police. All along, the Deputy Commissioner was appealing to the crowd to be peaceful and to go away. The police officials also tried all along to pacify the agitated crowd, but they failed.

30. All on a sudden, the five hunger-strikers began running towards the residential office of the Deputy Commissioner and the Treasury building. They were, however, intercepted by some policemen just in front of the Treasury building, which is about 125 to 150 feet from the banyan tree, where the five hunger-strikers were allowed to stay. The Deputy Commissioner also went to them and persuaded them to go back and not to run towards his office. He also said that, if the students insisted on proceeding towards his residence-cum-office, they would be taken and left outside the police cordon. They, however, did not listen and were bent upon proceeding towards the Deputy Commissioner's residence; they were detained by the police.

31. In the meantime, the crowd outside the police cordon was becoming more and more agitated. All on a sudden brickbats came from the direction of the crowd. Within a minute or two, brickbatting became heavier. It was at that stage that the Deputy Commissioner declared the assembly unlawful and directed it to disperse within two minutes failing which, it was announced, police would be directed to disperse the mob by use of force. The orders and warnings of the Deputy Commissioner were announced over the mike. These warnings had no effect on the crowd ; on the other hand, brickbatting became heavier. A number of policemen were hit with brickbats.

32. It was then that the Deputy Commissioner ordered the SP to disperse the unlawful assembly by use of force. This order was given by the Deputy Commissioner about an hour after his arrival at the spot. Teargas was used to disperse the mob ; use of teargas shells had the desired effect ; the mob receded ; there were certain sections of mob which reformed here and there ; there was also brickbatting by them ; the police chased them away.

33. At the spot, the Deputy Commissioner was informed that due to brickbatting by the mob, the windscreen glasses of a police truck and of the Deputy Commissioner's jeep were damaged. The Deputy Commissioner is said to have seen the damaged vehicles within a few minutes they were reported to have been damaged.

34. As regards the effect of the use of force, the version, given by the Deputy Commissioner in his affidavit as also in his evidence, is that he had seen a man, who was parleying with him, affected by teargas and falling down on the ground ; he was, however, taken away by some members of the mob. Apart from this case, the Deputy Commissioner said that he had not seen any member of the public having sustained any injury or having been seriously affected or having fallen on the ground ; a number of policemen were hit with brickbats but none of them appeared then to have sustained serious injuries.

35. As further preventive measure, the SDO, Sadar passed an order under Section 144 Criminal Procedure Code ; soon after teargas was used to disperse the unlawful assembly.

36. *In what manner, the Deputy Commissioner Mr. Kukreja tried to pacify the student processionists* : It was about 12.30 or 1 P. M that the student-processionists were seen at the

cross road said to be at a distance of about 100 feet; in the meantime, the Deputy Commissioner was informed of the advancing procession. He came to the place where the police cordon was placed inside the court area for reasons of security.

37. While the Deputy Commissioner was approaching the police cordon, the main crowd was still at the cross road; as he was approaching, the crowd started surging forward. When the Deputy Commissioner reached the spot, the students demanded fulfilment of the three demands as hereinbefore stated. Then he tried to pacify the students and persuaded them not to indulge in lawlessness and to act in a constitutional manner. The Deputy Commissioner explained to the students to the effect that the constitutional manner in which the students could record their protests would be that, instead of leaving their classes and studies, taking out processions and indulging in hunger-strikes, it would be better and dignified way for the students if they continued to attend their classes and record their protests from within the precincts of their colleges and schools either by holding meetings inside or by passing resolutions or writing to the Government in any manner they thought fit; that would be a proper thing for the students to do; they should not force the hands of the administration to take action against them, by creating situations, entering into Government offices and having such unseemly incidents.

38. *In what circumstances there was cordoning, tearsmoke used and crowd chased:* A question was raised. What was the object of putting the police cordon in the position as shown in the spot map Ext. C/72? The explanation was that there were the various courts, the State Bank of India, Treasury and other offices located in the court area; if the entire procession, whose motive was not evidently peaceful, was allowed to come inside the premises, the court and office work would have been disturbed; the crowd could have gone up to the Treasury and the State Bank; their security would have been in jeopardy; the mob would have also gone into the Deputy Commissioner's residential office and its security also would have been in jeopardy. Accordingly, 20 to 25 policemen were posted forming the cordon in the position as shown in the spot map Ext. C/72.

39. The situation, in which the use of tearsmoke was ordered by the Deputy Commissioner, has been described by him. Although the assembly was declared unlawful and

repeated warnings were given to the mob to disperse, still the crowd showed absolutely no intention of dispersing; stone pelting became heavier; the Deputy Commissioner gave the mob two minutes' time to disperse, yet they did not disperse; thereafter, the Deputy Commissioner ordered the SP to use force and also directed him that he should use tear-smoke; thereafter, tear-smoke was used and the crowd ran back towards the road crossing. It is said that three rounds of tear-smoke were fired. It is true that as a result of tear-smoke, the courts had been disturbed; and when the tear-smoke shells had to be used, certainly the work was affected. This was unavoidable under the circumstances.

40. As regards chase by the policemen, the case of the administration is that after the use of tear-smoke when the crowd receded towards the road crossing, police force was sent with the ADM to chase them. The crowd regrouped at a number of points and threw stones as a result of which a police vehicle and the Deputy Commissioner's jeep were damaged. The evidence of the Deputy Commissioner is that lathi charge was not ordered, and that he had not seen any one having been hit by lathi (Q. 173). The reasons, for which he ordered the police to chase the crowd while they dispersed, are these : The crowd had regrouped at a short distance and had continued brickbattling. Thus, when use of tear-smoke had not the desired effect of completely dispersing the crowd, the policemen had to chase the crowd to disperse them.

41. It is also clear from the evidence of P. W. 22 Mr. Murarilal Seth that the crowd stopped after running about 20 to 30 yards; they stayed there again; when the police were chasing them with lathis, the students again ran away; this continued for some time. The strength of the mob even at that stage would be still about 200 to 300. The students, thus chased by the police, are said to have run up to the Municipality Office, where the strength of the students had become half of the original strength of the procession (P. W. 22 Murarilal Seth Q. 183). His evidence supports the case of the administration that the crowd did not completely disperse and had regrouped at places and therefore it was necessary to chase them.

42. So, the police, under the charge of the ADM, went forward; the dispersal of the unlawful assembly was to be made effective and therefore the police, under the charge of the ADM, went ahead to ensure that the crowd would disperse and would not continue to cause damage or would

not come back to the Collectorate premises. In a suggestion made to the Deputy Commissioner in cross-examination as to whether or not he asked the police to chase the crowd, he answered in the affirmative and said that in a way he asked the police to go forward (Qq. 175 to 177).

43. The fact, however, remains that policemen who were chasing had lathis in their hands. A distinction was sought to be made on behalf of the administration between lathi charge on the one hand and chasing and pushing of the crowd by the policemen with lathis in their hands on the other. This general aspect of police action was explained by one SIDO C. W. 31 Mr. R. K. Sahu in connection with the Bhubaneswar incident. (C. W. 31 R. K. Sahu Qq. 242, 243, 244). At Sambalpur, the Deputy Commissioner did not order lathi charge; he ordered the policemen to chase the crowd. According to the Deputy Commissioner, such use of force was only for the purpose of dispersing the crowd and not for the purpose of injuring the crowd; but, if injury resulted in course of the force being used, it is a natural event flowing from the action (C. W. 33 M. K. Kukreja Qq. 93-94).

44. In the circumstances in which the Deputy Commissioner and the police force found themselves placed in the court area, it cannot be said that the initial precaution of cordoning off the area, subsequent use of tear smoke and ultimately chasing of the crowd were measures taken by them in excess of the requirements of the situation.

45. *Alleged assault on Mr. Tribikram Tripathy* : The case of the students, as suggested to the Deputy Commissioner C. W. 33 Mr. Kukreja in cross-examination, is that the tear smoke shell was straight fired at Mr. Tribikram Tripathy that when Mr. Tribikram Tripathy fell down, the crowd had receded still further back and two students who went to help Mr. Tribikram Tripathy were beaten by the constables with lathis; that the police people did not go to help Mr. Tribikram Tripathy, they prevented all outside help coming to him; that one of the students (presumably referring to Md. Abdul Mallak) who came to help Mr. Tripathy was so assaulted that he had a head injury (Qq. 169 to 173).

46. In this context, the evidence of the Deputy Commissioner is that he saw a man falling beyond the cordon; the man who fell down went away or was taken away by some students immediately thereafter; he did not recollect whether the man went away on his own. The injury report in respect of Mr. Tribikram Tripathy Ext. C/75 (2) shows that he was sent to the hospital on October 24 for treatment

of burning of eye due to teargas. The doctor reported that there was no sign of any injury ; there was only redness on the eyes ; that he (Mr. Tribikram Tripathy) was complaining of burning pain on the face on the date of admission in the hospital. The burning of eye due to teargas is only natural. Mr. Tribikram Tripathy did not file any affidavit nor did he give evidence. There is also nothing on record to show that he ever made any complaint to anybody.

47. So there is no proof of Mr. Tribikram Tripathy having been assaulted or manhandled by the police as alleged.

48. *Alleged assault on Md. Abdul Mallak:* It was also suggested to the Deputy Commissioner Mr. Kukreja in cross examination that Md. Abdul Mallak a student of the Burla Medical College was assaulted by the police with lathis near about the crossing on October 24 and he suffered head injury ; that he was one of the two students who came to rescue Mr. Tribikram Tripathy who fell down ; Md. Abdul Mallak had been sent for medical examination by the police and there is a medical certificate ; the injury report Ext. C/75 (1) shows that he suffered from head injury ; that after he was assaulted by the police, other constables rushed on to him and trampled over him (C. W. 33 M. K. Kukreja Qq. 368 to 375).

49. Although Md. Abdul Mallak neither filed affidavit nor gave evidence, he appeared before the Commission and introduced himself in course of the proceedings at Sambalpur when the Deputy Commissioner Mr. Kukreja was asked whether he knew this young man. The Deputy Commissioner replied in the negative and said that he did not recollect him ; that he had not seen anyone being hit by lathi nor any lathi charge was ordered. The Deputy Commissioner, however, said that the day after the incident, that is, on October 25, he received information that one student had gone to the District Hospital at Sambalpur with a complaint that he had been injured, and he had no other information. (Qq. 173, 194, 195).

50. The injury report in respect of Md. Abdul Mallak Ext. C/75 (1) shows that he was admitted to the hospital for scratch and bleeding injury on his head during the student agitation near the Collectorate. In the requisition to the Civil Surgeon, Sambalpur on October 24, 1964, the police officer states that the injury is said to have been caused by the pelting of stones by the mob as stated therein. The material portion of the report of the doctor on the result of his examination of Md. Abdul Mallak is this:

“To

The Sub-Inspector of Police, Sadar Police Station

Sir,

I have the honour to forward herewith the result of my examination of Md. Abdul Mallak, son of Md. Abdul Salam, resident of student, Buria Medical College.

Nature of injury, etc.	Size of each injury, etc.	On what part, etc.	Whether “Simple” or “grievous”	By what kind of weapon inflicted	Remarks
(1)	(2)	(3)	(4)	(5)	(6)
One lacerated wound	$\frac{3}{4}'' \times \frac{1}{4}''$	$\frac{1}{6}''$ On the rt. side of middle of scalp $3 \frac{1}{2}''$ form the mid. line.	Simple ..	Probably by a hard blunt weapon such as lathi or stone.	Fresh and bleeding when admitted on 24-10-1964.
One abrasion ..	$\frac{1}{4}'' \times \frac{1}{4}''$	On the base of rt. palm	Do. ..	Probably by fall on rough and hard ground.	Ditto
One abrasion ..	$\frac{1}{2}'' \times \frac{1}{4}''$	On the front of rt. knee	Do. ..	Ditto ..	Ditto
One abrasion ..	$\frac{1}{3}'' \times \frac{1}{2}''$	On the Dorsum of the left thumb.	Do. ..	Probably by a hard blunt weapon such as a stone.	Ditto

Yours faithfully
Sd. Illegible
Assistant Surgeon, Sambalpur
31-10-1964 ”

Date 31-10-1964
Ext. No. C/75 (1)
Sd. P. C. M.

The injury report shows 4 injuries including one head injury which is stated to have been probably inflicted by hard blunt weapon such as lathi or stone.

51. It is not understandable how the Deputy Commissioner did not keep any further information about this young man, after he came to know that one student had been sent to the District Hospital on police requisition with bleeding injury on his head. On this point, the replies of the Deputy Commissioner to specific questions put to him about this assault are not convincing— they appear to be somewhat evasive. The doubt is further confirmed by the injury report of the doctor stating that the head injury might have been caused by a hard blunt weapon such as lathi or stone. Thus, on the injury report itself, the possibility of this young man having been injured by the policemen with lathis cannot be ruled out.

52. It is the evidence of the Deputy Commissioner that he did not order lathi charge. The consistent case of the administration is that there was no lathi charge, but chasing of the crowd by the policemen. The fact, however, remains that the policemen who were chasing had lathis in their hands ; the likelihood of these lathis having come in contact with any member of the crowd in course of being chased by the police is not improbable.

53. The Deputy Commissioner, in answer to a general question put to him as to whether he can use force for the purpose of injuring the crowd, answered that it could not be done, but if injury resulted in course of the force being used, it is a natural event flowing from the action (Q. 94). This stand, could have been, in all frankness, justifiably taken on behalf of the administration with regard to the injury which Md. Abdul Mallak happened to have suffered in course of chase by the policemen with lathis in their hands. In the face of the injury report Ext. C/75(1), it is difficult to accept the case of the administration that none of the officers at the spot noticed such an injury on Md. Abdul Mallak. If, in fact, he had been injured by the pelting of stones by the mob, that fact also could have been frankly mentioned by the State officials or any of them who filed affidavits. In fact, the requisition to the Civil Surgeon stating that—

“the injury is said to have been caused by pelting of stones by the mob”

was made by a police officer ; he should have been examined.

54. On the other hand, it is also unfortunate that Md. Abdul Mallak did not either file an affidavit stating how he got the injuries nor did he give evidence. There is nothing on record also to show that he made any complaint to any authority about the injuries. In view of this significant silence on the part of Md Abdul Mallak, the alternative suggestion of the doctor in the injury report that the head injury might have been inflicted by stone, presumably pelted by the mob, cannot also be ruled out.

55. In this state of the evidence on record, the fact that the injuries, alleged to have been caused by policemen with lathis or by throwing stones, cannot be found to have been proved beyond doubt.

56. *Discussion of the evidence of public witnesses : P. W. 23 Mr. Sambhulal Jagatramka*. According to his affidavit, whatever he saw of the incident, he saw from the verandah of the Civil Supplies Office and it was from the Civil Supplies Office that he went to the embankment of the river Mohanadi where ten policemen are alleged to have abused and assaulted him. In evidence, however, he said that he joined the gathering of students and was in the gathering when he was teargassed and lathi charged. Thus, he admitted to have been a member of the unlawful assembly; his omission about his having been in the gathering was a material omission. There is no injury report in respect of the alleged assault on him by the policemen.

57. His evidence is that he ran away inside the Civil Supplies Office when teargassing started; that he remained there for one minute (Q. 49). In answer to Q. 54, he said that he did not come out. he remained inside the Civil Supplies Office. The reasons he gave for his running away into the Civil Supplies Office were not at all convincing. He said to the effect that he ran away from the Civil Supplies Office as the police might have entered the Civil Supplies Office; he agreed that Civil Supplies Office was a Government Office, employees and officers there were working and it was a comparatively safer place than the road. But he said that he fled away from the Civil Supplies Office towards the river side because he was very much frightened, he was not afraid while he was in the gathering which was being chased by the police nor was he afraid that he would be arrested; he was only afraid of the assault. It is also significant that he did not complain before any Magistrate that he was assaulted or abused by the police (Q. 55). It is

in evidence that he was arrested by the police. It is not improbable that in course of arrest by the police he, while resisting, might have been tackled by the police and incidentally he might have been roughly handled. Such tackling by the policemen in course of the arrest would not amount to assault by policemen as alleged. Thus, there is no proof that he had been assaulted by the police in the manner as alleged.

58. On the other hand, the evidence of Mr. Sambhulal Jagatramka supports the case of the administration on certain material points. He said that the strength of the mob who were shouting slogans in the court premises was about 500; he also said about the position where the policemen forming the cordon were posted. He said that when he was in the midst of the gathering of the students, they wanted to meet the Deputy Commissioner. It is quite clear from his evidence that he saw the gathering of students at least for one hour. Then, he further said that prior to the chasing, there was tear-gassing.

59 Thus, the general tenor of his evidence substantially supports what the Deputy Commissioner had said about the strength of the gathering, the posting of the policemen forming the cordon and ultimately chasing of the crowd after teargassing.

60. *P. W. 22 Mr. Murarilal Seth* : He is said to have been an eye-witness to the entire incident in the court premises. In his affidavit and in his evidence in examination-in-chief, he did not mention about the parley between the Deputy Commissioner and the processionists nor did he mention about the students having demanded to go on hunger-strike inside the residential office of the Deputy Commissioner nor about their having subsequently rushed towards the Deputy Commissioner's residence. He only mentioned about one assault by lathi on one person; that five students were injured as a result of alleged brickbatting by the police; that the police chased the students with brickbats, up to the Municipality field which is at a distance of about one furlong from the court premises. Although, according to him, five persons were injured from brickbatting by police, none of the persons alleged to have been so injured filed affidavits nor were injury reports in respect of these five alleged injured persons produced.

61 According to the evidence of *P. W. 22. Mr. Murarilal Seth*, only one person was hit by lathi. In his affidavit,

however, he said that two persons were severely beaten by the police and both of them were injured, one having a head injury as hereinbefore discussed. Neither of these two injured persons filed affidavit nor gave evidence.

62. That apart, there are some inconsistencies in the students' behaviour. It appears that the students' procession did not act according to the decision at their meeting. According to Mr. Murarilal Seth, the decision taken at the meeting of the college students between 8 and 9 A. M. in the morning of October 24, was to start a procession; no other decision was taken; they decided to follow the route up to the post office and thereafter via Jail and the Zilla School to return to the college via Laxmi Talkies; the object of the procession was to demand fulfilment of the demands of the students: the students wanted the public to know that they had demanded and that they should be fulfilled (Qq. 107 to 114). This shows that the object was to take out a procession in the town; there was no question of hunger-strike or demand for going on hunger-strike inside the Deputy Commissioner's residence. P. W. 22 Mr. Murarilal Seth was the Secretary of the College Union; he certainly knew what decision had been taken at the meeting. Apparently he did not want to say either in the affidavit or in his evidence that the students had, contrary to the decision taken at their meeting, gone out of their way to the court premises and indulged in lawlessness in the manner they had done. Evidently, he was conscious of the implications of their behaviour in the court premises in the manner they behaved which compelled the use of force against them for dispersal of the crowd.

63. The evidence of P. W. 22 Mr. Murarilal Seth regarding the object of the procession is also contradicted by the evidence of P. W. 23 Mr. Sambhulal Jagatramka who said that the students were there to protest against the police excess by going on hunger-strike and some of them actually went near the banyan tree (referring to the banyan tree where the hunger-strikers had gone) and went on hunger-strike as aforesaid (P. W. 23 Sambhulal Jagatramka Qq. 41, 42).

64. In view of the tense situation prevailing in Sambalpur town on October 24, the SDO, Sadar, apprehending that public peace was likely to be disturbed within the town, passed an order under Section 144 Criminal Procedure Code at 12-30 P. M. on the date.

**C. 25th October incident in the college area
(Gangadhar Meher College, Sambalpur):**

65. Evidently, the students were very much agitated over the incident on the previous day October 24 in the court premises, from where they were chased away by the policemen after tear-gassing in the manner it was done as hereinbefore stated. The order under Section 144 Criminal Procedure Code, prohibiting all unlawful assemblies in the town which had been passed the previous day and was in force till the following day on October 25, had also excited the students; they were determined to violate the prohibitory order under Section 144; they held a meeting inside the college campus in the morning of October 25. In the meantime, the Deputy Commissioner had taken all preventive measures to stop the students from coming out on the road from the college campus and from violating the order under Section 144. Admittedly, there was teargassing towards the students inside the college campus.

66. The question is : In what circumstances use of tear-smoke had to be resorted to ? On this point, there are two versions- -students' version and the version of the administration.

67. *Case of the students : Explanation of the administration in support of their action :* The case of the students, as stated in paragraph 5 of the affidavit of Mr. Murarilal Seth, Secretary of the College Union, was this :

“ On 25-10.1964, the students held a meeting inside the college compound to protest against the unprovoked attack by the police. At that time, the Deputy Commissioner, Superintendent of Police, Deputy Inspector-General and the Additional District Magistrate along with a large body of police constables arrived near the college. They finding the meeting inside the college compound immediately fired teargas shells into the college compound. One of the teargas shells fell inside the house of the Principal and several on the students inside the college compound. Thereafter without any orders for the closure of the road lest the gentry of town would come and see the inhuman and brutal attack of the police all the roads leading to the college were blocked by the police and nobody was allowed to move on the road till next morning. The suffering students and the inmates of the house of the Principal who suffered from the teargas were left without medical aid. The members of staff of the college met and passed a resolution regarding this which is attached to this petition and even though copies of these were sent to the Governmental authorities, i.e., to the Director of Public Instruction, the District Collector and others, absolutely no action, not even an enquiry, has yet been made by those officers regarding this matter.”

The students' case, in substance, is that they were holding a meeting inside the college campus; the Deputy Commissioner and others arrived there and finding the meeting threw teargas shells into the meeting.

68. The explanation on behalf of the administration in support of their action, as given by Mr. Kukreja, Deputy Commissioner, is in paragraphs 8 to 10 of his affidavit. He also gave evidence. In substance, their case is that the students attempted to rush upon the police by scaling over the low compound wall of the college and began brickbattling; the students further attempted to violate order under Section 144; due to brickbattling by the students two police Sub-Inspectors were injured; relevant injury reports are Exts. C/75 (17) & (18). It was in this situation that the local authorities had to stop the students by using tearsmoke; in fact, prior to teargassing, two batches of students had already come out of the college premises and violated order under Section 144.

69. In order to avoid repetition, the background and circumstances, in which the policemen had to throw teargas shells inside the college campus, are stated in course of the discussion as follows.

70. *Why order under Section 144 Criminal Procedure Code was promulgated: students' determination to violate the order: preliminary precautions taken by the Deputy Commissioner:* After police action on October 24, in the court area, there was tension among the students and late in the night, the Deputy Commissioner learnt from the DIG that he had been told by the Principal of the Gangadhar Meher College that the students will again come out in a procession the next day. As hereinbefore stated, order under Section 144 Criminal Procedure Code had already been promulgated by the SDO after tearsmoke had been used on October 24 at 2-30 P. M. The necessity for this prohibitory order was this: The students had gone on a procession without taking a licence under Section 30 of the Police Act; they did not listen to reason; they wanted to force the hands of the administration to take action against some of the hunger-strikers which would be followed by the rest of the crowd to enter into the Government offices. According to the information received, it was apprehended that the students might indulge in other mischief. The students having behaved themselves in the manner they did on October 24, the administration had to take a decision that law and order must be maintained in the town so that the ordinary citizen would not be disturbed in his avocation. In order to

give wide publicity to this order, the Assistant District Public Relations Officer, Sambalpur announced the order through mike fitted to a vehicle, in which he moved in the main thoroughfares and made the announcements repeatedly throughout the town on both October 24 and 25.

71. The Deputy Commissioner got the information on the night of October 24 that the plan of the students was to violate order under Section 144 Criminal Procedure Code in groups and thereafter to rush out in a body from inside the Gangadhar Meher College and march in a procession defying the order and if obstructed by the police to resort to violence. So, in consultation with the DIG and SP, arrangements were made by the Deputy Commissioner for the posting of police near the college to avert any eventuality.

72. Early in the morning of October 25, the Deputy Commissioner, along with the SP, went to the residence of the Principal of the college to ascertain the position from him and to enlist his co-operation in dissuading the students from their apprehended course of action. They were assured by the Principal and by some members of the staff that they would try to restrain the students from coming to the road to violate order under Section 144 and create any mischief; they would do their best to persuade the students not to go out of the college premises. The Deputy Commissioner, however, got the impression that the Principal and his staff were not sure, if they would be able to persuade the students from violating order under Section 144.

73. *Why police cordon was placed on the road outside the college campus : why policemen were posted near the college :* The object was that the general life in the rest of the town was not disturbed by the students coming first in batches and then *en masse*. It was apprehended that students, once allowed to break the law, might go into town and do mischief. Thus, the purpose of the police cordon was to prevent the students from coming out of the college compound in batches and *en masse*. From the position of the cordon as shown in the spot map Ext. C/73, it is quite clear that the cordon was not just outside the main gate as suggested but at the place shown in the spot map; the purpose of the cordon was to ensure that the peace of the rest of the town was not disturbed and other mischief was not caused. As the Deputy Commissioner explained, the intention of administration was not to harass the students or to confine them to the college campus but this step (placing a cordon on the road) was only taken with the limited

objective as aforesaid. In fact, many students in the hostel were going out to have their tiffin in the shops opposite the college campus and they were free to come out to have their tiffin and move about in the normal course; there was no question of the police preventing free exercise of their normal rights just because they happened to be students. It is not that the police did not permit anybody to enter the college campus. The Deputy Commissioner Mr. Kukreja completely denied the insinuations that their purpose was to prevent the public from getting an inkling about the police atrocities or that was why the police cordon was put up near the station and the church to stop traffic during that whole period on that road (Qq. 388, 389).

74. It was alleged that, due to closure of the road because of the police cordon, all approaches to the college were blocked by the police and nobody was allowed to move on the road till next morning. There must have been some obstruction on the road, but not to the extent as alleged. When asked about this aspect, the Deputy Commissioner Mr. Kukreja explained that some traffic certainly moved on the road in the morning, but for some time, the movement of the traffic was suspended because of the situation arising out of the students attempting to break order under Section 144 Criminal Procedure Code by jumping over the low compound wall of the college followed by use of tearsmoke by the police. Thus, there was no closure nor blocking of the road as alleged; a small police cordon was put across the road so that the peace of the town might not be disturbed.

75. The next question raised was: Why were police constables posted at the gate nearer to the compound wall of the college? It is not that the policemen were posted from the morning of October 25 at the gate of the college. About one platoon of policemen was on the road; most of these policemen had lathis and a few had fire arms such as muskets; this police party had also a tearsmoke squad. Apart from the policemen posted at the cordon, a few policemen were also posted at the railway station near the college which is at the other end of the college; some policemen were also on the northern side. Thus, by way of precaution, policemen had been posted near about the college campus on the road at different places. The purpose of putting the police guards near the college was not merely to prevent the students from coming out of the campus but from violating order under Section 144. The object was to dissuade the students from

coming out in batches and violating Section 144 order; once the crowd was allowed to come and break the law, it could go to any limit; there might have been further lawlessness in the town, resulting in damage to life and property or any other mischief. What, therefore, weighed with the authorities in taking the precaution of posting policemen on the road in the manner they did was in apprehension of breach of peace in the college area.

76. *The immediate situation in which teargas shells were thrown towards and into the college campus*; After having received the assurance from the Principal and some members of the staff of the Gangadhar Meher College that they would do their best to dissuade the students from indulging in unlawful activities, the Deputy Commissioner and the SP came out on the road and watched the situation. After some time, it was found that students were gathering inside the college campus; then they had a meeting at which speeches were given; it was decided in the meeting that the students would not only violate the 144 order in groups but also *en masse*; some time later at about 9 A. M., the first batch of five students came out. The Deputy Commissioner and his party reasoned with the students. The students, however, insisted that not only their demands should be honoured by Government immediately but also all the students who were arrested in Sambalpur in connection with the previous day's (October 24) incident should be released immediately. The students would not listen to reason. The police wanted to arrest them for violating 144 order; one ran away and the remaining four were detained by the police.

77. In the meantime, the crowd of students who were inside the college campus was coming closer inside the premises and a second batch of five students came out. The Deputy Commissioner and his party again reasoned with this batch and requested them to go back, to be peaceful in their demonstration and protests; after some time this second batch somehow or other could be persuaded and they ran back inside the college. This "retreat" infuriated their fellow students inside the college campus; they surged forward close to the low compound wall on the left side where the Deputy Commissioner and other officers were standing with the police force. The Deputy Commissioner and the SP asked the students to go back; not to create a scene and to be peaceful in their demonstration; but this had no effect on the students. Evidently, these two batches of students came

out on the road to violate Section 144 order at the instigation of the students inside the college campus.

76. While the Deputy Commissioner and the SP were thus trying to pacify the students, suddenly there was stone pelting from inside the college premises; a policeman was hit. Simultaneously, a number of students with brickbats jumped on to the low compound wall of the college. It was apparent that the students had no peaceful intention; they would, any moment, rush out on the road. It was apprehended that, if the students rushed out on the road and came in contact with the policemen outside, the policemen would be overwhelmed by the students; that a situation would ensue where there would be a great melee and confusion. At that point of time, the strength of the students inside the compound wall was about 400 while the number of policemen who formed the cordon outside on the road was only one platoon.

79. In this situation, the Deputy Commissioner warned the students to desist from doing such unlawful acts. The Deputy Commissioner, in consultation with the DIG who was at the spot, decided that, if the students did not desist from this and go back inside the college campus, tearsmoke would have to be used. Prior to the use of tearsmoke shells, the Deputy Commissioner and the SP repeatedly warned the students not to come in such close proximity to the compound wall; when a number of students jumped on to the compound wall, the Deputy Commissioner and the SP again warned the students to get down from the wall into the college compound; they were also warned that if they did not listen to these warnings, force might have to be used; but these warnings were not heeded.

80. At this stage, the considerations, which weighed with the officers at the spot in charge of the law and order situation, were these: Although normally college compound is not a public place in the strict legal sense, but here they had to use force because the students had started throwing brickbats from inside the college premises; there was imminent danger of the student mob inside the college campus overwhelming the police force by rushing out on the road. In such a position, there was no alternative but to use tearsmoke to stop the situation from further deteriorating. The use of tearsmoke—as minimum force—was decided to avoid use of greater force later which would become necessary, if the situation had not been controlled immediately.

81. On the question whether the Deputy Commissioner and the SP had the authority to ask the other students-- other than the batches who had come out-- to keep away from the compound wall, the explanation of the Deputy Commissioner is that all the students at the meeting formed a crowd and a number of them had jumped on to the compound wall and therefore it was not possible to distinguish them from the other students ; they were there as a crowd and apparently had the common intention of violating Section 144 order.

82. With reference to a statement by the Deputy Commissioner Mr. Kukreja in paragraph 10 of his affidavit that the police shouted warnings at the students to withdraw from near the compound wall, he was asked in cross-examination why the students had no right to stand near the compound wall of their college. The explanation of the Deputy Commissioner was that the students had not merely come very close to the compound wall, but a number of them also jumped on the compound wall, and brickbatting from the side of the students had also started. It was in this situation that the warnings were given to the students to withdraw from near the compound wall; the apprehension was that the students would rush out on the road *en masse*, overwhelm the police and all the other consequences would have followed (Qq. 427, 428).

83. The aggressive mood of the students at the meeting is apparent from the fact that they did not also listen to the persuasions of their professors and lecturers who also came to the meeting to dissuade the students from doing any unlawful acts. The evidence of the student witness P. W. 22 Mr. Murarilal Seth himself is that there were 50 or 60 professors and lecturers including the Principal near about the meeting. The Principal had instructed the lecturers to maintain discipline in the college and to see that the outsiders do not come to the college. The Principal and the teachers were persuading the students to keep discipline and not to go out of the premises of the college and create trouble (P W. 22 Murarilal Seth Qq. 280, 286, 287). It is evident from the conduct of the students that even these persuasions by the Principal and the professors of the college failed to pacify the students.

84. When repeated warnings by the Deputy Commissioner and others failed, the Deputy Commissioner ordered the SP to use tearsmoke as a deterrent action for the purpose of

dispersal of the crowd, so that the students, who were surging forward and rushing out on the road, would recede from the compound wall and go inside the college campus. It was thus that a bigger incident was avoided. It was about 10-30/10-35 A. M. or a few minutes thereafter that in all six rounds of tearsmoke shells, including a grenade, were fired inside the college campus in the direction of the student-crowd (C. W. 33, M. K. Kukreja Q. 513 ; P. W. 22 Murarilal Seth Qq. 300 to 303).

85. The limited purpose of throwing tearsmoke was to stop the students from overwhelming the police force and violating the 144 order. It was only a deterrent action to avoid an ugly situation ; it was not intended to, nor could it keep the students away from their classes or from the places of their habitation, if they wanted to remain there. There was no intention to disperse the students from the college premises ; the object of the use of tearsmoke was to disperse the students from the college compound wall ; this was done in the interest of maintenance of law and order and to avoid further trouble.

86. The use of teargas had the desired effect ; the students receded back from the low compound wall ; after some time, they had another meeting inside the college campus - in fact, they were all over the place inside the campus till the evening. No further action was taken to disperse them because they were inside the college ; the limited object of stopping them from overwhelming the police and violating 144 order had already been achieved by the use of tearsmoke.

87. *Discussion of the evidence of the student witness P. W. 22 Mr. Murarilal Seth* : He is the only witness from the side of the students for the incident in college area. In his affidavit and evidence, he said that about 400 students were holding a meeting at the position, inside the college campus, which he marked with Blue Cross mark on the college building spot map Ext. C/73 ; there was a pandal for the meeting at the time ; the students were holding the meeting to protest against the police excess committed by the police on the students at Cuttack, against the police entry into the Law College Hostel, Cuttack and against the closure of the colleges untimely. He further said that the students passed resolutions and forwarded them to the authorities ; there were 60 or 70 professors at that meeting ; the meeting commenced at about 3 A. M. and lasted for about half an hour or one hour (Qq. 299, 300). His further evidence is that about 5 or 6 teargas shells fell in the meeting and some students were also injured thereby.

then the students dispersed from the meeting and went away towards the college, hostel and in other directions (Q. 26).

88. Thus, his evidence, in substance, is that it was in course of the meeting, which commenced at 8 A. M. and lasted for half an hour or one hour that is by 9-30 A. M., the teargas shells fell on the students in the meeting and the students dispersed. Subsequently, however, he said that the teargassing was at about 10-35 A. M. With regard to this timing, as he subsequently puts it, he supported the version of the Deputy Commissioner.

89. It is thus clear that the students were holding the meeting for about two hours from 8 or 8-30 A. M. Mr. Murarilal Seth also said that about 350 hostel students and some other students had also gathered there in the field; they were discussing among themselves as there was strike and students were not attending classes. The presence of the Principal and the professors at the meeting inside the college campus at about 8 A. M. till teargassing, for the purpose of maintaining discipline among the students, shows the anxiety of the college authorities to maintain law and order; they tried to persuade the students not to go out during all this time for about 2 or 3 hours of the meeting but the students apparently did not listen. There was no plausible ground for holding the meeting from as early as 8 A. M. unless the students had the intention of going out of the college campus and violating Section 144 order.

90. In the ultimate analysis of the evidence, it is clear that, in spite of all attempts on the part of the officials and the college staff including the Principal to persuade the students not to come out and break the law, the students were bent upon rushing out on the road and in fact, two batches had jumped over the low compound wall.

D. Findings :

91. After considering the several arguments canvassed before it, the Commission concludes--

Re: 24th October incident in court area :

(a) that for several years prior to students' disquietude in 1964 at Sambalpur, the students had been indulging in acts of indiscipline and lawlessness; they have all along been feeling that they can take law into their own hands:

(b) that the way the students at Sambalpur reacted to the happenings at Cuttack on September 26 and 27,

is evident from the student agitation at Sambalpur apparently on the inspiration they received from the student leaders of Cuttack;

- (c) that under the instigation of Cuttack students' representatives, who had arrived at Sambalpur on September 28, the students of local colleges and schools at Sambalpur went on strike and processions, shouting anti-police and anti-Government slogans on September 29, in the morning; on October 1, there was hunger-strike by three students of the Gangadhar Meher College for fulfilment of their demands for unconditional release of the arrested persons at Cuttack and judicial enquiry, there was no public support for the hunger-strike; so the hunger-strike was called off the following day on October 2;
- (d) that in view of the attitude and activities of the students at Sambalpur quite for some time in the past, the local authorities remained alert; it was in this situation that the Deputy Commissioner, in order to ensure public co-operation in maintaining law and order, met a number of public men and also the Principals of the local colleges ;
- (e) that on October 24, after a meeting in the morning, the students took out a procession and proceeded towards the court area, presumably to go on hunger-strike inside the residential office of the Deputy Commissioner as hereinafter found ;
- (f) that in view of the close proximity of the State Bank of India, Treasury and other Government offices to the Deputy Commissioner's residential office, as a security measure, 20—25 policemen were posted forming the cordon in the position as shown in the spot map Ext. C/72,
- (g) that it was about 12-30 or 1 P. M. that the student processionists were seen at the cross road at a distance of about 100 feet from the court area;
- (h) that in the meantime, the Deputy Commissioner was informed of the advancing procession; he came to the place where the police cordon was placed inside the court area; the students demanded fulfilment of their demands— unconditional release of all students arrested at Cuttack and other places in

connection with the students' agitation, judicial enquiry into police excesses at Cuttack and payment of compensation to the students who had suffered in the agitation; the students also threatened that five of them would go on hunger-strike at the residential office of the Deputy Commissioner ;

- (f) that the Deputy Commissioner tried to pacify the students with reasoning; the students, however, did not listen to any reasoning; they appeared to be determined to create a situation near the court premises and force the hands of the administration to take action and arrest them;
- (j) that then the Deputy Commissioner told the students that he had no objection to their going on hunger-strike but it would not be proper for them to go into his residential office and go on hunger-strike there, because that would very much disturb Government work and as a result there would be dislocation and confusion;
- (k) that during this parley between the Deputy Commissioner and the students, the situation was gradually becoming tense; in order to avoid trouble the Deputy Commissioner told the students that, if they were so determined to go on hunger-strike, they might go under the banyan tree nearby behind the police cordon; accordingly, five among the students were allowed to go behind the police cordon and they occupied a place under the banyan tree; they were treated with courtesy and consideration and provided with a bench and a jar of water;
- (l) that soon thereafter, there were shoutings from the crowd in front of the police cordon instigating, to violence, the five hunger-strikers then under the banyan tree; all on a sudden, the five hunger-strikers began running towards the residential office of the Deputy Commissioner and the Treasury building; they were, however, intercepted by some policemen just in front of the Treasury building which is about 125 to 150 feet from the banyan tree where five hunger-strikers were allowed to stay;

- (m) that in the meantime, the crowd outside the police cordon was becoming more and more agitated; all on a sudden brickbats came from the direction of the crowd; within a minute or two brickbatting became heavier; it was at that stage that the Deputy Commissioner declared the assembly unlawful and asked the assembly to disperse within two minutes failing which, it was announced, police would be directed to disperse the mob by use of force; the orders and warnings of the Deputy Commissioner were announced over the mike; these warnings had no effect on the crowd; on the other hand, brickbatting by the crowd became heavier; a number of policemen were hit with brickbats;
- (n) that it was then that the Deputy Commissioner ordered the SP to disperse the unlawful assembly by use of force; thereupon tearsmoke was used to disperse the mob; three rounds of tearsmoke were fired;
- (o) that the use of teargas shells had the desired effect; the mob receded; there were certain sections of mob which reformed here and there; there was also brickbatting by the mob; police in charge of the ADM chased them away;
- (p) that due to brickbatting by the mob the windscreen glasses of a police truck and of the Deputy Commissioner's jeep were damaged;
- (q) that the Deputy Commissioner did not pass any order for lathi charge; he ordered dispersal of the mob by chasing when the use of tearsmoke had not the desired effect of completely dispersing the crowd;
- (r) that the dispersal of the unlawful assembly was to be made effective and therefore the police under the charge of the ADM went ahead to ensure that the crowd would disperse and would not continue to cause damage or would not come back to the court area;
- (s) that as regards the charge of alleged assault on Mr. Tribikram Tripathy, there is no proof of his having been assaulted or manhandled by the police as alleged;

- (i) that as regards the charge of alleged assault on Md. Abdul Mallak, the injury report Ext. C/75 (1) shows that he suffered four injuries, including one head injury, which is stated by the doctor to have been probably inflicted by hard blunt weapon such as lathi or stone; it is not understandable why the Deputy Commissioner did not keep any information about this young man, after he came to know that one student had been sent to the District Hospital on police requisition with bleeding injury on his head; the injury report itself shows that the possibility of this young man having been injured with lathis cannot be ruled out; although there was no lathi charge but chasing of the crowd by the policemen, the policemen who were chasing had lathis in their hands; therefore, the likelihood of the lathis having come in contact with Md. Abdul Mallak as a member of the unlawful assembly in course of the chase is not improbable; in view of the significant silence on the part of Md. Abdul Mallak who did not either file an affidavit or give evidence although he attended the Commission proceedings at Sambalpur, the alternative suggestion of the doctor in the injury report that the head injury might have been inflicted by stone, presumably pelted by the mob, cannot also be ruled out; in this state of the evidence on record, the charge that the injuries were caused by policemen with lathis or by throwing of stones cannot be found to have been proved beyond doubt;
- (ii) that as regards the charge of alleged assault on P. W. 23 Mr. Sambhulal Jagatramka, it is not impossible that in course of arrest by the police, he, while resisting, might have been tackled by the police and incidentally might have been roughly handled; such tackling by policemen, in course of arrest, will not amount to assault by policemen as alleged; thus there is no proof that he had been assaulted by the police in the manner as alleged;
- (v) that in the result, in the circumstances, in which the Deputy Commissioner and the police force found themselves placed in the court area, it cannot be found that the initial precaution of cordoning off the area, subsequent use of tearsmoke and

ultimately chasing of the mob were measures taken by them in excess of the requirements of the situation.

Re: 25th October incident in college area:

- (a) that, as a further precautionary measure, an order under Section 144, Criminal Code had already been promulgated by the SDO after tearsmoke had been used the previous day on October 24 at 2:30 P. M.;
- (b) that the students having behaved themselves in the manner they did the previous day on October 24, the administration had to take the decision that law and order must be maintained in the town so that the ordinary citizen would not be disturbed in his avocation: wide publicity was given to the said order through mike fitted to a vehicle which moved in the main thoroughfares and made the announcements repeatedly throughout the town on both October 24 and 25;
- (c) that the Deputy Commissioner got the information on the night of October 24 about the plan of the students to violate Section 144 order in groups and thereafter to rush out in a body from inside Gangadhar Meher College and march in a procession defying the order and, if obstructed by the police, to resort to violence;
- (d) that in order to pacify the students, the Deputy Commissioner, along with the SP, met the Principal of the college to ascertain the position from him and to enlist his co-operation in dissuading the students from their apprehended course of action; they were assured by the Principal and the staff that they would try to restrain the students from coming to the road to violate order under Section 144 and create any mischief;
- (e) that arrangements were made by the Deputy Commissioner for placing police cordon on the road outside the college campus to avert any eventuality; the object of this was that the general life in the rest of the town was not disturbed by the students coming first in batches and then *en masse*; there was no question of the police preventing the students from normal exercise of their right of free movement;

- (f) that at about 9 A. M. the first batch of five students came out; the students insisted not only on immediate fulfilment of their three demands but also on immediate release of all the students arrested in Sambalpur the previous day; the Deputy Commissioner and his party reasoned with the students but the students would not listen to reason; ultimately four students were detained by the police and the remaining one student ran away;
- (g) that in the meantime, the crowd of students, who were inside the college campus, were coming closer inside the premises and a second batch of five students came out; again, the Deputy Commissioner and his party reasoned with this batch and after some time, this batch somehow or other could be persuaded and they went back inside the college; this 'retreat' infuriated their fellow students inside the college campus; they surged forward close to the low compound wall on the left side where the Deputy Commissioner and other officers were standing with the police force; their attempts to pacify the students failed;
- (h) that, while the Deputy Commissioner and the SP were thus trying to pacify the students, suddenly there was stone pelting from inside the college premises; a policeman was hit; simultaneously a number of students with brickbats jumped on to the low compound wall of the college; it was apparent that the students had no peaceful intention; they would, any moment, rush out on the road;
- (i) that it was apprehended that, if the students rushed out on the road and came in contact with the policemen outside, the policemen would be overwhelmed by the students; that a situation would then ensue where there would be great melee and confusion; at that point of time the strength of the students inside the compound was about 400 while the number of the policemen who formed the cordon outside on the road was only one platoon;
- (j) that in this situation, the Deputy Commissioner warned the students to desist from doing such unlawful acts; he, in consultation with the other officers at the spot, decided that if the students did not desist

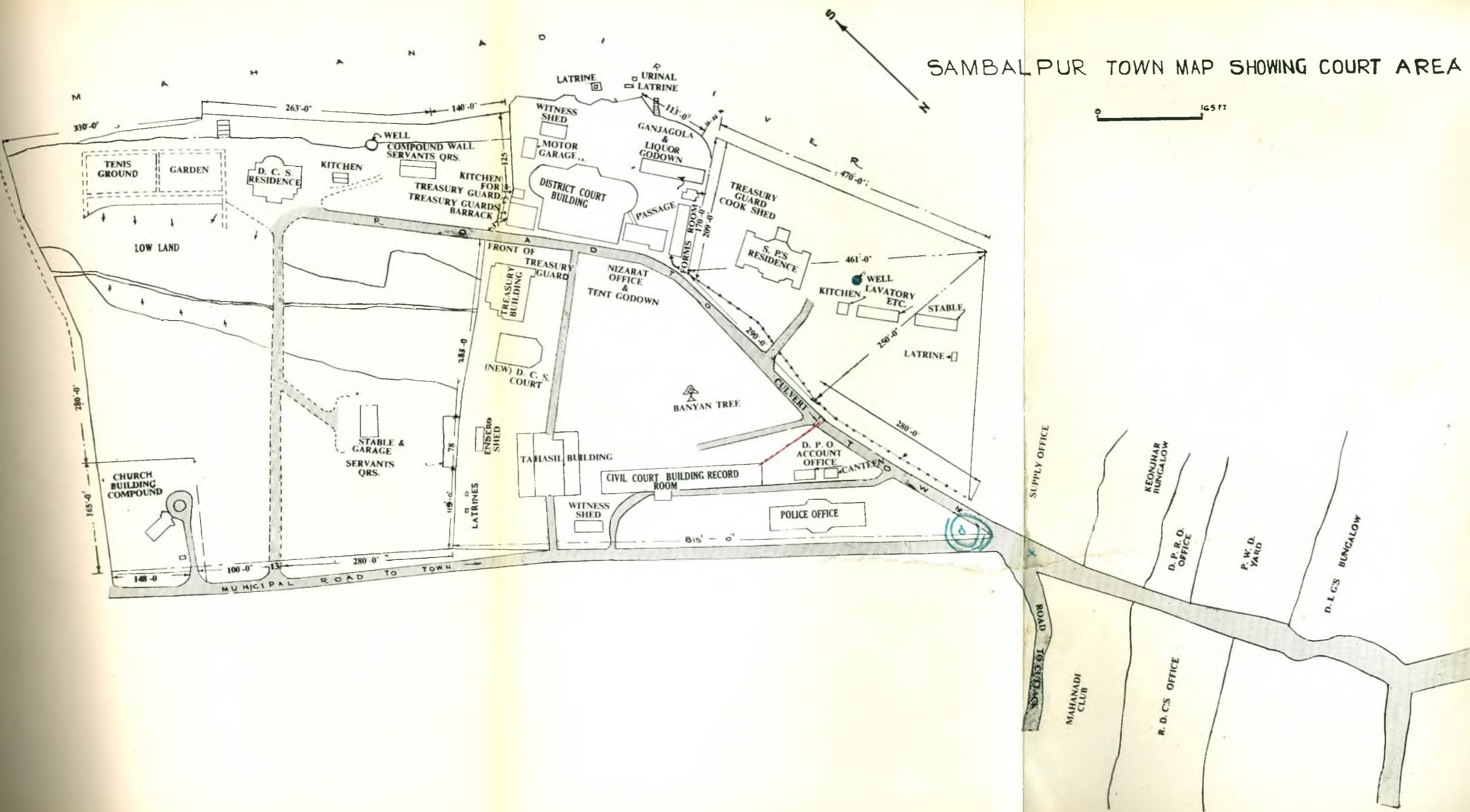
from this and go back inside the college campus, tearsmoke would have to be used; before use of tearsmoke, students were given repeated warnings not to come in close proximity to the compound wall;

- (k) that when a number of students had actually jumped on the compound wall, the Deputy Commissioner and the SP again warned the students to get down from the wall into the college compound; they were also warned that if they did not listen to these warnings, force might have to be used; but these warnings were not heeded;
- (l) that although normally college compound is not a public place in the strict legal sense, but here force had to be used because the students had started throwing brickbats from inside the college campus; there was imminent danger of the student-mob inside the college campus overwhelming the police force by rushing out on the road;
- (m) that in such a position, there was no alternative but to use tearsmoke, to stop the situation from further deteriorating; it was decided to use tearsmoke—as a minimum force—to avoid use of greater force later which would have become necessary if the situation had not been controlled immediately;
- (n) that the students had not merely come very close to the compound wall but a number of them also jumped on the compound wall, and brickbatting from the side of the students had also started;
- (o) that the aggressive mood of the students was apparent from the fact that they did not also listen to the persuasions of their Principal, professors and lecturers not to do any unlawful acts; even their persuasions failed to pacify the students;
- (p) that when such repeated warnings and persuasions failed, the Deputy Commissioner ordered the SP to use tearsmoke as a deterrent action for the purpose of dispersing the crowd, so that the students, who were surging forward and rushing out on the road, would recede from the compound

wall and go inside the college campus; it was in this manner that a bigger incident was avoided; in all, about six rounds of tearsmoke shells including grenade, were fired inside the college campus in the direction of the students, crowd;

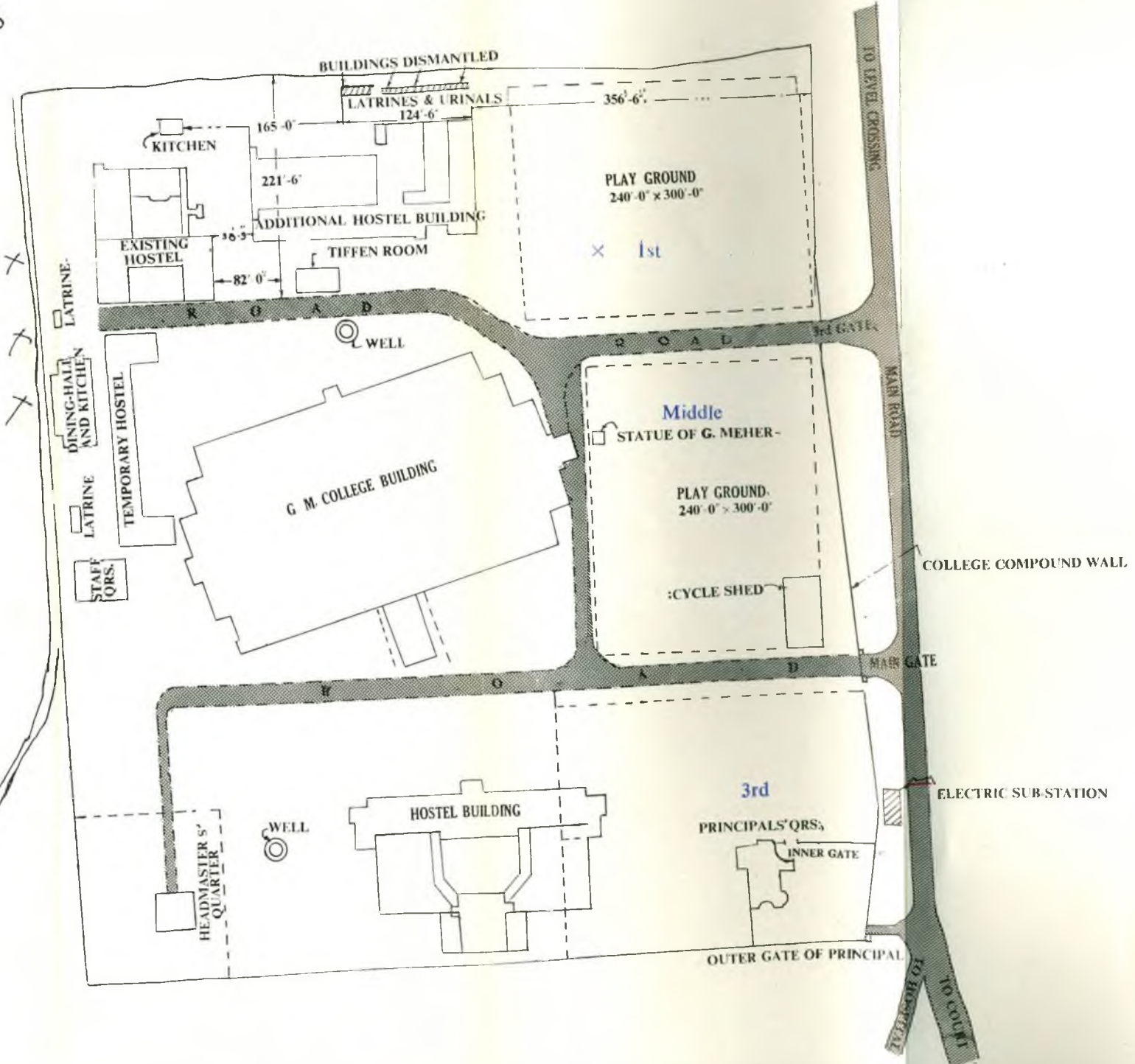
- (q) that the limited purpose of using tearsmoke was to stop the students from overwhelming the police force and violating Section 144 order; it was only a deterrent action to avoid an ugly situation; the object was to disperse the students from the college compound wall; this was done in the interest of maintenance of law and order and to avoid further troubles;
- (r) that the use of teargas had the desired effect; the students receded back from the low compound wall;
- (s) that there must have been some obstruction on the road but not to the extent as alleged; the movement of the traffic was only for some time suspended, because of the situation arising out of the students attempting to break Section 144 order by jumping over the low compound wall of the college, followed by use of tearsmoke by police; there was no closure nor blocking of the road as alleged; a small police cordon was put across the road so that the peace of the town might not be disturbed;
- (t) that in the result, therefore, it cannot be found that any of the measures taken by the administration—placing of police cordon on the road and use of tearsmoke in the manner it was done—were in anyway in excess of the requirements while handling the situation as at the time developed.

SAMBALPUR TOWN MAP SHOWING COURT AREA



Ex-C/73
SITE PLAN OF G.M. COLLEGE BUILDING, SAMBALPUR

SCALE 8 1/2 FT



CHAPTER XVI

BARGARH ON OCTOBER 28

	Paragraph		Paragraph
Introduction ..	1—7	D. Did members of the public instigate the students for a show-down	60—64
A. Background immediately before the incidents at Bargarh	8—12	E. How ultimately developed a situation culminating in a scuffle between the students and the police	65—71
B. 28th October incident in front of the SDO's office	23—49	F. What was the situation in which the constables are said to have resorted to lathi charge in self-defence ; was such lathi charge resulting in injuries justified	72—80
Case of the students and the public	27—43	G. In what circumstances Mr. Padma Lochan Panda was injured ; was the assault on him by the police in excess	81—94
Case of the administration ..	44—49	H. Findings of the Commission ..	95
C. Did the SDO and other officers try to persuade the student deputationists not to create trouble in the court area and to go away	50—59		

INTRODUCTION

According to tradition, Bargarh was founded by Balram Dev, the first Raja of Sambalpur, who first established himself at Nuagarh (literally a new fort) in the Bargarh Tahasil and then moved his headquarters to Bargarh, that is the great fort, the present Bargarh.

2. Bargarh, which is the place of the incident, is the headquarters of the subdivision of the same name in Sambalpur district. It is situate on the Raipur road and on the left bank of the Jira river, 42 miles west of Sambalpur on the National Highway to Bombay via Raipur. The population of Bargarh town is said to be about 12,000. The town in length is about one and a half miles and in breadth about one mile.

3. While coming from Sambalpur, at the entrance of Bargarh town are the Government offices and the courts, while at the other end is the river Jira. The town contains a dispensary, PWD Inspection Bungalow, a rest shed, rain gauge station, telegraph and post office, Municipal Council and a veterinary hospital.

4. The SDO's office, the Judicial Magistrates' courts, the Treasury and the State Bank, are in one building at a distance of about 170 feet from the National Highway with a shady grove in the front. This grove is said to be used by lawyers who sit under the trees with their Moharirs and clients. On the other side of the road are the Munsif's court and the Bar Association which are in the same compound.

5. Bargarh is an important centre for local trade, being the entrop of most of the grain trade of the subdivision; a weekly Bazar is held every Friday and it is the biggest cattle market in the district. The commercial part of the town is on both sides of the National Highway from the court area up to the river Jira.

6. The SDO resides and holds his court at Bargarh. There is also a Munsif, stationed there, who has civil jurisdiction over the subdivision. There is also a police station inside the town by the National Highway near the market place. There is a Circle Inspector at Bargarh.

7. There is a college, which is called the Panchayat College, about a mile and a half away from the town; there are two High Schools, one Basic Training School, one Middle Vernacular Girls' School, Hindi School and a Maktab.

A. Background immediately before the incidents at Bargarh:

8. The incidents, on which the present discussion is confined, took place on 28th and 29th October, 1964. The political background was that the principal political parties—Socialist Party, Communist Party, Janasangha and Congress—had their respective organisations working in this area. It is said that certain leaders, belonging to Communist Party, were instigating the students in the movement. Four such leaders are said to have been arrested subsequently under the DIR.

9. As regards the position of the Congress in this area, it is of significance to know that the local MLA of Bargarh belongs to SSP; the local MP also belongs to this area. Mr. Lengu Misra of Bargarh is said to be a Socialist Party worker. The evidence of the SDO Mr. S. K. Lal is that later on he came to understand from confidential source that Mr. Lengu Misra was a member of the Communist Party at the time of the movement and he is said to have changed from Socialist Party to Communist Party; it was SDO's impression as he said. As regards Mr. Radhaballav Misra, the SDO said that according to his information he also belongs to the Communist Party (Qq. 318-324). So far as Bargarh is concerned, the Commission was not however satisfied as to which leader was aligning with which political party, particularly with regard to Mr. Radhaballav Misra and Mr. Lengu Misra. In evidence, Mr. Radhaballav Misra, P. W. 30 denied that he

was a Communist. He said that he was not a Communist and that he did not belong to any political party, that he believed in that political ideology, which says that the people should have socialism in India, he is opposed to all form of dictatorship and also opposed to the alleged constitutional dictatorship in the country (P. W. 30 Radhaballav Misra Qq. 95—98).

10. It is however clear from the atmosphere at Bargarh that the people were politically conscious; the political leaders were active in the area by reason of which the people were in touch with the happenings in the country and their political significance and implications.

11. For a few days prior to the incidents on 28th and 29th October, 1964, the student movement at Bargarh was taking shape in the form of meetings, processions and demonstrations as hereinafter stated.

12. It is said that on October 3, a meeting was organised in connection with the students' agitation, which took place at children's park, where nearly 50—60 students attended. Mr. Madhusudan Patnaik, a student of Bargarh Panchayat College, presided over the said meeting; the speakers at the meeting are said to have been all students; the object of the meeting was to express sympathy towards the students of Cuttack, who are alleged to have been subjected to police excess and atrocities on 26th and 27th September, 1964 and to protest against the same; it was decided at the meeting that the students would take out a procession peacefully and give a memorandum to the SDO, Bargarh; a memorandum was drawn up at the meeting.

13. On October 24, the students gathered under a mango tree on their way to the college and it was at a distance of about one furlong from the college; about 100 students gathered there; they decided to go out in a procession into the town and to present the memorandum to the SDO. The evidence of Mr. Madhusudan Patnaik P. W. 27 is that on that date they went and presented the memorandum, in which they demanded an impartial enquiry into the police excess committed on the students at Cuttack and elsewhere, the police zulum must stop and that compensation should be paid (P. W. 27 Madhusudan Patnaik Qq. 85—98).

14. On October 25, 1964 in the morning some students are said to have met and planned to take out a procession in the same manner as elsewhere. They applied for the licence which was granted to them.

15. On October 26, the students of Bargarh Panchayat College went on strike, with the demands of a judicial enquiry into the police-student clash; unconditional release of the arrested students and compensation for loss. Earlier, the students obtained from the Circle Inspector of police, Bargarh, permission, to take out a procession and hold a public meeting at local Hatpada, under section 30 of the Police Act.

16. At about 10-30 A. M., the students collected at a place two furlongs away from the college; about 50-60 students started a procession from there and went round the town shouting slogans against the Government; the procession led by Mr. Madhusudan Patnaik, said to be with leanings towards CPI, proceeded towards the local George High School side; it swelled up to 100 and then moved towards the court premises; there was no police cordoning or anything to prevent their entry into the court; there was no provocation from the side of the administration, as the administration did not want to do anything which could be construed as a provocation to the students, and further as the students were reported to have been peaceful in their procession which reached the court building at about 1-45 P. M.; the procession stood there for sometime silently.

17. The SDO was at that time in his chamber; some of the students, believed to be in the procession, came over to his chamber; one of them Mr. Madhusudan Patnaik who took the leadership in these days, as hereinbefore stated, handed over a memorandum to the SDO containing demands which Mr. Patnaik desired that the SDO should forward to the Government. The said memorandum was this:

“To

The Government of Orissa
(Through Sub-Collector, Bargarh)

SIR,

We, the students of Bargarh Panchayat College draw your kind attention and suitable consideration towards the below main (3) points.

So, until fulfilled these three (3) points we, the students of Bargarh Panchayat College would continue the strike from today for the time being.

Yours obediently

Bargarh
Dt. 26-10-64

Students of Panchayat College, Bargarh.

Demands

1. Judicial enquiry for the police-students struggle.
2. Unconditional release of the arrested students.
3. Compensation for the loss of the students.

These three students are representing the students of Panchayat College.

1. Madhusudan Patnaik—Sd. M. S. Patnaik
2. Rajendra Dash—Sd. R. Dash
3. Umesh Prasad Panigrahi—Sd. U. P. Panigrahi"

18. In his chamber, the SDO advised Mr. Madhusudan Patnaik and his companions that they should remain peaceful in the procession and in their agitation, if they thought that the students' agitation was at all necessary; they should in no manner be violent so that things might not become difficult for the administration. Mr. Madhusudan Patnaik agreed, and after giving the assurance that the movement would be peaceful, left the SDO's chamber along with his companions; the procession also left; there was, however, a public meeting that day in the evening at Hatpala area and thereafter there was no further trouble on October 26. The SDO in his daily report to the Collector (Ext. C/77), written on the same date October 26, 1964 about the incident, recorded what happened on that date substantially to the same effect as stated above.

19. On October 27 again, the students of Bargarh College took out a procession and at about 11-45 A.M. or 12 noon reached the SDO's office; as in the previous day they had been going along George High School; they picked up students from that school also; they were about 500 strong when they came over to the SDO's office; they were carrying an effigy of the then Chief Minister Mr. Biren Mitra which they burnt in front of the SDO's office on the road; there were one or two students probably dressed like women in Saris having bangles which they broke after the effigy was burnt in mock sorrow; thereafter the procession went away.

20. In the same afternoon October 27, there was an informal meeting of the College Governing Body and some guardians, in the Panchayat College premises, where the students' agitation at Bargarh was discussed. The SDO was present in that meeting, there were also some other prominent citizens of the town; they discussed specifically whether the students should not be persuaded by them to discontinue their agitation and to start their studies in right earnest, because, as far as the token strike was concerned, that was already done on October 26 and in the same morning on

October 27. It was decided to form a Guardians Action Committee and the members present selected Mr. Das Mohapatra, Project Administrator, to be the President of the Guardians Action Committee.

21. The main purpose of the Guardians Action Committee was to get in touch with the guardians in the town to advise them that boys and girls, belonging to the schools and the college, should attend their institutions regularly and should not participate in the agitation. It was further decided that, if persuasion to that effect failed, they would persuade the students to conduct themselves in a very peaceful manner befitting the dignity of the town and the institutions to which they belonged. The guardians felt that this was the right course of action and gave whole-hearted support to the same; some of the members of the committee met some guardians informally later in the evening and requested them to persuade their wards in town to attend the college and the schools in future. The SDO in his daily report of the same date October 27 (Ext. C/78) reported the incidents of the day to the Collector substantially to the same effect.

22. It is admitted that there was a procession of students which came out on the 27th October and that Mr. Madhusudan Patnaik was there but he is said to have been behind all the students (P. W. 27 Madhusudan Patnaik Q. 244).

B. 28th October incident in front of the SDO's office :

23. The sequence, in which the events were taking place at and in front of the SDO's office from morning till afternoon on October 28 as appears from evidence, is stated hereunder.

24. On October 28 a procession consisting of about 300 to 400 persons mostly students, came to the SDO's office; it reached the SDO's office premises at about the same time as it did on the previous two days, that is between 11-45 A. M. and 12 noon; there was a mike also in the procession with the help of which some slogans were being shouted (C. W. 35 S. K. Lal Qq. 11, 344). The respective versions of what thereafter passed between the SDO on the one hand and the student deputationists on the other and the implications thereof are stated hereunder, while stating the case of the public and the students and the case of the administration.

25. At about 3-45 p. M., during the discussion between the student deputationists and the SDO, the reinforcement consisting of two sections of OMP in charge of

Mr. K. B. Roy, DSP, Sambalpur, reached Bargarh; it is said that the DSP also joined the discussion with the student leaders; he also advised the students to be peaceful and to go away.

26. Near about 4 p. m. it is said that batches of students were being brought to the SDO's chamber for persuasion. At this point of time the last batch of students left the SDO's chamber saying that they would intimate their final decision after consulting other students who were outside on the road. The students, however, did not return. The SDO waited for a few minutes; by about 4-5/4-7 p. m. the SDO, along with other officers, came to the verandah where the eight student deputationists were sitting on a bench in front of the SDO's izlas (court room). They were later joined by a batch of four more students and at that time the SDO again advised them not to picket, not to obstruct and not to force the hands of the administration in any manner; the student deputationists however stood up, started shouting slogans and wanted to force their entry into the SDO's izlas. What had exactly happened at that stage and thereafter, in course of which Mr. Padma Lochan Panda got injuries, is controversial. The SDO gave his version of the incident in his daily report of October 28 Ext C/79 to the Collector Mr. Kukreja, which is said to be the earliest version of the SDO sent on the same date and initialled by the Collector on the following date at Sambalpur, as appears from the report. His report included a general picture of the incidents of the day. In his evidence before the Commission, the SDO also described in detail the different stages how the situation developed from time to time throughout the day.

27. *Case of the students and the public:* Mr. Radhaballav Misra P. W. 30, a practising advocate at Bargarh, filed an affidavit in support of the case of the public and the students. He also gave evidence before the Commission. What he stated is confined to the incident on October 28, as he was arrested on the same night and had no personal knowledge of what happened the following day. His version of the incident on October 28, is stated hereunder.

28. On October 28, the students came as usual in a procession to the court, shouting slogans against the ruling clique of Orissa and demanding judicial enquiry into the police excesses on Cuttack students.

29. Thereafter, the procession was stated to have halted on Raipur-Sambalpur road which is known as the National Highway passing by the side of the court; four students went

towards the court building of the SDO, while the processionists kept on "lustily" shouting slogans; the four students were sent on deputation to the SDO to ascertain from him the outcome of their memorandum which they had left with the SDO on October 26.

30. The said four students on deputation were first stopped by a small number of policemen present in the SDO's court premises; later on, under the orders of the SDO, the four students were allowed to proceed up to the footsteps of the court building where the SDO met them and had a discussion with them; on the insistence of the students to get a definite answer about the fate of their memorandum, the SDO wanted that he should be given time till 2 P. M. to give a reply.

31. The students' deputation conditionally agreed to what the SDO said; they were allowed to sit in the court verandah by the SDO with an understanding that they would not raise slogans there.

32. It is said that, as time passed on, the processionists gradually became thinner; at 2 P. M. the students' deputation demanded an answer from the SDO who in turn wanted time till 4 P. M. The students agreed and kept on sitting in the court verandah.

33. In the meantime, the business of the court was going on as usual; towards 4 P. M. the court premises was considerably less crowded, as the closing hour of the court was approaching; the processionists, who were less in number, were raising slogans with feeble voice; at that time a police van arrived loaded with scores of military police.

34. At 4 P. M. four more students, as second batch of deputationists, went and joined the first batch sitting in the court verandah. It is said that the second batch was sent by the processionists, because, although it was already 4 P. M., the SDO did not furnish his reply as promised.

35. What followed thereafter resulting in assault by the police, as stated in paragraphs 10 and 11 of the affidavit of Mr. Radhaballav Misra, was this:

" 10. That, at about a quarter past four as I was intending to go home I saw that a ring of military police armed with lathis had put a cordon round the central entrance of the court building and I suddenly saw on the court verandah two groups of deputationists were encircled by the policemen with their lathis and were systematically being squeezed and pushed and within a few seconds were brought down from the verandah near the flag staff in front of the court

and within a fleeting second I was horrified to see that while those students were thus within the double ring of armed police at once they were assaulted by the police with lathis and in the next moment the policemen were running in all directions savagely assaulting whomsoever they came across.

11. That, in the indiscriminate and dastardly attack I saw many innocent litigant villagers among others assaulted and also saw Shri P. L. Panda, Advocate sitting under a tree in a chair receive severe head injuries from the lathis of Military Police."

36. It was further alleged that, at the time the police began the fray, there was absolutely no provocation from the student processionists or from any other quarter whatsoever; the police action was uncalled for and was without any excuse.

37. Mr. Gobardhan Pujari, a student of Bargarh Panchayat College, filed an affidavit alleging police excess in these terms :

- " 12. That, at about 4 P. M. a police van arrived carrying OMP constables, DSP and Sergeant immediately on arrival they took up position along the court building.
13. That, thereafter another group of four students, viz., Sarvashri Rathindra Kumar Acharya, Mrutyunjaya Panda Tribikram Dora and Aditya Kumar Mohapatra came for the same purpose for which the previous four came and they also went and sat with them.
14. That, thereafter they wanted to know from the Sub-Collector as to what he had to say them as it was past 4 P. M. to which he replied that he was just giving reply and a few minutes afterwards to our utter surprise the Sub-Collector and the DSP rudely asked them to clear out and on their reminding the Sub-Collector that on his terms they were sitting there all on a sudden all eight of them encircled by policemen with lathis and squeezed and pushed out of the verandah.
15. That, while they were thus being forced out they raised slogans and near the flag staff before that Sub-Collector's court they were thus kept encircled and squeezed by the lathi holding police for a while and while they were in that pitiable plight all on a sudden the policemen began assaulting them by lathis.
16. That, completely taken back they ran for their lives and received injuries from lathi becomes and say that the police were rashly assaulting on whomsoever they could lay hands on as a result of which an Advocate Shri Padma Lochan Panda had received severe head injuries.
17. That, at the time the police began assaulting the atmosphere of the court areas are absolutely calm and peaceful and as a matter of fact most of the student processionists had gone away."

In course of hearing, the attention of the Commission was drawn to the fact that Mr. Mrutyunjay Panda, included in the second batch of student deputationists mentioned in paragraph 13 of the said affidavit, was the son of Mr Padma Lochan Panda.

38. Mr. Gobardhan Pujari said that he was in the procession raising slogans and demanding immediate enquiry, and described how according to him the student deputationists were kept waiting; the SDO was stated to have wanted time till 2 P. M. to contact the Deputy Commissioner at Sambalpur and then let them know about the action taken on the memorandum; the students readily agreed on condition that they would be allowed to sit in the court verandah to which the SDO agreed on condition that the students would not raise slogans; the student deputationists peacefully sat in the verandah. It was also stated that at 2 P. M. the student processionists met the SDO again and wanted to know from him if he would then enlighten them as promised; the SDO, however, said that he would require further time till 4 P. M. and informed the student deputationists that he had sent a telegram to the Deputy Commissioner to expedite the information regarding the memorandum; the students kept on sitting in the verandah, awaiting the clock to strike 4, while the remaining processionists kept on standing on the National Highway and occasionally giving slogans. What followed after 4 P. M. resulting in police action is stated in the paragraphs hereinbefore quoted.

39. The student leader at Bargarh P. W. 27 Mr. Madhusudan Patnaik, who was in the students' deputation and met the SDO as aforesaid, also filed an affidavit in which he made allegation of police excess on that date. What he said in paragraph 3 of his affidavit was this:

“ 3. That, on the 28th October 1964, while demonstrating before the Bargarh Court and while waiting to hear from the Sub-Collector the outcome of our memorandum left with him earlier, we together with others peaceful citizens including lawyers, litigants and clerks were mercilessly beaten with lathis and several of us received severe injuries.”

He also gave evidence before the Commission, where he made specific allegations against the SDO and the police. It is significant that in his affidavit, there is no indication even of alleged *mala fide* of the SDO that he kept the students' deputation waiting in order to give them ultimately a good beating as alleged; there is also no mention of the student

deputationists sitting in the court verandah nor of their attempt to enter the izlas, nor of their having been beaten inside the ring by the policemen, as alleged.

40 P. W. 26 Mr. Binod Bihari Sahu and Mr. Mukteswar Das, both advocate's clerks, also filed affidavits. Their allegation against the police, as stated in paragraph 5 of their respective affidavits, in identical language was this:

" 5. That all on a sudden I saw that the Military Police began chasing people gathered in the court premises and within a few seconds I saw Shri P. L. Panda, Advocate collapsing after being assaulted by lathis."

In neither of these affidavits is there any mention of eight student deputationists having been beaten inside the police ring as alleged. Apart from them, Mr. Ramprasad Misra, convener of the Bargarh Citizens Fact Finding Committee, also filed an affidavit. His allegation was that at about 4-30 P. M., the entire atmosphere was charged with "grave situations" when the OMP began brutal assault on everybody within the reach of their lathis: the SDO was standing by as the "Chief Commanding authority" when the legal practitioners and litigant public were pitilessly exposed before the Gurkha force of the OMP. He also did not mention about the police having assaulted the eight student deputationists within the police ring as alleged.

41. P. W. 28 Mr. Basudeb Naik, a Mukhtar, also filed an affidavit. He was not present at the time of the incident on October 28 in front of the SDO's office. He stated what he learnt subsequently.

42. In course of hearing before the Commission, the specific case of the students and the public, as put to the SDO in cross-examination, was in substance, this: Right from the time, when the students met the SDO sometime round about 12 noon on October 28 and demanded a reply to the memorandum Ext. C/87, the SDO made up his mind to give the students a good beating; the SDO made the students keep waiting till 4 P. M. on the false pretence of his giving a reply to the memorandum. the SDO in the meantime sent for police reinforcement from Saubalpur with the object of giving the students a beating; as soon as the reinforcement arrived, the SDO ordered lathi charge.

43. As regards the manner in which the policemen are alleged to have beaten the eight student deputationists, the case of the students was this: The OMP policemen forming the inner cordon with long lathis inhumanly squeezed the eight student deputationists

44. *Case of the Administration* : As regards the incident on October 28, the SDO C. W. 35 Mr. S. K. Lal filed an affidavit and also gave evidence before the Commission. He stated in detail how the situation developed from stage to stage; the circumstances in which Mr. Padma Lochan Panda was involved and suffered injuries.

45. The case of the administration, as stated by the SDO Mr. Lal was, in substance, this : The SDO was throughout persuading the students to go away; the students demanded immediate reply to the memorandum Ext. C/87; the object of the students was to get a refusal or a categorical reply that the demands had not been acceded to by that time; this refusal by the SDO to reply or intimate that the demand was not acceded to by that time was intended as a cause of action for a show-down. According to the SDO, it was really an ultimatum to him by the students to give a favourable reply by the specified time which was ultimately fixed at 4 P. M.; the SDO apprehended that the show-down would involve a law and order situation of some gravity; so, he was attempting to stave off the issue till 5 P. M., when offices normally close and thereby tactfully avoiding the situation altogether; that is why he did not give any categorical reply earlier regarding any orders on the students' memorandum Ext. C/87 though all along he had been telling the students that neither he nor the Collector nor the Commissioner had any authority in the matter to pass orders; that if any orders were passed by the Government it would be known to all throughout Orissa. Thus, the SDO on the one hand and the students on the other knew exactly where they stood in the matter of orders on the memorandum Ext. C/87; there was no misgiving on either side; the students wanted to force an issue while the SDO wanted to avoid an issue; that was how the matter was dragged till 4 P. M.

46. In this context what the SDO told the student at 4 P. M. would be clear from his answer to Q. 451 :

“ Q. 451 Did you inform the students that no orders have been passed on their memorandum by the State Government.

A. I told the students at 4 P. M. that Government have not passed any orders on their demands or on the demands of other students from other areas which they would be able to know themselves as and when Government takes a decision in the matter.”

47 It is said that near about 4-10 P. M., when the students did not get from the SDO any reply to their memorandum, the eight student deputationists got excited and shouted

slogans. After this, the eight student deputationists were brought down from the court building by the policemen who formed what was called the inner cordon and they were put beyond the outer cordon.

48. It was at that stage that there was a tussle between the eight student deputationists and the constables of the outer cordon with lathis; the tussle or scuffle, as it is put by the SDO, was that there was kicking and snatching, by the eight student deputationists, of the lathis from the five Gurkha constables out of those policemen who formed the outer cordon; just prior to this, there was rushing forward towards the court building of a section of the crowd on the road and some people, including Mr Padma Lochan Panda, from the left side of the court premises; there was simultaneous brickbatting which was a part of the situation; continuous brickbatting was indicative of the mood of the mob; the psychological effect of brickbatting on the five Gurkha policemen, who evidently apprehended risk of life as they felt that they were attacked by the mob, is a material factor in the present context. It is said that these five policemen had acted on the spur of the moment and used their lathis against the mob causing injuries. It was in course of this that when Mr. Padma Lochan Panda, with raised hands, came rushing along with others and became part of the melee, including the eight student deputationists, that he got injuries from the lathi which was said to have been used by one of the said constables having so acted in self-defence against what they apprehended to be mob attack on them. It is said that these policemen of the outer cordon in self-defence made mild lathi charge up to a distance of 20 feet within the court premises which was only for a few seconds; it was in course of this that Mr. Padma Lochan Panda got injuries.

49. The SDO C. W. 35 Mr S K. Lal, in his evidence, described this particular stage of the incident how Mr. P. I. Panda was involved in the scuffle thus :

“Q. 37 At that time you saw Mr Panda coming with a raised hand how many other persons were with him.

A. It was a big crowd --a very dense crowd in a small place. Since Mr. Panda was one or two feet away from the cordoning constable he was rushing through the crowd and he came to the front when I saw him with raised hands.

Q. 38 By the time he came to the front he was not injured

A. Then I did not see him injured. Thereafter the situation was such that I could not have stuck myself only to one point. I probably might not have noticed as to what

happened. In any case I was not expecting that Mr. Padma Lochan Panda will get injured in that manner. I had no apprehension that this scuffle resulting in a mild lathi charge was a premeditated preconceived intention of either the students or the constables. The situation developed suddenly and the mild lathi charge in self-defence was almost a reflex action. I may put it as reflex reaction to the assault on the constables, kicking them and pulling away their lathis. They cannot afford to lose their lathis. When they were kicked, as reflex action they tackled the situation in self-defence."

The SDO was clear in what he wanted to say describing the exact position at the time.

C. Did the SDO and other officers try to persuade the student deputationists not to create trouble in the court area and to go away:

50. In view of the specific allegation by the public that the SDO had kept the student deputationists waiting with the object of giving them a beating, the question whether or not the SDO made such persuasion not to create trouble in the court area is a relevant consideration.

51. The student deputationists had threatened that they would break the law with all their vigour, if the results of their demands were not communicated to them by the evening of October 28. The SDO told them that he would try his best to know the result over phone; apparently, the students were satisfied by his assurance and went back to the procession which was on the road. The first batch of four deputationists, especially Mr. Madhusudan Patnaik, told the SDO that they had decided to break the law, to commit cognizable offences, to picket and to resort to such other things as Cuttack and Bhubaneswar students were doing so that they would be arrested by police.

52. Thereupon, the SDO with the help of BDO (Block Development Officer), Bargarh and Circle Inspector of Police, Bargarh, conferred with the student leaders several times continuously pleading with them to be peaceful, and appealed to them to change their attitude of violence and commission of offences with an intention to make the agitation prominent. The S. O requested the student leaders not to compel the magistrates and the police to take action against them; the student deputationists, however, repeatedly turned down the requests of the SDO and others, and said that they had decided to break the law and resort to such actions as their 'brothers' were doing at Cuttack and Bhubaneswar. The SDO stated clearly to them that, if they did not discard

this attitude and resorted to violence, then police force would be compelled to take action and that the students alone would be responsible for any untoward incident.

53. The student deputationists said that they wanted a reply to their memorandum, otherwise they would see that the students behaved in such a manner that the normal office work was suspended and they would commit such offence which would result in their arrests ; they would not wait till the evening for the reply to the memorandum ; they wanted a reply immediately or else would picket and obstruct the work of the office and paralyse the administration at Bargarh and do such acts as would force the hands of the administration to arrest them. The SDO again told them politely that there was no use in getting arrested ; if they carried on their peaceful agitation, probably their purpose would be served and they could bring it to the notice of the Government, as they desired, the feelings of the students of Bargarh ; the SDO again requested the students including Mr Madhusudan Patnaik and told them that he was like their elder brother ; he would not like to see that they were arrested unnecessarily for a cause which could be fought out in a very peaceful manner and without any unpleasantness. The student leaders however appeared to be adamant ; the SDO told them that just a few minutes ago the student leaders agreed that they would wait till the evening but wondered how after going back to the procession, they changed their mind and came over again with a threat that they would resort to lawlessness, unless a reply to their demands was communicated to them forthwith.

54. The reasoning, with which the SDO tried to persuade the students not to resort to lawlessness, was, in substance, this: The SDO told Mr. Madhusudan Patnaik that he (Mr. Madhusudan Patnaik) knew it very well that reply to their demands, as contained in the memorandum could not be given by the SDO at that time immediately because it was not for the SDO to give reply to the demands which were to be dealt with at the highest level of the Government ; Mr. Patnaik also agreed with the SDO but remained adamant that he must get a reply ; the SDO further added that the Collector, Sambalpur or even the Commissioner at Sambalpur had no authority to give reply to such demands ; it was a matter of concern to people all over Orissa ; when the Government would give a reply to the memorandum, it would be known to all concerned ; the student deputationists however, insisted not only on an immediate

reply but on an immediate favourable reply. This attitude further made the situation worse. The SDO personally did not want any unpleasantness to occur because he knew that these deputationists were students and had a career before them; if they were arrested, they would unnecessarily get themselves involved in an affair which was incited by some political persons of the locality. After some discussion on this line, a suggestion was given to the SDO that the students would give the SDO time till 4 P. M. to give reply to the memorandum already submitted to him; the students would wait till 4 P. M. and would not picket or obstruct or do anything till 4 P. M.

55. It was in this situation that, under compelling circumstances, the SDO agreed that the students might wait till 4 P. M. knowing fully well that he was not in a position to reply to their demands even at 4 P. M.; the SDO also knew that the students were fully conscious that he would not be able to give a reply to their memorandum; in any event, a suggestion came from the students' side that they would give the SDO time till 4 P. M., and thus a situation, which would have precipitated at that time, was at least postponed for 2 to 3 hours; the SDO thought that after 4 P. M. he could easily drag on till 5 P. M. when the offices would close according to normal routine.

56. In his further attempt to pacify the students, the SDO came to his chamber and entered into a discussion with other student leaders; in this matter the SDO was helped by the BDO, Circle Inspector and others; thus the SDO was making contact with them and was persuading them not to commit any lawlessness, not to create any unpleasantness because that was not necessary nor called for at Bargarh. The SDO told the student leaders that he was himself a student 5 to 6 years ago and he could realise the sentiments of the students in such times; he also told them that they should treat him like their elder brother and they should listen to him, because, faced with such a situation when the students themselves would become administrators, they would probably realise his difficulties at that time. As he said in evidence he had an impression that he was creating some impact on the mind of the student leaders; that they would ultimately see reason and would not insist on getting a reply to their demands by 4 P. M., which the students knew fully well that he was not authorised nor was in a position to give.

57. During these discussions, the DSP, Mr. K. B. Roy came to the SDO's chamber and also participated in the talks; he also advised the students to be peaceful; he told them to the effect that they had elected representatives in the Legislature and Parliament; if the students had to ventilate their grievances, they could do so through these high-powered bodies; no purpose would be served, if they committed lawlessness and forced the administration to a helpless position.

58. The SDO's object of meeting batches of students was somehow to persuade the students not to precipitate matters, by insisting on fulfilment by him of their demands by the ultimatum that they gave; the students patiently heard the SDO and agreed with him whatever he was telling them as regards carrying on the agitation peacefully and as regards the position that the SDO could not meet their demands; the students were, however, all the time telling the SDO that they had already decided to take a particular line of action in case the SDO was not able to give a favourable reply to their demands; each time they said that they would discuss with their friends outside in the procession and let him know the result; the SDO was thus meeting different batches of students and he repeated his requests to them and offered them brotherly advice; he went on like this till about 4 P. M.

59. The patience, restraint and brotherliness with which the SDO tactfully persuaded the student leaders makes improbable the case of the students and the public that the SDO kept them waiting with the object of giving them a beating. In fact, the students, left to themselves, appeared to have been convinced with the reasoning of the SDO to remain peaceful but the students were being instigated by members of the public for a show-down as hereinafter discussed.

D. Did members of the public instigate the students for a show-down :

60. There is ample evidence on record to show that non-student outsiders were inciting the students to violence. After discussion with the SDO, the student leaders appeared to have been convinced with the reasoning of the SDO and went back to the procession on the road; it was expected that the procession would leave the court area and proceed towards the college; it was at that point of time that about 150 members of the public joined the student leaders; these outsiders included three members of the CPI as mentioned in the daily report of the SDO Ext. C/79; these

CPI members had some discussion with the students; it was apprehended that there might be a large scale violence, if they tried to precipitate the situation; after discussion with the members of the public, the student deputationists, including Mr. Madhusudan Patnaik with a garland in his neck, again came to the SDO and said that they would not wait till evening for his reply.

61. In his evidence, the SDO explained how the student leaders were being incited by the politicians; he found that the four student leaders, who went to the procession, were joined by 2 or 3 prominent political leaders and about 150 members of the public, who in the meantime gathered within the court compound from the neighbourhood. The SDO said that on the road these three leaders and others started discussion with the four student leaders; from the gesticulation, that he could observe from the verandah, he found that a situation might arise when by sheer instigation the four student leaders would again come back along with the entire procession; the SDO apprehended that the entire procession might come inside the court premises and do such acts as to compel him to take some action; after a few minutes, he found that the four students, including Mr. Madhusudan Patnaik having a garland at that time, returned to the SDO; the garland was symbol of leadership.

62. The SDO's inference, that the student leaders were being incited by outsiders, was based on his observation of the gesticulation of the members of the public including those mentioned above while they were talking with the student leaders, reaction of the students by slight flutter in the procession—sometimes also loud murmurs amongst them; it appeared to the SDO that the four student leaders wanted to tell the processionists that they would not picket or obstruct the work at that time because reply to their memorandum would be given by the evening of that day; apparently, this suggestion by the student leaders was not acceptable to the members of the public outside on the road and as a result the student leaders were sent back to meet the SDO again.

63. The gesticulations, that were being made by the non-student public men mentioned above, were prominent and were clearly visible to the SDO; some of the gesticulations were waving of hands by way of trying to convince the student leaders by show of hands, and at times waved their hands towards the SDO's office; this shows the active part which the non-student outsiders played amongst the public, leading

the otherwise peaceful movement by the students to lawlessness and ultimate disorder which subsequently ensued as a result thereof, as hereinafter discussed.

64. As a result of persuasion by members of the public, which ultimately weighed with the student leaders, the students were determined for a show-down and were intent upon picketing, otherwise breaking the law and courting arrest.

E. How ultimately developed a situation culminating in a scuffle between the students and the police :

65. At about 4 p. m., the batch of students, who had come to the SDO's chamber to confer with him, left with the promise to intimate their final decision after consulting other students who were outside; the SDO and his party waited for a while but they did not find them returning; after some-time, the DSP, the Circle Inspector, the Officer-in-charge, the BDO and the SDO himself came out of his chamber and found the four student deputationists joined by another batch of four students standing in front of the SDO's izlas (court-room); thus, by then, there were 8 student deputationists consisting of the first batch of four student leaders including Mr. Madhusudhan Patnaik and the second batch of four other student leaders including Mr. Mrutunjoy Panda (son of Mr. Padma Lochan Panda); they told the SDO that they would picket, shout slogans and do such other things as would attract the provisions of law resulting in their arrest; then they suddenly started shouting slogans and attempted to force their entry into the SDO's izlas but they were cordoned off by the police. The quick sequence in which things happened is stated hereunder.

66. The SDO and the DSP went on persuading the eight student leaders to leave the court building, as they were causing obstruction to the normal work in the office and the courts but they did not listen; these eight students got down from the verandah; they were facing the crowd with their back towards the cordoning constables; the eight students were handed over to the outer cordon; it was about that point of time that about 50 to 60 students from the road side and other members of the public rushed down and joined them.

67. The eight student leaders suddenly turned towards the cordoning constables, some of the students kicked the constables, started snatching away lathis from the constables

and were joined by Mr. Padma Lochan Panda, Advocate and President of Bharatiya Janasangha, Bargarh Branch, who rushed with raised hands towards the police.

68. Simultaneously, heavy stone pelting started from the students and the mob; immediately, five constables of the outer cordon resorted to mild lathi charge, evidently in self-defence, to keep away the crowd from overpowering and rushing towards the court premises; these five constables cleared away the unruly crowd of about 400 persons in a few seconds; after the crowd receded, the charging constables were immediately brought back to their position.

69. The case of the administration is that there was no excess in the use of force, that the constables had to resort to, in self-defence; the force, used by the constables, was not more than what was required to save themselves in the circumstances in which they were placed at the moment. It is unfortunate that, during this scuffle, Mr. Padma Lochan Panda was involved and received certain injuries. The case of the administration with regard to the injury on Mr. Panda is that it was by accident.

70. On this point, the SDO Mr. S. K. Lal gave a clear picture of what exactly happened. While describing the position of the inner cordon and outer cordon with reference to the spot Map Ext. C/76, he said that the inner cordon (6 APR policemen) was first formed on the front verandah protecting his izlas and preventing the students from entering into it; the inner cordon constables progressed, as the students moved towards the road and ultimately the students reached the outer cordon (22 OMP Gurkha constables with lathis) and the eight students were put on the other side beyond the outer cordon.

71. After they were handed over to the outer cordon 50 to 60 students, who were then visible on the road, rushed down to them; there was also quite a big crowd on the left, side of the SDO facing the road; when these 50 to 60 students rushed inside, the situation became grave; the students, who had picketed, started pulling away lathis from the constables of the outer cordon and in that process some of the constables were kicked; simultaneously, from the right side heavy stone pelting started; simultaneously, from the left-hand side Mr. Padma Lochan Panda came rushing with raised hands towards the cordon on the front side, apprehending danger to their lives, the five constables of the outer

cordon resorted to lathi-charge by pulling back their lathis and running a few feet after the unruly mob; the strength of the unruly mob at the time was about 400; the lathi-charge lasted for a few seconds only and immediately the Jamadar in charge of the force brought the five constables back to their position.

F. What was the situation in which the constables are said to have resorted to lathi-charge in self-defence; was such lathi-charge resulting in injuries justified?

72. On this point, the SDO gave a clear picture in support of his version that the constables lathi-charged in self-defence; at that point of time, the SDO was standing just below the verandah of his office on the ground. While describing the scuffle he said this:

“I have no apprehension that this scuffle resulting in a mild lathi-charge was a premeditated preconceived intention of either the students or the constables. The situation developed suddenly and the mild lathi-charge in self-defence was almost a reflex action —I may put it as reflex reaction to the assault on the constables, kicking them and pulling away their lathis. They cannot afford to lose their lathis. When they were kicked, as reflex action they tackled the situation in self-defence.”

(C. W. 35 S. K. Lal Q. 38)

73. In describing the nature of the scuffle, the SDO said that when the students pulled down the lathis, the constables dragged back the lathis; the eight students, who were in front of the five constables, started snatching away the lathis from among the five constables, and these five constables were standing close to each other because they formed the particular part of the cordon which covered the approach road to the Collectorate; these five constables, who charged, did so in self-defence and there was no order from the SDO; they charged on their own. In what circumstances they charged was explained by the SDO thus:

“Their lathis having been snatched away and they having been kicked it was almost like a reflex action that they charged on them because they had to get back their lathis. Sir, lathis happen to be their arms and they cannot lose it. Since they were kicked, they naturally in trying to save themselves charged on the crowd” (Q. 79).

74. It is clear from his evidence that at the point of time the eight students kicked the five constables and tried to snatch away the lathis, these five constables were in the same line with the other constables forming the outer cordon; these five

constables happened to be on the line covering the approach road to the Collectorate standing side by side; in so doing the charging constables went ahead of their line about 2/3 feet. It is also in evidence that while the constables were engaged in lathi-charge, they would have gone approximately a distance of 20 feet in this process of lathi-charge in the direction of the National Highway. The SDO was asked if these five constables had gone towards the right or left of the road from the court building to the National Highway in the course of lathi-charge (Q. 837). He replied that 2 or 3 constables went slightly towards the left also to a distance of about 20 to 25 feet; they were lathi-charging the mob to that distance; this lathi-charge scared away the crowd.

75. It appears from the injury reports Ext. 85 series that five students out of the two batches of the student deputationists, who went to the SDO, namely, Mr. Sudhir Kumar Das and Mr. Hemanta Kumar Naik of the first batch and Mr. Rathindra Kumar Acharya, Mr. Mrutyunjay Panda and Mr. Tribikram Dora of the second batch were injured. Apart from the students, 4 non-students, namely, Mr. Shyan:sundar Chaperia, Mr. Ramkrishna Hota, Mr. Mukteswar Das and Mr. Padma Lochan Panda also had injuries as recorded in their respective injury reports Ext. 85 series.

76. Much reliance was placed on the position that none of the policemen appeared to have suffered any injury. The evidence of the SDO, however, is that some of the constables complained to him of having been injured as a result of which they suffered pain in different parts of their body. His evidence is that the eight students had kicked the constables with legs; it was reported to him by the constables that they got kicks on thighs and stomachs; the constables complained to the SDO of pain. The SDO said that immediately after the occurrence, he, as the highest Magistrate present at the spot, enquired of the constables, and they complained of having suffered pain, caused by the students (C. W. 35 S. K. Lal Qq. 800—805). The fact, however, remains that as many as nine persons—students and non-students—appeared to have suffered various kinds of injuries due to lathi-charge by the constables, as appears from the injury reports, whereas there is no injury report showing any injury to the charging constables.

77. The question is: In the circumstances of the case, is the plea of self-defence available to the charging constables? On

this point the settled legal position as laid down by their Lordships of the Supreme Court is this:

“ In judging the conduct of a person who proves that he had a right of private defence, allowance has necessarily to be made for his feelings at the relevant time. He is faced with an assault which causes a reasonable apprehension of death or grievous hurt and that inevitably creates in his mind some excitement and confusion. At such a moment, the uppermost feeling in his mind would be to ward off the danger and to save himself or his property, and so, he would naturally be anxious to strike a decisive blow in exercise of his right. It is no doubt true that in striking a decisive blow, he must not use more force than appears to be reasonably necessary. But in dealing with the question as to whether more force is used than is necessary or than was justified by the prevailing circumstances, it would be inappropriate to adopt tests of detached objectivity which would be so natural in a court room, for instance long after the incident has taken place. The means which a threatened person adopts or the force which he uses should not be weighed in golden scales. To begin with, the person exercising a right of private defence must consider whether the threat to his person or his property is real and immediate. If he reaches the conclusion reasonably that the threat is immediate and real, he is entitled to exercise his right. In the exercise of his right, he must use force necessary for the purpose and he must stop using the force as soon as the threat has disappeared. So long as the threat lasts and the right of private defence can be legitimately exercised it would not be fair to require that “he should modulate his defence step by step, according to the attack, before there is reason to believe the attack is over”. The law of private defence does not require that the person assaulted or facing an apprehension of an assault must run away for safety. As soon as the cause for the reasonable apprehension has disappeared and the threat has either been destroyed or has been put to rout, there can be no occasion to exercise the right of private defence. If the danger is continuing, the right is there; if the danger or the apprehension about it has ceased to exist, there is no longer the right of private defence.” (*Jai Dev v. State of Punjab A. I. R. 1963 Supreme Court 612*).

78 In the present case, it is clear from the evidence that the situation in the court area was tense; it was since the morning that the processionists gathered on the National Highway in front of the SDO's Court; the two batches of student deputationists had, in course of the day, gone to the SDO and demanded a favourable reply to their memorandum that they already submitted before him: all attempts by the SDO and other officers to pacify the students and persuade them not to resort to lawlessness apparently failed; the situation was further aggravated by reason of the instigation of the students by non-student outsiders to violence as hereinbefore discussed; they all wanted a show-down and it was with that intention that

they wanted to provoke a situation, which the young SDO Mr. S. K. Lal tactfully succeeded in avoiding till about late in the afternoon; there was consequently a feeling of frustration in the minds of those who wanted to create trouble. The quick sequence, in which the situation became grave resulting in a scuffle between the constables and the eight student leaders, has been discussed above.

79. The circumstances, in which the constables found themselves by reason of which they had to use force in self-defence, were these: There was in front of them standing on the National Highway a huge aggressive mob; the mob were all bent upon having a show-down in the court area; as soon as the frustrated eight student leaders passed through the outer cordon, 50/60 persons out of the mob rushed forward towards the outer cordon and joined the eight student leaders; it was from a sense of frustration and also emboldened by the presence of other agitators at the spot that the said eight student deputationists snatched away from the constables their lathis which were their only arms; placed in such a predicament, the constables reasonably apprehended danger to their life; in such a situation it was open to them to resort to lathi-charge in self-defence in the manner they did. They were entitled to continue lathi-charge to the extent and up to such distance until the cause for the apprehension, which was reasonable, disappeared. It is true that as a result of the lathi-charge nine persons appeared to have been injured but this was unavoidable. On the other hand, there is no reason to disbelieve the evidence that some of the constables had also suffered pain on their thighs and stomachs by reason of the kicks given by the students in course of the scuffle. The means which the constables, as threatened persons, adopted, and the force, which they used resulting in the injuries, cannot be weighed in golden scales.

80. In the result, therefore, on a careful consideration of the circumstances in which the constables had to resort to lathi-charge in self-defence, it cannot be found that such use of force by the police was unjustified.

G In what circumstances Mr. Padma Lochan Panda was injured: was the assault on him by the police in excess :

81. Mr. Padma Lochan Panda is an Advocate and President of Bharatiya Jana Sangh, Bargarh Branch. His son Murtyunjay Panda was one of the student leaders who had participated in the movement and in fact was one of the four student deputationists in the second batch who went to the

SDO and was one of the students injured in course of the scuffle between the students and the police as hereinbefore described.

82. The case of the public, as to how Mr. Padma Lochan Panda was assaulted by the police, was stated in the affidavits of Mr. Radhaballav Misra, Advocate, Mr. Mukteswar Das and Mr. Binod Bihari Sahu both Advocates' Clerks at Bargarh. Apart from the affidavits, the case of the public, as suggested to the SDO Mr S. K. Lal in cross-examination, was that the injury on the head of Mr. Padma Lochan Panda was inflicted while he was sitting on his chair and reading a judgment; that the head injury was inflicted on him from behind; thereafter he got up and asked the constables not to assault him any further; even after that, he was further assaulted.

83. The position that Mr. Padma Lochan Panda himself did not even file any affidavit although he was present at the local inspection and hearing from day to day was commented on behalf of the administration. Their point is that a false case was set up on behalf of the public that Mr. Padma Lochan Panda was sitting on a chair and reading a judgment under a tree at a distance of 20 feet from the outer cordon; the fact that Mr. Padma Lochan Panda himself did not come forward in support of this was stated to be a telling circumstance.

84. The case of the administration, as stated by the SDO in his affidavit, was to the effect that, in course of the scuffle between the constables and the students who were kicking the constables and snatching away lathis from them, the students were joined by Mr. Padma Lochan Panda who rushed with a raised hand towards the police; the constables recovered the lathis, and evidently in self-defence resorted to a mild lathi-charge for a few seconds resulting in simple injuries to Mr. Padma Lochan Panda, who was at once picked up and sent to the Government Hospital in a jeep through police escort. In his daily report to the Collector dated October 28 Ext. C/79, the SDO described how Mr. Padma Lochan Panda came to be involved and was injured.

85. While giving evidence the SDO was asked in Q 35 under what circumstances Mr. Padma Lochan Panda came to be injured to which the SDO replied thus:

“ I could not see where he (Mr. Padma Lochan Panda) was sitting earlier. Only when this started suddenly I found him with a raised hand rushing towards the constables and thereafter I did

not see him anywhere. Probably he fell down which I could infer later when he called for me and when I went and saw that he was having that injury. May be, since he was one or two feet away from the cordoning constables these constables charged on him thinking that he was coming to assault them."

86. This point was pursued and the SDO was cross-examined at length. His evidence was in substance this: It was a big crowd—a very dense crowd in a small place in front of the Court building; since Mr. Panda was one or two feet away from the cordoning constables he was rushing through the crowd and he came to the front of the constables when the SDO saw him with raised hand rushing towards the constables forming the outer cordon; he was adjacent to the right side of the students when the SDO saw him; the constables had hardly advanced at that time when the SDO saw Mr. Panda for the first time rushing towards the constables with a raised hand. The SDO said that it will be very difficult to pin point at what time the constables had recovered from the students the lathis which had been snatched away and at what point of time Mr. Panda reached the outer cordon; the struggle was going on; probably by that time the constables had recovered their lathis; during that struggle between the constables and the students, Mr. Panda came there from the left side; the appearance of Mr. Panda on the scene was absolutely simultaneous with the struggle between the students and the constables; when Mr. Panda came while the scuffle was going on, he was adjacent to them on the right side of the students; Mr. Panda was in front of the five constables who resorted to lathi-charge. In further clarification, the SDO in a diagram which he had drawn Ext. C/86, showed the position where Mr. Panda was found lying (C. W 35 S. K. Lal Qq. 37, 778, 844, 869—872, 879, 892).

87. A question arises: Why did Mr. Padma Lochan Panda rush towards the outer cordon raising his hand? The only inference, which can be reasonably drawn from the circumstances, is that his son Mrutyunjay Panda was one of the second batch among the eight student leaders involved in the scuffle with the constables at that point of time. In fact, his injury report Ext. C/85 (2) shows that the son Mrutyunjay Panda suffered injury—one contusion 2½" 2" in the middle of his right arm. It was presumably because of the father's anxiety for the safety of the son that it was natural for the father Mr. Padma Lochan Panda to advance to the outer cordon raising his hand by way of intervention to stop the situation by preventing

the police from taking any action; this accounts for Mr. Padma Lochan Panda's advancing with a raised hand—a natural reaction of a father to a son's safety in danger.

88. The next question arises: What did the raising of hand by Mr. Padma Lochan Panda mean to the constables? The constables did not know that the son of Mr. Panda was one of the students with whom they were having the scuffle; the constables thought that Mr. Padma Lochan Panda was advancing towards them in support of the students with whom they were having the scuffle; the constables took the raising of the hand as a menacing attitude and naturally they thought that Mr. Padma Lochan Panda was also joining the students in the scuffle and the "constables charged on him thinking that he was coming to assault them" as the SDO said in answer to Q. 35 quoted above.

89. The further question is: Did the constables, in so charging on Mr. Padma Lochan Panda, use force in excess? The injury report Ext. C 85 (6) shows that he had four simple injuries consisting of (1) one lacerated wound $1\frac{1}{2} \times 1 \times$ scalp deep oblique right parietal (2) one contusion 2×1 oblique left shoulder (3) one abrasion $2\frac{1}{2} \times 1$ vertical over lower margin (4) one abrasion 2×1 middle front left thigh as recorded therein. It was submitted, on behalf of the students and the public, that as many as four injuries including a head injury show that the constables used force in excess of what was necessary. On this point, the SDO was specifically asked as to how he could account for all the injuries on the person of Mr. Padma Lochan Panda. The SDO's explanation was that, the injuries purported to be indicated in the injury report, might have occurred during the course of the lathi-charge (Q. 900).

90. The sudden situation, in which Mr. Padma Lochan Panda happened to have come on the scene when the students and the constables were involved in the scuffle, as hereinbefore described, was as a result of reflex reaction to the assault by the eight student leaders on the five outer cordon constables described by the SDO in his evidence. It was in the course of tackling the situation in self-defence that the constables used lathis as a result of which one of the nine injured persons happened to be the unfortunate victim Mr. Padma Lochan Panda, who happened to have appeared on the scene in the circumstances hereinbefore stated. The head injury, caused by hard blunt substance

as recorded in the injury report, was presumably caused by lathi while used by the constables in self-defence.

91. In the ultimate analysis, the situation was this: it is quite clear from the evidence that Mr. Padma Lochan Panda with raised hand rushed towards the five constables at a time when the scuffle was going on between the five constables and the eight students including his son Mrutyunjay Panda; *bona fide* or otherwise Mr. Padma Lochan Panda had become a member of the mob at that point of time; the raising of hand by Mr. Panda in that situation caused apprehension in the minds of the constables that he was also coming to assault them; it was in reasonable apprehension that the five constables wielded lathis to disperse the attacking mob; Mr. Padma Lochan Panda happened to be in the mob; he was hit in course of lathi-charge on the mob by the constables in self-defence.

92. As many as live constables were engaged in the lathi-charge; naturally it caused injuries to the persons who came in their way. It is evident from the nature of the injuries on Mr. Panda that they were caused in course of the lathi-charge by a constable.

93. As regards the quantum of force used by the constables in self-defence, it must be kept in view that the means which they adopted or the force which they used should not be weighed in golden scales; it would be inappropriate to adopt tests of detached objectivity which would be natural in a court room, for instance, long after the incident had taken place.

94. In this view of the circumstances, as discussed above, the Commission is unable to give a finding that the force justifiably used by the constables in self-defence was in excess of the requirements of the situation as at the time prevailed.

H. Findings of the Commission:

95. On the evidence before it and for reasons stated above the Commission holds:

(i) *Re: Background immediately before the incidents at Bargarh:*

(a) that the political background was that the principal political parties—Socialist Party, Communist Party, Jana Sangh and Congress—had their respective organisations working in this area;

(b) that certain leaders belonging to Communist Party were instigating the students in the movement; that there is no direct evidence as to which of the

leaders, who appeared in the picture, was aligning with what particular political party; that it was, however, clear from the atmosphere at Bargarh that the people were politically conscious;

- (c) that a few days prior to the incidents on the 28th and 29th October, the student movement at Bargarh was taking shape in the form of meetings, processions and demonstrations;
- (d) that on October 26 the students of Bargarh Panchayat College went on strike with the demand for a Judicial enquiry into the police-student clash; that at about 1-45 p. m. some of the students came over to the SDO's chamber; one of the student leaders Mr. Madhusudan Patnaik handed over a memorandum to the SDO containing demands which the student leader desired that the SDO should forward to the Government.
- (e) that on October 27, the day before the incident, the students of Bargarh College took out a procession; they picked up students from the George High School; they were about 500 strong when they came over to the SDO's Office; they were carrying an effigy of the then Chief Minister Mr. Biren Mitra which they burnt in front of the SDO's Office on the road; there were one or two students probably dressed like women in Saris having bangles which they broke after the effigy was burnt in mock sorrow; thereafter the procession went away;
- (ii) *Re : Incident on October 28 in front of the SDO's Office :*
- (a) that on October 28 between 11-45 A. M. and 12 noon a procession consisting of about 300 to 400 persons, mostly students, came by the National Highway passing by the side of the court and halted there; 4 students came to the court building of the SDO while the processionists kept on shouting slogans; 4 students were sent on deputation to the SDO to ascertain from him the outcome of the memorandum which they left with the SDO on October 26;

- (b) that the said four students on deputation were allowed by the order of the SDO to proceed up to the court building where the SDO met them and had a discussion with them ; on the insistence of the students to get a definite answer about the fate of their memorandum, the SDO wanted that he should be given time till 2 p. m. to give a reply ;
- (c) that the students' deputation were allowed to sit in the court verandah by the SDO with an understanding that they would not raise slogans there ; at 2 p. m. the students' deputation demanded an answer from the SDO who in turn wanted time till 4 p. m. ; the students agreed and kept on sitting in the court verandah ;
- (d) that towards 4 p. m. the processionists, who were less in number, were raising slogans with feeble voice ; four more students in second batch on deputation joined with the first batch sitting in the court verandah ; the second batch was sent by the processionists because although it was near about 4 p. m. but yet the students did not get from the SDO any reply to their memorandum ; the eight student deputationists got excited and shouted slogans ;
- (e) that after this, the eight student deputationists were brought down from the court building by the policemen who formed what was called the inner cordon, and the deputationists were put beyond the outer cordon ;
- (f) that at that stage, there was a tussle between the eight student deputationists and the constables of the outer cordon with lathis ; there was the tussle or scuffle in that there was kicking and snatching, by the eight student deputationists, of the lathis from the five Gurkha constables out of those policemen who formed the outer cordon ;
- (g) that just prior to this, there was rushing forward towards the court building of a section of the crowd from the road and some people including Mr. Padma Lochan Panda from the left side of the court premises ; there was simultaneous brickbattling which was a part of the situation ;

(h) that these policemen of the outer cordon, in self-defence, made mild lathi-charge up to a distance of 20 feet within the court premises which was only for a few seconds; it was in course of this that Mr. Padma Lochan Panda got injuries while he came rushing along with the others and became part of the melee;

(iii) *Re: Did the SDO and other officers try to persuade the student deputationists not to create trouble in the court area and to go away ?*

(a) that the student deputationists had threatened that they would break the law in all their vigour if the results of their demands were not communicated to them by the evening of October 28; the SDO told them that he would try his best to know the result over phone;

(b) that apparently the students were satisfied by the SDO's assurance and went back to the procession which was on the road;

(c) that the first batch of four deputationists, especially Mr. Madhusudan Patnaik, told the SDO that they decided to break the law, to commit cognizable offences, to picket and to resort to such other things as Cuttack and Bhubaneswar students were doing so that they would be arrested by the police;

(d) that the student deputationists, however, repeatedly turned down the requests of the SDO and others and said that they decided to break the law and resort to such actions as their 'brothers' were doing at Cuttack and Bhubaneswar;

(e) that the student deputationists insisted on a reply to their memorandum, otherwise they would see that the students behaved in such a manner that the normal office work was suspended and they would commit such offence which would result in their arrests; they would not wait till the evening for the reply to the memorandum; in the meantime they wanted a reply immediately or else they would picket and obstruct the work of the office and paralyse the administration at Bargarh and do such acts as would force the hands of the administration to arrest them;

- (f) that the young SDO gave all brotherly advice to the students and tried his best to dissuade them from lawlessness; student leaders, however, appeared to be adamant; the SDO told them that just a few minutes ago the student leaders agreed that they would wait till the evening but wondered how after going back to the procession they changed their mind and came over again with a threat that they would resort to lawlessness unless a reply to their demands was communicated to them forthwith;
- (g) that the SDO told the student leader Mr. Madhusudan Patnaik that he (Mr. Patnaik) knew it very well that reply to the demands as contained in the memorandum could not be given by the SDO at that time immediately because it was not for the SDO to give reply to the demands which were to be dealt with at the highest level of the Government; the student leader also agreed with the SDO but remained adamant that he must get a reply; the student deputationists, however, insisted not only on an immediate reply but on an immediate favourable reply;
- (h) that evidently, the students were adamant; the SDO did not want any unpleasantness to occur because he knew that these deputationists were students and had a career before them; if they were arrested they would unnecessarily get themselves involved in an affair which was incited by some political persons of the locality;
- (i) that ultimately the students agreed to give the SDO time till 4 P. M. to give reply to the memorandum already submitted to him; the students would wait till 4 P. M. and would not picket or obstruct or do anything till 4 P. M.
- (j) that in this situation under compelling circumstances, the SDO agreed that the students might wait till 4 P. M. knowing fully well that he was not in a position to reply to their demands even at 4 P. M.; the SDO also knew that the students were fully conscious that he would not be able to give a reply to their memorandum;

- (k) that it was in this way, the situation which would have precipitated at that time was at least postponed for 2 to 3 hours; the SDO thought that after 4 p. m. he could easily drag on till 5 p. m. when the offices would close according to normal routine;
- (l) that in the meantime, the SDO in his further attempt to pacify the students entered into a discussion with other student leaders in his chamber; thus the SDO was making contact with them and was persuading them not to commit any lawlessness; the SDO had an impression that he was creating some impact on the mind of the student leaders; that they would ultimately see reason and would not insist on getting a reply to their demands by 4 p. m. which the students knew fully well that the SDO was not authorised nor was in a position to give;
- (m) that the SDO's object of meeting batches of students was somehow to persuade them not to precipitate matters by insisting on fulfilment by him of their demands in the ultimatum that they gave; he went on like this till about 4 p. m.;
- (n) that the patience, restraint and brotherliness—with which the SDO Mr. S. K. Lal tactfully persuaded the student leaders—make improbable the case of the students and the public that the SDO kept them waiting with the object of giving them a beating; in fact the students, left to themselves, appeared to have been convinced with the reasoning of the SDO to remain peaceful but the students were being instigated by members of the public for a show-down;
- (iv) *Re: did the members of the public instigate the students for a show-down:*
- (a) that there is ample evidence on record to show that outsiders were inciting the students to violence; after discussion with the SDO the student leaders appeared to have been convinced with the reasoning of the SDO and went back to the procession on the road; it was at that point of time that about 150 members of the public joined the student leaders; these outsiders

included three members of the CPI; after discussion with the members of the public, the student deputationists, including Mr. Madhusudan Patnaik, again came to the SDO and said that they would not wait till evening for his reply;

- (b) that evidently, the student leaders were being incited by the politicians; he found that the four student leaders who went to the procession were joined by 2 or 3 prominent political leaders and about 150 members of the public who in the meantime gathered within the court compound;
- (c) that the SDO rightly apprehended that the entire procession might come inside the court premises and do such acts as to compel him to take some action; after a few minutes, he found that the four students, including Mr. Madhusudan Patnaik with a garland on his neck at that time, returned to the SDO;
- (d) that it appeared that the four student leaders wanted to tell the processionists that they should not picket or obstruct the work at that time because reply to their memorandum would be given by the evening of that day; apparently this suggestion by the student leaders was not acceptable to the members of the public outside on the road and as a result the student leaders were sent back to meet the SDO again;
- (e) that as a result of incitement by members of the public which ultimately weighed with the student leaders, the students were determined for a show-down and were intent upon picketing, otherwise breaking the law and courting arrest;
- (v) *Re: How ultimately developed a situation culminating in a scuffle between the students and the police :*
 - (a) that at about 4 p. m. the batch of students, who had come to the SDO's chamber to confer with him, left with the promise that they would intimate their final decision after consulting other students who were outside; the SDO and his party waited for a while but they did not find the student leaders returning .

- (b) that after sometime the SDO himself along with other officers came out of his chamber and found the four student deputationists joined by another batch of four students standing in front of the SDO's izlas;
- (c) that by then there were eight student deputationists consisting of the first batch of four student leaders including Mr. Madhusudan Patnaik and the second batch of four other student leaders including Mr. Mrutyunjay Panda, son of Mr. Padma Lochan Panda;
- (d) that the eight student deputationists told the SDO that they would picket, shout slogans and do such other things as would attract the provisions of the law resulting in their arrest, then they suddenly started shouting slogans and attempted to force their entry into the SDO's izlas, but they were cordoned off by the police;
- (e) that the SDO and DSP went on persuading the eight student leaders to leave the court building as they were causing obstruction to the normal work in the office but the student leaders did not listen;
- (f) that these eight student leaders got down from the verandah; they were facing the crowd with their back towards the cordoning constables; the eight students were handed over to the outer cordon;
- (g) that after they were handed over to the outer cordon, fifty to sixty students who were then visible on the road rushed down towards the outer cordon; there was also quite a big crowd on the left side of the SDO facing the road;
- (h) that when these 50 to 60 students rushed inside, the situation became grave; the students who had picketed started pulling away lathis from the constables of the outer cordon and in that process some of the constables were kicked; simultaneously from right side heavy stone pelting started; simultaneously from the left hand side Mr. Padma Lochan Panda, Advocate and President Bharatiya Janasangha, Bargarh Branch came rushing with raised hands towards the cordon on the front side;

- (i) the apprehending danger to their life, the five constables of the outer cordon in the meantime resorted to lathi-charge, pulled back their lathis and ran a few feet after the unruly mob; the mob at the time was about 400 in strength; the lathi-charge lasted for a few seconds only and immediately the Jamadar, in charge of the force, brought the five constables back to their position;
- (vi) *Re: What was the situation in which the constables are said to have resorted to lathi-charge in self-defence; was such lathi-charge resulting in injuries justified?*
- (a) that the situation developed suddenly and the mild lathi-charge in self-defence was almost a reflex reaction to the assault on the constables, kicking them and pulling away their lathis; the constables could not afford to lose their lathis;
- (b) that the situation was further aggravated by reason of the instigation to the students by outsiders for violence; they all wanted a show-down and it was with that intention that they wanted to provoke a situation which the SDO tactfully succeeded in avoiding till about late in the afternoon; there was consequently a feeling of frustration in the minds of those who wanted to create trouble;
- (c) that the circumstances, in which the constables found themselves by reason of which they had to use force in self-defence, were these: there was in front of them standing on the National Highway a huge aggressive mob; the mob were all bent upon having a show-down in the court area; as soon as the frustrated eight student leaders passed through the outer cordon, 50/60 persons out of the mob rushed forward towards the outer cordon and joined the eight student leaders; it was from a sense of frustration and also emboldened by the presence of other agitators at the spot that the said eight student deputationists snatched away the lathis from the constables which were their only arms;
- (d) that placed in such a predicament the constables reasonably apprehended danger to their life; in such a situation, it was open to them to resort to lathi-charge in self-defence in the manner they did; they were entitled to continue lathi-charge to the

extent and up to such distance, until the cause for the apprehension, which was reasonable, disappeared;

(e) that it is true that as a result of the lathi-charge, nine persons appeared to have been injured but this was unavoidable ; on the other hand, there is no reason to disbelieve the evidence that some of the constable had also suffered pain on their thighs and stomachs by reason of the kicks given by the students in course of the scuffle, the means which the constables, as threatened persons, adopted and the force, which they used resulting in the injuries, cannot be weighed in golden scales;

(f) that there was no excess in the use of force, that the constables had to resort to, in self-defence; the force used by the constables was not more than what was required to save themselves in the circumstances in which they were placed at the moment;

(g) that on a careful consideration of the circumstances in which the constables had to resort to lathi-charge in self-defence, it cannot be found that such use of force by the police was unjustified;

(vii) *Re : In what circumstances Mr. Padma Lochan Panda was injured: was the assault on him by the police an excess:*

(a) that it was a big crowd - a very dense crowd in a small place in front of the court building; Mr. Padma Lochan Panda with raised hands was rushing through the crowd towards the constables forming the outer cordon; he was adjacent to the right side of the students:

(b) that during the scuffle between the constables and the students, Mr Padma Lochan Panda came there from the right side of the students; his appearance on the scene was absolutely simultaneous with the scuffle between the students and the constables; he was in front of the five constables who resorted to lathi-charge:

(c) that as to why Mr. Padma Lochan Panda rushed towards the outer cordon raising his hand, the only inference, which could be reasonably drawn from

the circumstances, is that his son Mr. Mrutyunjay Panda was one of the second batch of the eight student leaders involved in the scuffle with the constables at that point of time; in fact the injury report shows that the son Mr. Mrutyunjay Panda suffered injury in the middle of his right arm; it was presumably because of the father's anxiety for the safety of the son that it seems natural for the father Mr. Padma Lochan Panda to rush towards the outer cordon raising his hand, by way of intervention to stop the situation purporting to prevent the police from taking any action; this accounts for Mr. Padma Lochan Panda's rushing on with a raised hand—a natural reaction of a father while a son's safety in danger;

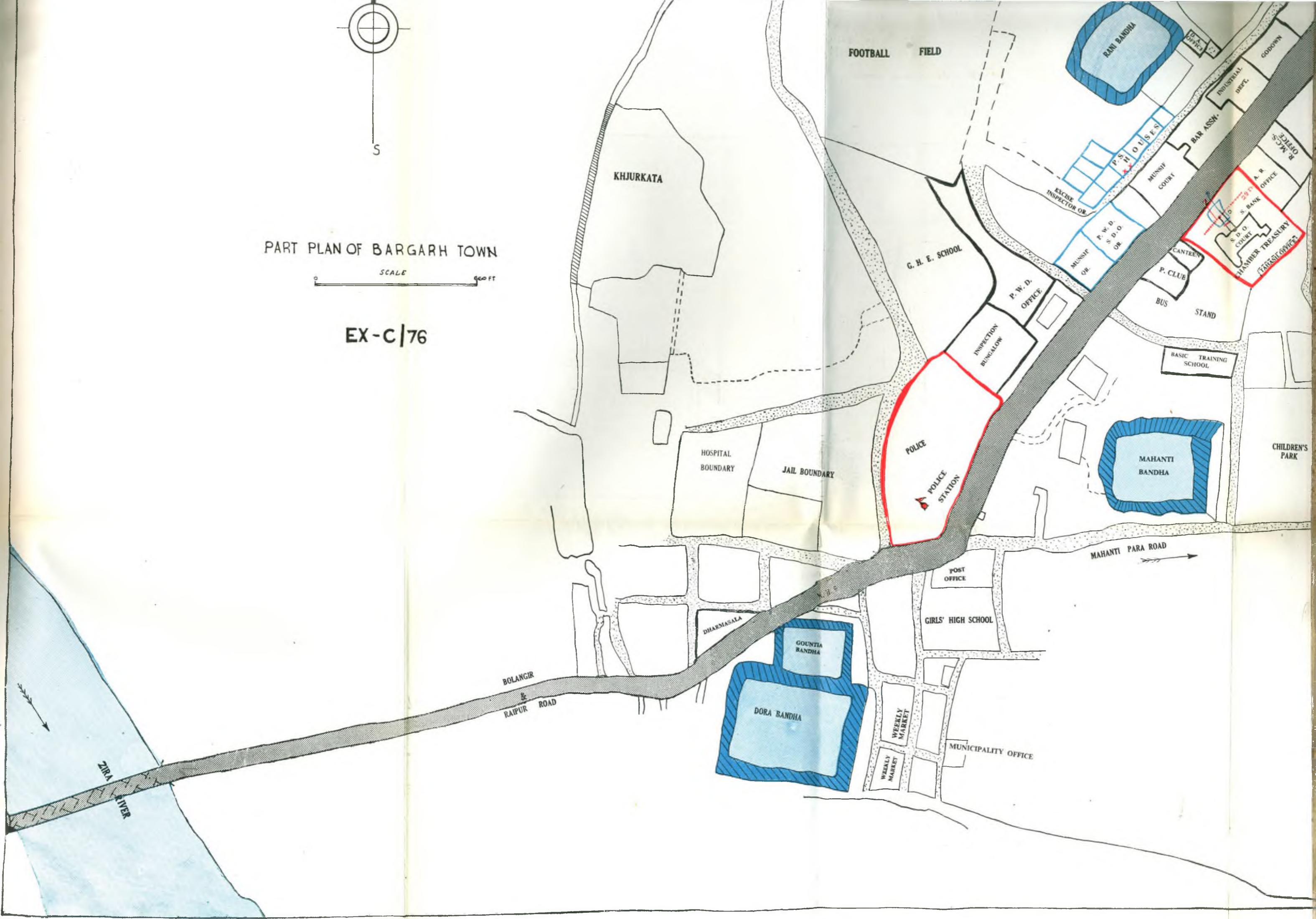
- (d) that when Mr. Padma Lochan Panda was rushing in with raised hand, presumably the constables thought that he was rushing towards them to join the attacking students with whom the constables were having a scuffle; the constables took the raising of hand as a menacing attitude and naturally they thought that he was also joining the students in the scuffle; the constables charged on him thinking that he was coming to assault them;
- (e) that the explanation for the four simple injuries, including a head injury, is that they occurred during the course of the lathi charge; the sudden situation, in which Mr. Padma Lochan Panda happened to have come on the scene when the students and the constables were involved in the scuffle, was as a result of reflex reaction to the assault by the eight student leaders on the five outer cordon constables as described by the SDO in his evidence; it was in the course of tackling the situation in self-defence that the constables used lathis as a result of which one of the nine injured persons happened to be the unfortunate victim Mr. Padma Lochan Panda who happened to have appeared on the scene; the head injury caused by hard blunt substance was presumably caused by lathi while used by the constables in self-defence;
- (f) that it is quite clear that Mr. Padma Lochan Panda, with raised hand, rushed towards the five constables at a time, when the scuffle was going on between



PART PLAN OF BARGARH TOWN

SCALE 0 500 FT

EX-C/76



KHJURKATA

FOOTBALL FIELD

RANI BANDHA

G. H. E. SCHOOL

P.S. HOUSES

BAR ASSH.

MUNSHI COURT

P. W. D. OFFICE

CANTEN

P. CLUB

BUS STAND

MAHANTI BANDHA

BASIC TRAINING SCHOOL

MAHANTI PARA ROAD

HOSPITAL BOUNDARY

JAIL BOUNDARY

POLICE STATION

INSPECTION BUNGALOW

P. W. D. OFFICE

MUNSHI OR

EXCISE INSPECTOR OR

P. W. D. S. D. O. DE

INDUSTRIAL DEPT.

GODOWN

A. R. OFFICE

S. D. O. COURT

CHAMBER TREASURY

CHIEF OFFICER

CHILDREN'S PARK

BOLANGIR RAIPUR ROAD

DHARMASALA

GOUNTIA BANDHA

DORA BANDHA

WEEKLY MARKET

WEEKLY MARKET

MUNICIPALITY OFFICE

GIRLS' HIGH SCHOOL

POST OFFICE

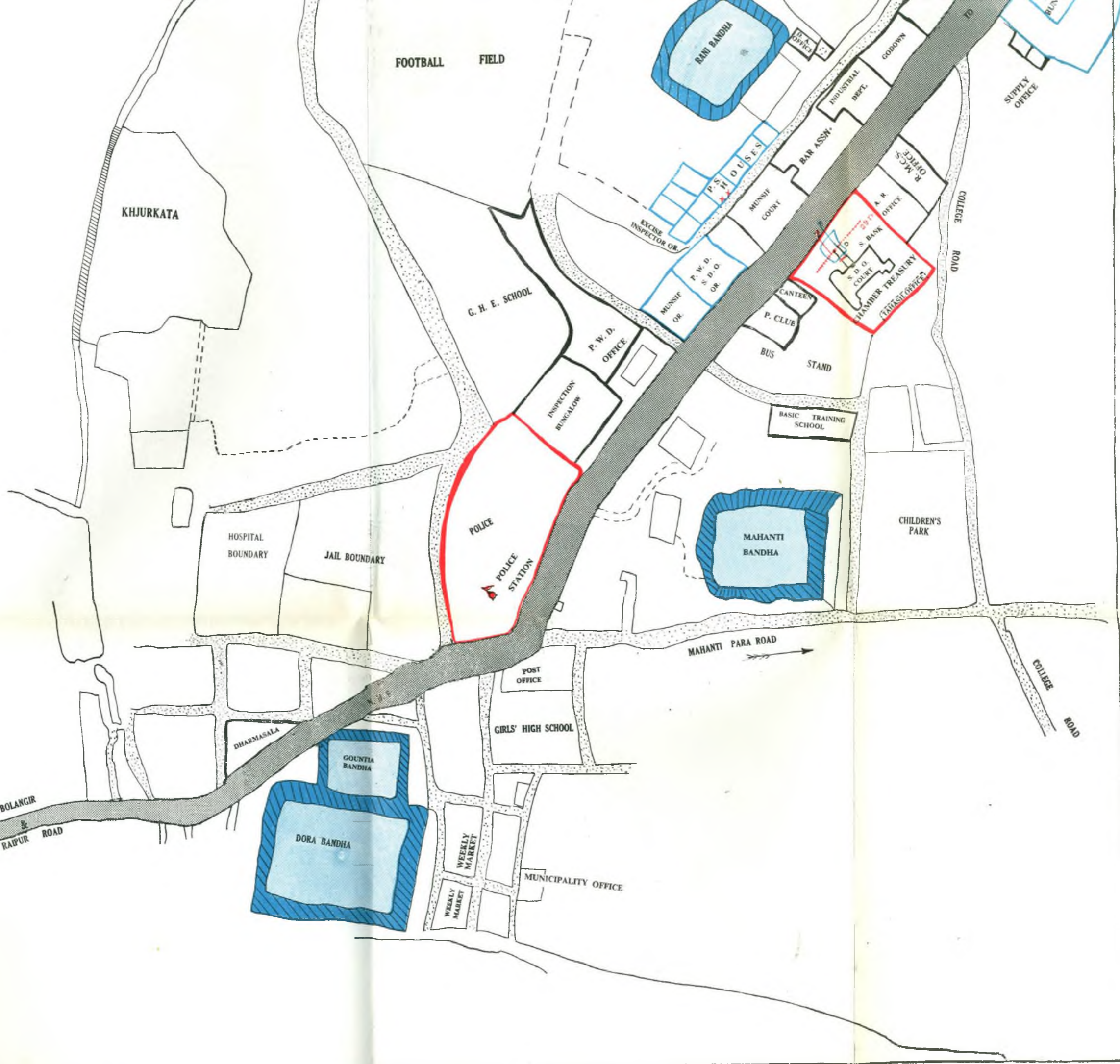
ZIRA RIVER

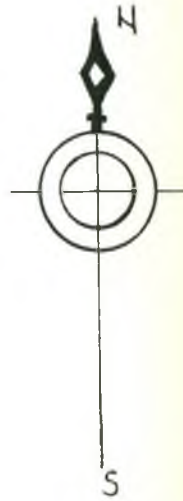


PART PLAN OF BARGARH TOWN

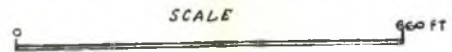
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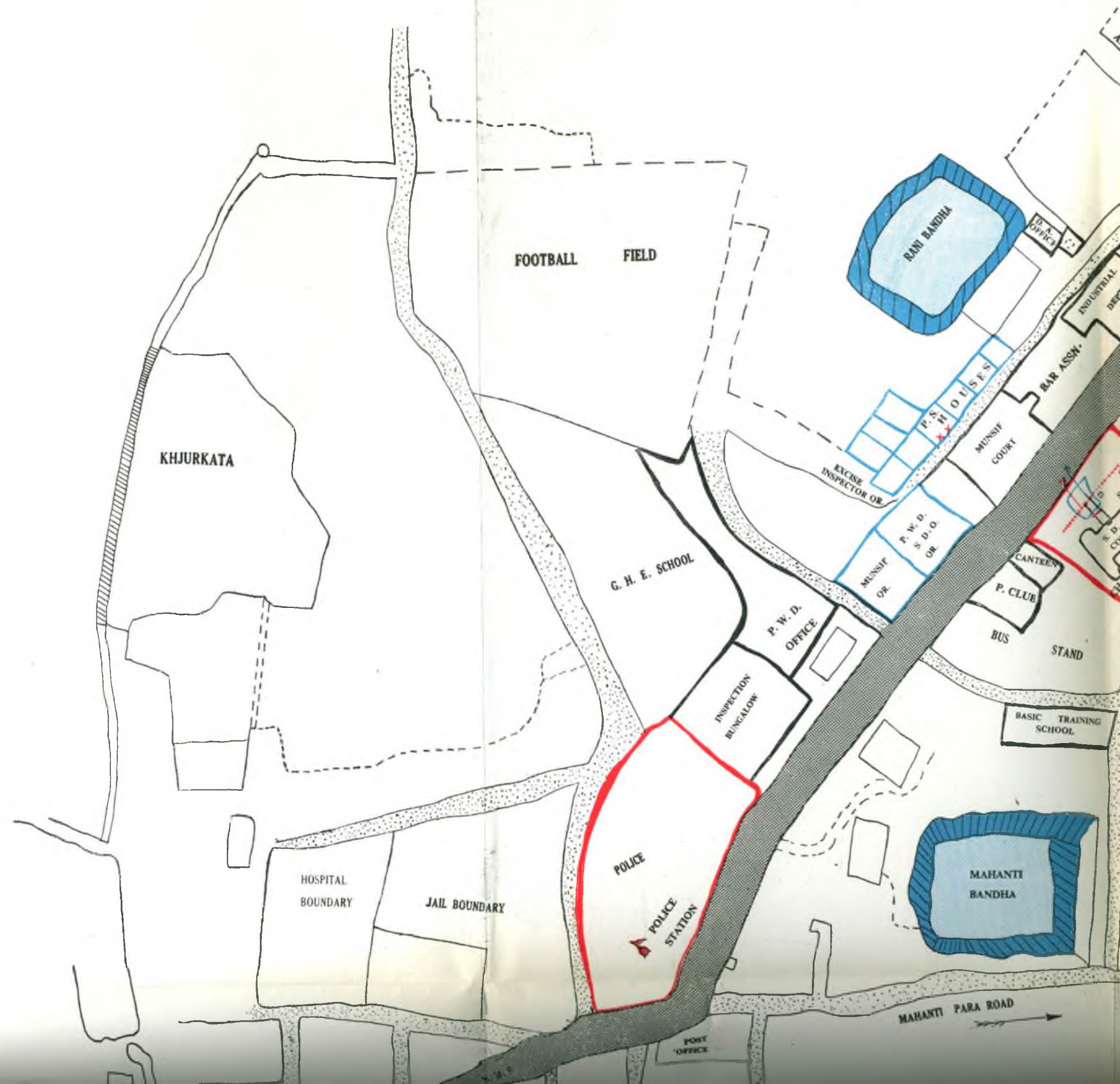


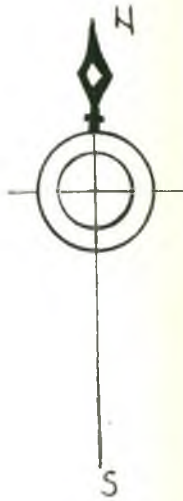


PART PLAN OF BARGARH TOWN



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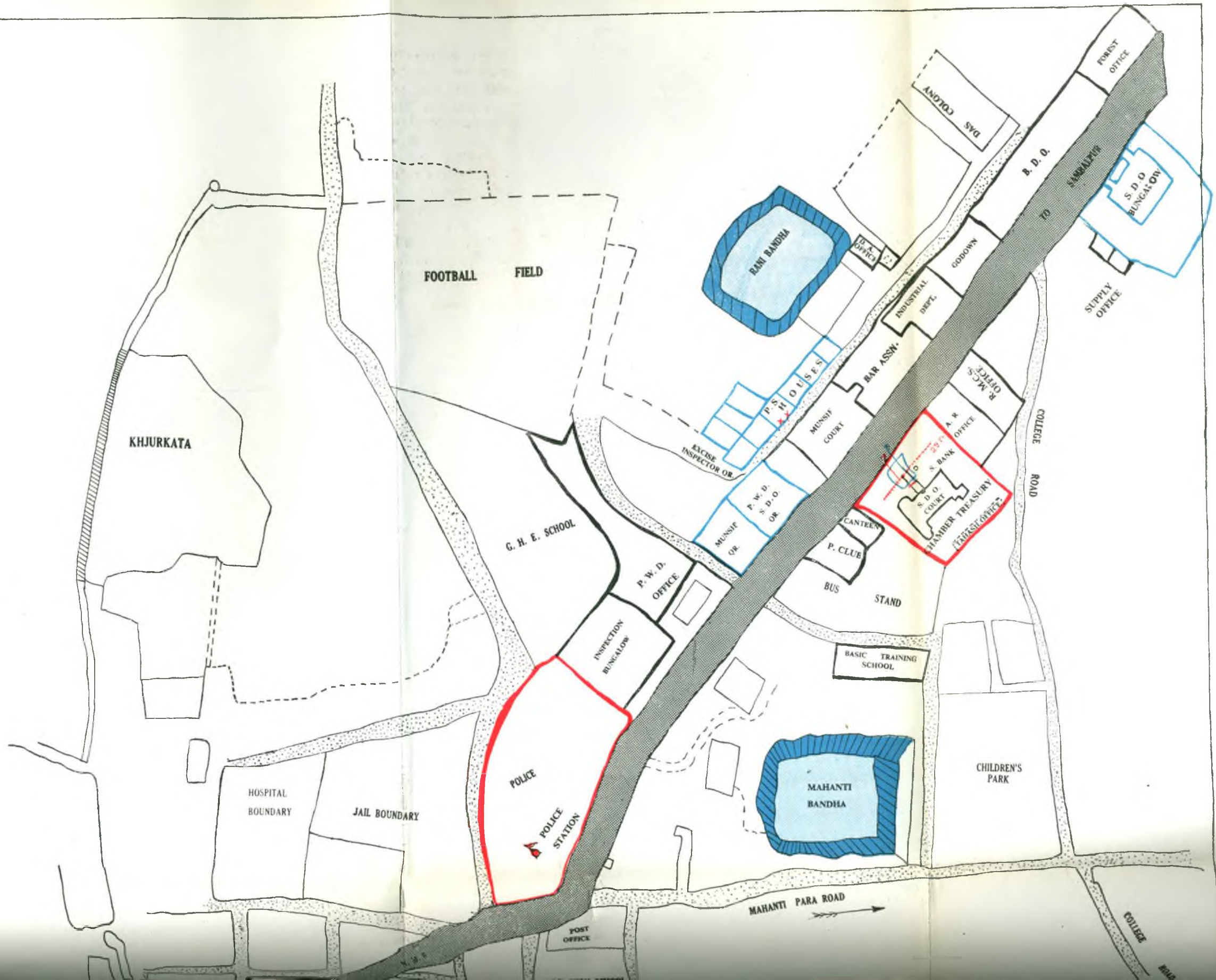




PART PLAN OF BARGARH TOWN

SCALE 900 FT

EX-C/76



the five constables and the eight students including his son Mrutyunjay Panda; *bona fide* or otherwise Mr. Padma Lochan Panda had become a member of the mob at that point of time; the raising of hand in that situation caused apprehension in the minds of the constables that he was also coming to assault them; it was in a reasonable apprehension that the five constables wielded lathis to disperse the attacking mob; Mr. Padma Lochan Panda happened to be in the mob; he was hit in course of lathi-charge on the mob by the constables in self-defence;

- (g) that as many as five constables were engaged in the lathi-charge; naturally it caused injuries to persons coming in their way; it is evident from the nature of the injuries that they were caused in course of the lathi-charge by the constables, which they did to save themselves;
- (h) that as regards the quantum of force used by the constables in self-defence as a result of which Mr. Panda happened to be injured, it must be kept in view that the means which they adopted or the force which they used should not be weighed in golden scales; it would be inappropriate to adopt tests of detached objectivity which would be natural in a court room, for instance, long after the incident had taken place;
- (i) that it is significant that Mr. Padma Lochan Panda himself did not even file any affidavit although he was available and found present at the time of local inspection and during hearing from day to day; the case, on behalf of the public, that Mr. Padma Lochan Panda while sitting under a tree in a chhat received several injuries from the lathi of the military police, is not acceptable;
- (j) that in the ultimate analysis of the circumstances, it is not possible to give a finding that the force justifiably used by the constables in self-defence was in excess of the requirements of the situation as at the time prevailed.

CHAPTER XVII

BARGARH ON OCTOBER 29—DAY OF CHASE UP TO THE RIVER JIRA

	Paragraph		Paragraph
Introduction ..	1-4	E. What was the necessity for chase of the mob by the police party led by the SDO through Bargarh town right up to the river Jira : the entire picture how the situation was saved	61-74
A. Case of the students and the public	5-8		
B. The version of what happened on October 29 as stated by the SDO and others	9-17		
C. How the situation deteriorated from stage to stage	18-28	F. Alleged wrongful entry of policemen with the SDO into the Basic Training School hostel room : alleged assault and arrest of the inmates of the hostel including Mr. Kunjaban Patra:	75-89
D. Successive warnings and declarations of the mob as unlawful assembly : lathi charge and use of teargas : chases by the police in different directions:	29-60	Allegations of excess as stated by Mr. Kunjaban Patra : explanation of the SDO and the Inspector in charge of the force	75-76
First declaration of the unlawful assembly : initial lathi-charge : three directions : 10-15 A.M.	30-37	Did SDO (referred to as Sub-Collector) enter into the Basic Training School hostel with 8 Gurkha policemen who assaulted and arrested Mr. Kunjaban Patra and others	77-89
Second declaration of the unlawful assembly : second lathi charge : further chase : 11 A.M. loss of teeth by constable hit by brickbatting by the mob	38-47		
Third declaration of unlawful assembly : further charge : 12 noon : promulgation of S. 144 order at 12-30 P.M.	48-51	G. Alleged forced entry by about six policemen inside the house of Mr. Prahalad Satpathy : allegation of alleged wrongful entry and threatening by Inspector Judhister Babu	90-110
Fourth declaration of unlawful assembly : further lathi charge : 1 P.M. : students receded to the background ; Goonda elements in the fore-front : arrival of District Magistrate with DIG with reinforcement.	52-57	H. Alleged wrongful entry by police into another private house and causing damage to the garden by plucking guava fruits and breaking some branches	111-113
Fifth declaration of unlawful assembly : last order for lathi-charge : 1.45 P.M. : chase mainly on the National Highway and sometimes into lanes	58-60	I. Findings of the Commission ..	114

INTRODUCTION

The previous day on October 28 after the whole day's demonstration, the mob ultimately dispersed; in the evening there was a public meeting in which the political leaders are stated to have made speeches inciting the public to carry on the movement; at night, the SDO got information that there was brisk publicity going on to take out a large procession on the following day on October 29 to the SDO's office.

2. Since the early hours of the morning on October 29, one could hear publicity going on through the mike. There was a general call to the people to come out in procession; the situation was tense; the previous night, some of the students and political leaders, including Mr. Madhusudan Patnaik and Mr. Radhaballav Misra, Advocate, were arrested under the DIR; the atmosphere in the town was understandably grave.

3. The SDO had information that on October 29, a procession would come up to the SDO's court premises and that it would attack his court; the police force at the time at Bargarh was small; in the morning, there were two sections of OMP, one section of APR and certain police officers; later on in the morning, the SDO received a reinforcement of two more sections of OMP; there were thus in all five sections including APR; it was mainly with this meagre force that the local authorities had to deal with their situation as developed on the day hereinafter described. As a measure of security, one section of the police force was sent to the police station and the remaining four sections were kept in the court area; a police cordon was put up in front of the SDO's court. It was not until about 1 P. M. in the afternoon that the District Magistrate Mr. Kukreja, accompanied by the DIG, Sambalpur, arrived with reinforcement of one platoon of OMP because, in the meantime, the District Magistrate was informed by the Tahasildar at about 12 noon about the situation at Bargarh.

4. The rival versions—of students and the public on the one hand and the administration on the other—are described hereunder.

A. Case of the students and the public :

5. Several affidavits were filed in support of their case. Mr. Gobardhan Pujari, a student of Bargarh Panchayat College, in his affidavit gave a general picture of the public and students' version of excess in the measures taken by the administration against the peaceful procession which was brought out on that date. According to their version, there was a complete Hartal in the market on October 29; after 10 A.M. a large procession of students and non-students spontaneously started peacefully; the processionists were giving slogans demanding, among other things, immediate

enquiry into the assaults by the police on the previous day October 28; the processionists gathered near the court, stood on the nearby road raising slogans and a few students went to meet the SDO to ventilate their grievances. It is said that suddenly teargas shells were burst from the court area heavily cordoned by the police and thrown towards the processionists as a result of which the processionists got scattered; they again came back and again they were received with teargas shells and stones from the police which are said to have hit and injured many of the processionists. Then, what followed thereafter was described by him in his affidavit thus :

- “23. That, thereafter the military police ran amuck and started assaulting with stones and lathi any person who came their way, trespassed into many houses nearby, the court and even broke some of the door of a lawyer's house and assaulted the inmates.
24. That, thereafter the District Magistrate arrived from Sambalpur with inforcement and the District Magistrate, Sub-Collector and High Police Officials leading hundreds of Military Police ran riot in the whole town, assaulting many innocent persons and children in various parts of the town, entered into private houses and assaulted the inmates and completely terrorised the residents of the town.
25. That before the police made all these high-handed violations of the Civil Rights of the general public neither any warning had been issued nor 144 or any prohibiting order was enforced in the town and peaceful normal avocations and panic-stricken people did not dare to come out of their houses and life in the town remained completely paralysed.
26. That, thereafter the police have started cases against me and many other students on false allegations and the Sub-Collector has personally threatened me many times with dire consequences and that he will take action on me by ruining my career.”

6. In support of the student's case, some members of the public, including businessmen, also filed affidavits. Mr. Mansaram Agarwal, a businessman of Bargarh, in his affidavit stated that on October 29 at about 2 P.M., while he was coming to his shop on the National Highway, he saw Gurkha military police were coming with lathis; the SDO was also coming behind them; at that time the Gurkha police came towards him in a terrorising mood; Banamali Das, O/C Bargarh police station intervened and he escaped; he saw 6 to 7 Gurkha policemen twisting the hands of two

boys aged about 16 years and were dragging them towards the police station. Apart from the allegation made in the affidavit, he was not examined as a witness nor is there anything in support of the allegations made by him. The allegations were denied by the SDO in para 29 of his affidavit where he also stated that the deponent Mr. Mansaram Agarwal be put to strict proof of the allegations made by him in his affidavit. There is thus no proof that the two boys were manhandled by the policemen in the manner as alleged nor was this charge against the police pressed on behalf of the students and the public in course of the argument.

7. Mr. Puranmal Agarwal, another businessman of Bargarh, in his affidavit stated that, while sitting in his shop on the National Highway, he found at about 2 P.M. on October 29 policemen loitering on the road and assaulting the innocent passersby indiscriminately; he also observed them throwing stones on those who were running away for safety, some military constables forcibly entered into the shop of one Mangal Chand, made a search and returned. The SDO Mr. Lal in his affidavit stated that these allegations are not admitted and that the deponent be put to strict proof of the same. In support of the charge, there is no other evidence that the policemen misbehaved in the manner they are alleged to have done.

8. Apart from the general allegations of indiscriminate arrests and assaults prior to and during chase of the mob by the police from the court area up to the river Jira, there were also allegations of wrongful entry into private houses and indiscriminate arrest and assault of the inmates, which are hereinafter dealt with separately with reference to each such incident of alleged ill-treatment and excess on the part of the police.

B. The version of what happened on October 29 as stated by the SDO and others :

9. In his affidavit in paragraphs 7-19 the SDO gave a complete picture of the various incidents from early morning till late in the day, as developed from stage to stage. The previous night he had information that there would be trouble in the town next day on October 29; he came to his office at 7-30 A.M. in the morning; between 9 and 9-30 A.M. a procession of about 1,500 men came towards the SDO's office; there were about 300-400 students

in that procession of 1,500. It was noticed this time that the number of non-student elements in the procession was more than the students.

10. At about 10 A.M. two students came to the police cordon and handed over an unsigned memorandum to the SDO which he received; it contained, among other demands, a demand for overthrow of the Biren Government and removal of police from Bargarh. The situation gradually became tense and by 10-15 A. M. the SDO declared the assembly unlawful and ordered the DSP to use teargas and lathi charge.

11. Between 10-15 A.M. and 1-45 P.M. there were successively as many as five lathi charges by the police on the attacking mob; in the meantime at 12-30 P.M., the SDO passed orders under Section 144, Criminal Procedure Code, covering the entire town and the college area; at about 1 P.M. the District Magistrate Mr. Kukreja, accompanied by the DIG, Sambalpur, arrived with reinforcement of one platoon of OMP; it was after the fifth lathi charge at about 1-45 P.M. that the SDO, with the police party, started chasing the mob through the market area towards the police station mainly on the National Highway—sometimes into the bye-lanes off the National Highway within visible distance from the SDO—right up to the river Jira; by then the mob thinned out and dispersed; it was then about 4-45 P.M.; on his way back, the SDO came to the police station at about 5-30 P.M.

12. In course of giving evidence, the SDO described the gravity of the situation at different stages. He also said that there was a situation for firing which he somehow avoided and tackled the mob by teargas and lathi charge.

13. In course of this chase, several arrests were made as were necessary under the circumstances; it was during these successive chases that the policemen had to go into lanes and bye-lanes from where the mob was stated to have been pelting stones and brickbattling on the policemen on the road. The SDO stated that, to his knowledge, no policemen in course of such chases had wrongfully entered into any private house or made any indiscriminate arrest or assault as alleged.

14. The version of the incidents of the day, as given by the SDO, is substantially corroborated by the District Magistrate C. W. 33 Mr. Kukreja in paragraph 12 of his affidavit, to the extent he himself saw the incidents after his

arrival at about 1 P.M. as discussed hereunder. In his evidence Mr. Kukreja reiterated what he said in his affidavit.

15. In further support of the version of the administration, C. W. 36 Inspector Yudhisthir Babu also filed an affidavit and gave evidence about what he had seen of the incident that day.

16. Apart from the officials, there were two non-official persons, namely C. W. 34 Mr. S. Das Mohapatra, Project Administrator of the Cement Project at Khaliapali under the Industrial Development Corporation and Mr. I. M. Das, a private medical practitioner at Bargarh and Secretary of the Managing Committee, Panchayat College, who filed affidavits; Mr. S. Das Mohapatra also gave evidence. Both of them said about what they had seen of the incident of the day

17. As regards the sequence in which the events happened throughout the day, the stages—how the situation developed from time to time necessitating successive chases by the policemen under the orders of the SDO—are stated hereunder.

C. How the situation deteriorated from stage to stage :

18. Since the previous night, the SDO apprehended troubles. He came to his office at about 7-30 A.M. and sent a section of APR to the police station along with the Magistrate as a precautionary measure; the SDO kept the other two sections of OMP with him which the DSP deployed within the court premises

19. At about 8-30 or 9 A.M., the SDO received two more sections of OMP in response to his request to the District Magistrate the previous night for reinforcement; the two sections which arrived were also kept in the SDO's office premises.

20. At about 9 or 9-30 A.M. a procession, which the SDO was apprehending came towards his office on the road with a black flag and a microphone mounted on a rickshaw; in the procession there were students and also other persons who, from their appearance, could not have been reasonably believed to be students; when the procession stopped in front of the SDO's office, it was 1500 strong—of them 300/400 were students they were shouting all kinds of filthy abuses through the

mike; some of the abuses were directed at the SDO—

“Bloody S. K. Lal Murdabad;
Bloody SDO Murdabad”

and other such vulgar abuses.

21. At about 10 A. M. two students came to the police cordon which had been formed; they handed over an unsigned memorandum to the SDO containing certain demands as hereinbefore stated. After handing over the memorandum, these two students went back to the procession which continued to hurl abuses and also shout slogans. The procession was extremely aggressive in its mood and violence by the mob was reasonably apprehended.

22. When the SDO returned from the cordon and took position near the front verandah of his office, three students, including the two who had come earlier to hand over the memorandum, again came up to the cordon; the SDO asked the Second Officer and also some police officers to go over to the cordon and find out as to what the students wanted; the students were arguing very heatedly with the officers there without any provocation whatsoever; after a few minutes, the SDO himself went there and asked the students as to what they wanted; they could not make out exactly what they wanted but said that replies to their demands had not yet been given to them; they threatened that they would resort to lawlessness, if this was not done immediately.

23. The microphone, which the processionists brought with them, simultaneously gave out abuses, some slogans and also some series of running commentary; the SDO told the students that if they wanted to shout abuses, slogans and hurl even personal abuses on him and on his officers, it was all right under the circumstances as long as they did not attempt to commit violence. The SDO further explained to the students that the administration did not mind, if they abused provided they maintained peace so that the hands of the administration were not compelled to take any action which might not be very pleasant; the students, who came, were fully convinced when the SDO told them that the best way to carry on the agitation was in a peaceful and constitutional way. When the SDO asked them to go back to the procession and ask the processionists to go away

peacefully, they said that the processionists would not be convinced with what they would tell and that they would not be able to abandon their plan of action

24. It was clear from this that the student leaders who came to the SDO could be persuaded to carry on the agitation peacefully, but they were not able to control the procession which they had brought to the court premises. In fact, one of the students went back to the procession and suggested peaceful way of carrying on the agitation. But the said student was ridiculed, was made fun of by the processionists and was asked not to forget the pledge. It was evident from the way the processionists were behaving that the majority of the processionists were anti-social elements who got mixed up with the students and the student leaders had no control over them.

25. Again 3 to 4 students came to the SDO in an aggressive mood; they were going to break the cordon with the object of creating a situation which might involve tackling by the administration from the point of view of keeping law and order. The said 3-4 students, who were advancing in an aggressive manner, were stopped by the police cordon; they also entered into heated arguments; they were told to carry on the agitation peacefully; ultimately, after some discussion, they agreed that that was the best course but they expressed that they had no confidence in the crowd which was there; so they did not venture to go back to the crowd to give advice for peaceful agitation.

26. It was found that some 10 to 12 years old boys were sent to the SDO; they came in batches of 2-4 wave after wave; apparently, they were instigated by the mob to advance towards the cordon, just with a view to embarrass the administration and create a situation. Apparently the attitude of the student leaders to carry on a peaceful demonstration was not to the liking of the anti-social elements of the mob; the mob was getting frustrated because of the action of the student leaders who went to the SDO.

27. At that stage, from a sense of frustration, the anti-social elements in the procession took control of the situation and gave an ultimatum to the SDO through the mike which they brought with them. The nature of the ultimatum, as described by the SDO in his evidence, was this - The first ultimatum was "10 minutes

to SDO; next ultimatum given was "5 minutes to SDO"; another ultimatum was given "2 minutes to SDO" or "1 minute to SDO; then it came down to seconds and then they said "50 seconds to SDO"; "40 seconds to SDO". It is not quite understandable as to what they meant by such ultimatum; what it probably meant was that they wanted a reply from the SDO to their earlier demands; if within 40 seconds, he could not give a favourable reply, the mob would take charge of the situation and overrun the SDO and the police party; this was what evidently the ultimatum meant.

28. Apart from shouting and a lot of noise, there was heavy stone-pelting from all sides of the mob. It was noticed that the broken bricks, then lying near ARJIS's office adjacent to the SDO court building on the right hand side, were being picked up by the mob and hurled towards the police and the magistrate on the spot; by then it was about 10 or 10:10 A. M.; the situation was taking an ugly turn; apparently, the leaders had no control over the anti-social elements who had joined the procession.

D. Successive warnings and declarations of the mob as unlawful assembly; lathi-charge and use of teargas: chases by the police in different directions :

29. As soon as the mob had uttered the final ultimatum "40 seconds to SDO" heavy pelting of stones, brickbats and ballasts started; the mob moved aggressively towards the SDO's office; the SDO then with the help of a mike warned the mob and asked them to stop brickbatting but in spite of the warning there was howling from the side of the mob.

30. *First declaration of the unlawful assembly: initial lathi charge: three directions: 10-15 a.m.:* It was at this stage round about 10-15 A. M. that the SDO declared the assembly unlawful and told the mob that, if they did not disperse within two minutes, he would order teargassing and lathi-charge to disperse them; orders were given in Oriya, Hindi and English; they were repeated by the DSP and the Circle Inspector; the warnings did not get any good response from the mob- rather they became more

aggressive in their attitude shouting more abuses, pelting more and more stones, ballasts and shooting Gutkas from Gulels.

31. The SDO gave the mob sufficient time to disperse but when they did not disperse in spite of the warnings, he ordered the DSP to open teargas and lathi charge. Immediately, the armed police which was there used teargas and lathi-charge on the unlawful assembly. As soon as the policemen started charging, the mob withdrew in three directions - one group ran in the direction of an open space near the District Agricultural Office which was in between the Munsif's court and the Central Ware House; another group took its position inside Munsif's court premises behind the court building; the third group withdrew itself on the main road near the bus stop, and some members of the mob went inside the residence of PWD SDO and Munsif, and some were also in the Inspection Bungalow which the mob had trespassed.

32. All this time, the mob were throwing stones and ballasts, shooting Gutkas from Gulels, some of them were also using lathis. In spite of the shower of brickbats, stones and ballasts, the charging police force was able to throw the mob back from their original position which they occupied on the road in front of the SDO's office; the mob thus receded in these three directions because of lathi-charge by the police.

33. The process in which the police party were charging the mob closing in, and again the police party charging and so on, was described in evidence thus: There was lathi-charge on the mob by the policemen in different directions up to the distance to which the mob receded. The mob, however, continued pelting stones, they kept on facing the police force which was charging on them.

4. The police could not proceed further because they were small in number - it was only three sections of policemen who were operating in these three directions; one section with fire-arms was kept inside the SDO's court premises for reasons of security. So, roughly speaking 8-10 policemen with lathis were used for the purpose of dispersing in each direction; teargas was shot by 2-3 constables (which normally accompanied a teargas party) from the fringe of the court premises; they could not go further; after firing teargas,

the more effective way of dispersing a crowd was lathi-charge; as a result of lathi-charge, the mob fell back; there was, however, a tendency among the mob to attack the constables while returning; in any case, the constables could not have gone any further for chasing them in order to disperse because they might have been overpowered by the mob.

35. When for a minute or two, the chasing constables were out of sight, bugles and whistles were sounded and the charging constables were brought back to their position within the court premises which by then had been cleared of the mob. But as the mob was aggressive lathi charge had to be continued on the road in three directions by the police up to a certain distance.

36. As to how far they were chased during the first lathi-charge, the evidence is that one group of the mob was chased up to a point near DAO's office said to be at a distance of about 200 feet from the SDO's office; another group went in front inside the Munsif's court to a distance of another 200 feet; and the third group was chased in the direction of the State Transport Office also to a distance of 100-200 feet.

37. As regards the group which went behind the Munsif's court premises, the evidence of the SDO was that there was an open space on the left-hand side of the Munsif's court premises through which the constables used to go when charging; the SDO and the DSP came up to the road to see the position of the constables and the mob in all the three directions; it was apparent that the members of the mob constituting the unlawful assembly were adopting hide and seek tactics; in cases where some of the constables went a little further within the Munsif's court premises and went out of sight for a minute or two, immediately the constables were brought back by the sound of bugles or by whistles because there was danger of their being overpowered by huge number of the mob.

38. *Second declaration of the unlawful assembly : second lathi-charge : further chase : 11 a.m. : loss of teeth by constable hit by brickbatting by the mob :* The situation, as then developed culminating in lathi-charge for the second time, was this : After the constables returned to the SDO's court premises after the chase and initial lathi-charge, the mob reappeared from the three directions and started stoning.

39. It was at this stage noticed that the members of the mob, which looked like students, were reluctant to carry on with further violence—such types of lawlessness which were being committed at that time; the anti-social elements, who constituted the majority of the mob, however, jeered at and hooted those who were reluctant to indulge in violence: in fact, some aggressive members of the mob started shouting at the students calling them cowards and stating that it was for them that they joined the procession that morning, came in front of the SDO's office and so the students could not run away like that—a situation developed where the aggressive members of the mob, who appeared to be Goondas of the town, coerced the students to return and take the lead in committing violence; thus instigated and coerced, the students again joined—led violence; they again started stoning and brickbattling heavily.

40. At this stage, although there was no necessity of further declaring the mob as unlawful assembly which had reappeared, the SDO repeated the warnings which he gave earlier and asked the mob to refrain from stoning and go away peacefully; the mob, however, did not listen to the order of the SDO; in this situation at about 11 A.M. the SDO was again compelled to declare the mob unlawful assembly and directed use of teargas and lathi-charge for the second time.

41. Thereupon, the constables charged on the mob after teargassing; the mob again fell back from the road in those three directions; they kept on pelting stones, shooting Gutkas from Gulels and indulged in other such lawless activities; after sometime, the mob again reappeared from three directions: the strength of the mob was greater this time. The evidence is that the students by this time somehow slipped into the background; the younger members of the mob were seen behind the mob and some distance away from the road; it was clear that by that time the anti-social elements—mostly the Goonda elements of the locality—took the lead—they shouted filthy abuses and kept on pelting stones heavily and shooting Gutkas from Gulels.

42. The pattern of the mob behaviour during this phase was somewhat different from the earlier phase in that the mob in greater strength moved menacingly towards the SDO's office and in fact it moved a few feet inside the compound of the SDO's office.

43. In the opinion of the SDO, it was a situation which called for firing. The reasons for his apprehension were stated to be these: Warnings and repeated declarations of the mob as unlawful assembly had no effect on the mob; they did not care for the SDO's orders to disperse; there were only three sections of policemen with lathis which were till then trying their best to keep the mob away from the SDO, his party and office; the mob, this time, had come in larger number; the Goonda elements of the town took the lead completely; the SDO's warnings were responded by people showing their private parts, dancing naked on the road, calling people to come and attack the SDO's office; in this situation, lathi-charge could not be effective. Apart from the fact that the mob was offensive in the way it behaved, there was heavy ceaseless stoning from all the directions and repeated shots from Gulels; they were also wielding lathis; the administration had to protect the office, the persons and properties in the court premises; that apart, use of more force was thought necessary not to allow the Goondas to take charge of the situation.

44. In the course of heavy brickbattling by the mob, there were some serious casualties among the members of the armed force. A constable, who was standing nearby, was hit with brickbats and lost four teeth; he fell down unconscious; his shirt got drenched in blood; another constable, who also was very near, was hit very hard on his chest by a stone. While the Commission was sitting at Bargarh, the constable who lost his teeth was produced in course of taking evidence. It was quite clear that the constable had lost four teeth as a result of brickbattling by the mob. The gravity of the situation, as then developed, is quite apparent from the nature of the injuries which were inflicted by heavy brickbattling of the mob.

45. It was in this grave situation that the SDO asked the DSP to get the section with rifles or muskets to come and be ready so that firing could be opened if the mob did not disperse and did not relent in its pressure on him and others.

46. A question was raised : Why ultimately firing was not resorted to ? The evidence is that when the SDO asked for the firing party to get ready, some prominent persons of the locality--Mr. Parikhit Satpathy, then Chairman, Bargarh Municipality and President of the Bar Association,

Dr. L. M. Das a prominent doctor of the town, Mr. Dinabandhu Kar a prominent lawyer and Mr. Sebakram Pansari a Municipal Councillor, who were all behind the SDO in the court premises—ran towards the SDO and told him that although the situation deserved firing for the dispersal of the Goondas, yet they suggested that they might be given a last chance to appeal to the mob so that it might go away peacefully and thus firing might be avoided.

47. The administration was also conscious that youngmen moving around might be hit by gun-shots in case there was firing. Although the SDO warned these public men, who proposed to intervene, that they themselves might be attacked by the hooligans or Goondas if they approached them, yet these gentlemen, in spite of the menacing attitude of the mob and the continued unabated stoning by the mob, insisted on their being allowed to go and plead with the mob as a last chance. In order to avoid firing, the SDO reluctantly agreed to these gentlemen going to the mob; they went facing stones coming towards them; in fact two of them Dr. L. M. Das and Mr. Dinabandhu Kar were injured; these gentlemen, however, proceeded and approached the mob who abused them profusely; they were told by the mob to go back; the mob threatened that they would operate against the police and the magistrates. Even in this situation, the gentlemen who approached the mob could manage to shout to all the students there to go back to their houses. After a few minutes, when their appeal did not receive proper response, these gentlemen returned and expressed disappointment; there was, however, one good effect of this move to pacify the mob in that the situation for the time being was 'arrested from its extreme aggressiveness' as the SDO put it in his evidence; although the mob continued showering of stones, brickbats, lathi-weilding, shooting of Gutkas from Gulels and shouting, the mob was found slightly relenting from their menacing attitude; thus, because of the intervention of these local publicmen, the situation to some extent eased and firing was avoided (C.W. 35 SDO, S. K. Lal. Q. 3).

48. *Third declaration of unlawful assembly. further charge. 12 noon. promulgation of section 144 order at 12-30 p m.* After the said publicmen of the town returned from the mob although the stone throwing, lathi-weilding and Gutka shooting still continued, the situation slightly eased and was less terrible than it was shortly before. The SDO then decided to disperse the unlawful assembly by further lathi charge instead of firing.

49. At 12 noon, the SDO declared the assembly unlawful and asked them to disperse peacefully within two minutes; the mob did not listen. Thereupon, the SDO again ordered the use of teargas and lathi-charge on the mob; accordingly lathi-charge was done by the police in the same manner towards the same directions to which the mob fled; the constables could go only a little distance and disperse the mob from their original position only temporarily; this continued tussle between the mob and the charging policemen—the policemen chasing and the mob again closing in and so on—helped in saving the SDO's office, the State Bank which was in the same building and other offices which all contained valuable records.

50. The operation of the lathi-charge by the policemen was wholly controlled in that when the constables went to a distance where they could not be observed, bugle was sounded as ordered by the DSP and the charging constables used to be brought back to their position within the court premises. It was on this occasion the charging policemen partly succeeded in throwing back the mob and demoralising them but this was only temporary and did not last long; although there was a slight pause in the movement of the mob, further trouble was scented soon thereafter.

51. At 12-30 p. m the SDO promulgated order under Section 144 Criminal Procedure Code which was ordered to be announced immediately within the town. The SDO personally took the mike and from the court premises announced the promulgation of the order which could be heard in the vicinity; the 144 order covered the entire town of Bargarh and the college area. The mob, however, again reappeared from the three directions on the road, again indulged in the same lawless activities and again started throwing stones and shooting Gutkas from Gulcls; the SDO warned the mob this time that Section 144 order had been promulgated and so they must disperse; the mob did not listen, they responded with filthy abuses and filthy exhibition of their private parts and other ugly behaviour; it was evident from this attitude on the part of the mob that they were still determined to continue their assault on the magistrates and the police party.

52. *Fourth declaration of unlawful assembly: further lathi-charge: 1 p. m. : students receded to the background: Goonda elements in the forefront: arrival of District Magistrate with*

DIG with reinforcement: By this time it could be appreciably noticed that the few students that were in the mob receded to the background- physically at the back of the mob; that is to say, the students were no longer in the forefront; it was the Goonda elements who by now had come to the forefront and took the lead in violence.

53. At 1 P.M. the SDO again declared the assembly unlawful, although strictly speaking there was no necessity of such further declaration of the assembly as unlawful, because apparently it was the same mob which, as unlawful assembly, continued to indulge in violence. The SDO again warned them to disperse peacefully within two minutes time; yet they did not disperse.

54. Thereupon, the SDO again ordered lathi-charge. This time the charging constables could successfully disperse the crowd towards the direction of the Munsif's court, behind and around. The constables could also disperse the unruly mob near the District Agricultural Office.

55. In a few minutes, the District Magistrate Mr. Kukreja, accompanied by the DIG, Sambalpur, arrived with reinforcement of one platoon of OMP. At about 12 noon, the Tahasildar had already informed the District Magistrate about the gravity of the situation at Bargarh.

56. Even after the District Magistrate arrived, the SDO continued to remain in charge of the law and order situation under the guidance of the District Magistrate who gave the SDO same instructions—some ideas about tackling the law and order situation.

57. It was at that stage that the mob regrouped in the direction of the State Transport Office and faced the SDO's office from that side; this time there was no appearance of the mob from the other two directions; they did not reappear from those two sides because they were effectively dispersed by lathi-charge on the fourth occasion; the mob, which reappeared and regrouped near the State Transport office, started stoning at the Magistrates and the policemen.

58. *Fifth declaration of unlawful assembly; last order for lathi-charge : 1-45 p. m.; chase mainly on the National Highway and sometimes into lanes :* It was at this stage that the mob again reappeared and concentrated near about the State

Transport office on the National Highway heavily throwing brickbats; the SDO again warned them that, as 144 order had been promulgated in the town, they should disperse peacefully; but the mob jeered at the SDO's warning; they responded with heavier shower of brickbats, Gutkas from Gulels and other ways of violence.

59. The mob did not disperse within two minutes, which was given to them after again declaring the mob unlawful. As the mob did not disperse within two minutes, the SDO ordered lathi-charge. As by this time reinforcement had arrived from Sambalpur, force was available to the SDO for his use to deal with the situation. The SDO and the other officers, with some reinforcement, moved from his office compound and went ahead on the road towards the police station to disperse the unlawful assembly on the National Highway, because it was from the direction of the police station the mob was reappearing. After passing the police station, the SDO and his party proceeded through the market area towards Dharmasala and beyond; while they were going and pushing the mob back, showering of stones by the mob, which continued, fell on them; some members of the mob left the main road and got into small lanes.

60. The necessity of this chase of the mob by the SDO and his party through the town after leaving the court premises was seriously commented on behalf of the students and the public, in that this chase through the town by itself is an excess on the part of the administration. This aspect is separately dealt with hereunder.

E. What was the necessity for chase of the mob by the police party led by the SDO through Bargarh town right up to river Jira : the entire picture how the situation was saved:

61. The allegation against the SDO, as suggested to him in cross-examination, was that he, along with the members of the military police, moved throughout the town assaulting people wherever he found them, dragging them from inside their houses and assaulting them with lathis and brickbats till the Jira river. This suggestion was denied by the SDO. Then in answer to a straight question put in cross-examination as to why he went up to the bridge of the Jira river, the SDO's explanation was this : the unlawful assembly did not disperse when it was

first ordered to disperse ; after the reinforcement arrived from Sambalpur, the mob had to be pushed back and dispersed for the sake of maintenance of peace, law and order (C. W. 35 S. K. 1al Qq. 1527, 1528).

62. Evidently, it was because of inadequacy of police strength at Bargarh at the time that the local administration was handicapped in the matter of dealing with the situation more effectively and quickly which could have been done if there was a stronger police force at the station. Indeed, it was because of the weakness of the police strength that it was not possible for the SDO to continue the chase by the lathi party beyond a certain distance, because otherwise there was the apprehension of the charging constables being overpowered by the mob which was much bigger in strength than the force.

63. In spite of the gravity of the situation at times, which even necessitated resorting to firing, the administration somehow could avoid it ; timely intervention of some public-men and their parley with the mob, though unsuccessful to a certain extent, gave respite and eased the situation at a critical stage.

64. The successive declarations of the assembly a unlawful, the chase and the tackling of the mob by chasing them up to a certain distance and then recalling the force so that they might not be overpowered by the mob—saved the situation. It was a tactful move by the SDO. In fact, the steps, taken by the local administration at Bargarh since morning, gave time for the reinforcement to arrive from Sambalpur. It was about 12 noon, when the situation became grave, that the District Magistrate at Sambalpur was requested for immediate reinforcement. It was within an hour that the reinforcement arrived at Bargarh and further deterioration in the situation was avoided.

65. If, from the very beginning in the morning of October 29, there was sufficient force available to the local administration at Bargarh, the situation could have been tackled more effectively much earlier. With the meagre force available to the administration, it was not possible for the SDO and the police party to move out of the court compound and pursue the mob to a safer distance. That apart, the stock of teargas shells and grenades at Bargarh was also not very encouraging ; it would be about 35 or 36 shells and grenades of teargas which were available to the local

administration. In course of the successive use of teargas during lathi charge, whatever teargas stock they had was already spent up by the third time when the SDO ordered dispersal of the unlawful assembly (C. W. 35 S. K. Lal Qq. 153, 154).

66. After the reinforcement arrived from Sambalpur at 1 P.M., there was definitely a change in the position. It was then possible for the SDO to move out of the court compound, to pursue the mob and to restore law and order in the town. The SDO was justified in himself taking out the force for the purpose of the chase throughout the town. It is in evidence that senior police officers were also with him to have complete control over the police party in their operations in the town. It is not that the police constables were left to themselves to chase; the chase was absolutely under control of the SDO and the officers.

67. The evidence of the SDO is that the seniormost police officers were going along with him when he proceeded towards the Jira river; it is not that the same police officer was throughout in command of the force; the command changed from DSP to the Circle Inspector and from the Circle Inspector to the Officer-in-charge; all these officers were under the control of the SDO because he was the magistrate in charge.

68. The strength of the unlawful assembly, at the point of time the policemen led by the SDO and the senior police officers in command of the force started the chase, was approximately 700 or even a little more.

69. In course of the chase there was no lathi-charge that is to say, striking of the mob by the policemen with lathis. On the question as to when and at what place the lathi-charge ceased, the evidence of the SDO is that the lathi-charge started from the road in the direction of the State Transport Office up to a little distance; thereafter the mob, while receding, however kept on pelting stones and brickbats; the police party also kept on pressing on the mob to disperse; the actual lathi-charge stopped after a very short distance in the direction of the police station; that is to say, the effective lathi-charge--actual use of lathis--was up to the police station, beyond the police station as the police was proceeding, the mob was

receding while stoning. There is no basis for the suggestions made on behalf of the public that, beyond the police station, the police was using both lathis and brickbats, that some members of the public were hit by brickbats on the front and that fleeing people had also been hit on their back side by brickbats and lathis. All these suggestions were denied, on behalf of the administration

70. In the process of the chase, while going on the main road, the policemen had also to enter a little distance on the side roads—lanes and bye-lanes. The policemen entered a little distance inside Hatpada area; in that process the policemen also went into a bye-lane off the National Highway near the Basic Training School; a little further beyond the police station, they also went about 20—25 feet inside the main road on the right hand side. Thus in all, the policemen, in the process of the chase, entered 3-4 lanes and bye-lanes to disperse, the mob who were pelting stones and brickbats from there.

71. While thus tackling the situation by chase, the policemen entered some lanes and bye-lanes, precaution was taken that the chasing policemen did not go out of sight of the police officers in command; this was done with a view to keep control on the police operation. The evidence of the SDO is that whenever police people entered into lanes, they were mostly visible to him or to a police officer; these lanes were small ones; after giving a chase to a short distance, the policemen used to come back to their position on the main road—the National Highway.

72. As a result of the chase, the mob gradually receded; as and when they receded, they were gradually thinning down; in this process, by the time they reached the Jira bridge, it would be about 100; many of them went down the Jira river and some of them crossed the bridge; when the mob was thrown back beyond the Jira bridge, it was not expected to return to the town and create trouble. In any event by the time the mob was dispersed beyond the river Jira, it lost and was purged of its unlawful character.

73. There is no basis for the allegation that the policemen were making indiscriminate assaults on passersby and throwing stones who were running away for safety as alleged by P. W. 29 Mr. Puranmal Agarwal both in his affidavit and in evidence nor is there any basis for the allegations made by

Mr. Mansaram Agarwal in his affidavit hereinbefore stated; there is no proof that 6 or 7 Gurkha policemen mishandled two boys in the manner as alleged in his affidavit.

74. Apart from the general allegations about alleged excess by the administration, certain specific charges were made against policemen of excess on certain individual persons which are separately dealt with hereunder.

F. Alleged wrongful entry of policemen with the SDO into the Basic Training School hostel room: alleged assault and arrest of the inmates of the hostel including Mr. Kunjaban Patra :

75. *Allegations of excess as stated by Mr. Kunjaban Patra : explanation of the SDO and the Inspector in charge of the force ;* in this context the allegations against the administration, including the SDO, are in the affidavit of Mr. Kunjaban Patra, a student of the Basic Training School, who himself is said to have been a victim of the alleged excess. The material portions of his affidavit are these :

- “ 3. That in the hostel I was talking with my friend, we were eight trainees in the hall where I stayed. There came to the hall, about 15 policemen including 8 Gurkhas and the Sub-Collector of Bargarh (referring to the SDO). They began abusing and tried to take the trainees, Purandar Mahant, Mangobind Dhaland Dulamani Behera by pushing them. We protested and demanded that the Headmaster be called.
4. That the Gurkha police did not pay any heed to our protest and assaulted all of us inside the hall and in the verandah, whereby I received a lathi blow on my head, fell down and lost my senses. From that place we were removed to the front side of the court and I noticed that myself and my friend Premraj Pati received severe injuries on the head.”

Apart from his affidavit, he (P. W. 24) also gave evidence.

76. The SDO in his counter-affidavit, while stating that Mr. Kunjaban Patra was actually arrested by Inspector Judhithir Babu, denied the allegations imputed to him (SDO) as baseless and false. Inspector Judhithir Babu in his affidavit stated that Mr. Kunjaban Patra and Mr. Premraj Pati were members of the unlawful assembly which was brickbatting at the police; the said mob was declared an unlawful assembly by the SDO and was asked to disperse; these two students were arrested in course of the chase of the brickbatting mob by the police; at the time of their arrest these two students were found to have sustained;

head injuries during the lathi-charge on the unlawful assembly, which did not disperse inspite of the repeated warnings by the SDO; they were arrested near the green fencing compound of the Basic Training School. Inspector Judhishir Babu also denied the allegations made in the affidavit of Mr. Kunjaban Patra in the matter of entry into the hostel, the circumstances of entry, arrest, abuses and assault by the police.

77. Did SDO (referred to as Sub-Collector) enter into the Basic Training School hostel with 8 Gurkha policemen who assaulted and arrested Mr. Kunjaban Patra and others : There was a specific allegation by Mr. Kunjaban Patra in his affidavit that the SDO entered the hall of the hostel along with the Gurkha policemen. In his evidence, however, he said that he saw the SDO standing adjacent to the fence of the Basic Training School but he did not enter into the hostel. What he said in evidence was this :

“Q. 13 Did anything happen when you were in the hostel during the recreation hour that day.

A. I had rested for about 10 minutes after beginning of the recreation when about 15 police people entered into the hostel and assaulted us.

Q. 14 Who else was with the policemen.

A. The SDO, Bargarh was with the police people but he did not enter into the hostel.

Q. 16 Where did you see him on 29-10-64

A. I saw him standing adjacent to the fence of the Basic Training School.

Q. 59 When the policemen entered into your hostel premises and assaulted you, did you complain to the Sub-Collector.

A. I have not seen the Sub-Collector at the time because at that time we were inside the room.

Q. 77 The statement that the Sub-Collector came into the hall of your hostel in your affidavit is false.

A. He had not come to the hostel, but he was standing adjacent to the compound of the school.”

78. Thus, the above clearly shows that Mr Kunjaban Patra in evidence had completely gone back on what he had stated in the affidavit, where he made a serious allegation against the SDO that he entered the hostel along with the policemen who abused and assaulted them inside the hall as a result of which Mr. Kunjaban Patra received a lathi blow on his head, fell down and lost his senses.

79. The evidence of the SDO C. W. 35 Mr. S. K. Lal was, in substance, this : After declaration of the assembly as unlawful for the fifth time he ordered dispersal of the mob by pushing them back; it was in the course of such chase by the policemen that the members of the unlawful assembly left the main road and went into the small lanes; it was during such dispersal by chase that several arrests—about 5 to 6 persons—were made. When he was asked as to whether anybody was arrested from the Basic Training School he said that he would not be able to say; the Basic Training School was slightly away from the National Highway; on the way they had to cover a slight distance in lanes near about the Transport Office; so policemen might have made some arrests near about the Basic Training School but he could not say exactly; he had never gone to the Basic Training School; so far he could recollect, one or two students of the Basic Training School were arrested on the 29th—he was not very sure. The SDO said that he was on the main road all along and did not go near the Basic Training School; the police force, wherever it was going, was within sight and returning after chase to a certain distance; so there was no question of the police entering into anybody's house; he could not, however, rule out the possibility that some of the policemen might have gone slightly ahead but all of them were within visible distance from him (Q.1560).

80. Apart from his general evidence about the manner in which the chase by the police was conducted under his control and other senior police officers, in answer to certain direct questions in cross-examination about the operation of the force in the lane leading to the Basic Training School hostel, the SDO made it abundantly clear that the force that had gone in that direction could not have entered the Basic Training School hostel. The material portion of his evidence was this:

"To Mr. (L) S. Misra

Q. 1581 Where were you at the time when the policemen entered that lane.

A. (Witness puts a red cross mark showing the position on the National Highway where he was standing.)

Q. 1582 Could you see from that position as to how far the policemen had entered into the lane and whether they had gone inside the Basic Training School.

A. I could have been able to see, Sir, from there and so far I could see the policemen entered the lane up to a distance, say, 15 to 20 feet approximately because a section of the unlawful assembly entered that lane and kept on pelting stones from that direction.

Q. 1583 Did the military police go near the Basic Training School.

A. I would not be able to say exactly but they went on the road. I cannot rule out the possibility of their having gone near the Basic Training School.

To Commission

Q. 1584 Are you sure that none of the policemen entered the Basic Training School.

A. We were particularly ensuring that none of the policemen entered into any of the private houses or such institutions because we did not want to create any heartburn or any agitation unnecessarily. That was my instruction.

To Mr. (L) S. Misra

Q. 1585 That may be your instruction. Can you now swear that they did not enter.

A. So far as I know, they did not enter.

Q. 1586 Were you always looking at that direction when the policemen went way.

A. I was observing the situation in front and I was also looking at that direction so far I could see. So far I could ascertain from the situation there, there was no possibility I never came across any policemen entering into any house.

Q. 1587 Was there any police officer in charge of that section of the constables who entered the lane leading to the Basic Training School.

A. There must be some police officer."

81. It is clear from the evidence of the SDO that—in the manner in which close watch was kept on the movement of the force in the directions of the lanes and bye-lanes during the chase and due to the fact that the section of the constables, that entered the lane leading to the Basic Training School, was in charge of a senior police officer—it was not possible for the force in operation to go astray and enter the hostel, abuse and assault the inmates in the manner they are alleged to have done or at all.

82. The police officer, who was in charge of that particular section which entered the lane leading to the Basic Training School, was Inspector Judhithir Babu who also

gave evidence. In fact, his evidence is that he effected the arrest of Mr. Kunjaban Patra and Mr. Premraj Pati near the fence outside the hostel. In this context, the evidence of C. W. 36 Inspector Judhisthir Babu about the sequence of the happenings and the circumstances, in which he arrested Mr. Kunjaban Patra and Mr. Premraj Pati, is amply clear as discussed hereunder.

83. When the SDO warned the mob and ordered dispersal, the OMP constables chased them ; Inspector Judhisthir Babu, along with the SDO, followed the force along the main road until the Inspector diverted towards the lane leading to the Basic Training School ; when the Inspector entered the lane, the SDO, who remained near the National Highway, was still visible ; the Inspector and the charging constables were proceeding from the National Highway by the side of the green hedge fencing where there were gaps here and there ; some members of the mob after being chased diverted to different directions and some of them went towards the Basic Training School ; the constables who were in charge of Inspector Judhisthir Babu chased the mob towards the direction of the Basic Training School ; the charging constables pursued the mob in the direction of the Basic Training School where two persons were running away ; he saw these two persons whom he arrested actually brickbatting from the by-lane towards the police force (Q. 201).

84. The circumstances, in which Inspector Judhisthir Babu made the arrests of Mr. Kunjaban Patra and Mr. Premraj Pati, are these : When Inspector Judhisthir Babu was going along the main road, he saw a group in front of the Basic Training School ; with one section of OMP then with him, he rushed in that direction towards the mob which was pelting stones at the police from the bye-lane in front of the Basic Training School ; the charging constables used lathi as a result of which some of the members of the mob were hit ; the constables caught hold of two persons near the compound of the Basic Training School—Mr. Kunjaban Patra and Mr. Premraj Pati—who had injuries on their head as hit by the policemen with lathis in course of the earlier lathi charge.

85. Inspector Judhisthir Babu further explained that the charging constables who were going ahead of him were always within his sight as he was following them ; the constables did not enter the Basic Training School. As explained by the

Inspector with reference to the letter of the Headmaster, Basic Training School, Ext. 49/A, the Inspector said that, when he returned to the police station in the evening at 7-30 P.M., he saw some persons detained at the police station; among them there were four trainees of the Basic Training School; the Headmaster came to the police station by about 8 or 9 P.M. for release of his students on his petition to the SDO; after verification, on finding that there was no evidence against the four students, the Inspector allowed them to go. As he said, these students were brought to the police station for interrogation. The Inspector was positive when he said that he only brought two students from the side of the Basic Training School and not eight students as suggested to him. In fact, there is nothing in the station diary or in any other record to show who brought the remaining six students or at what time they were brought to the police station nor is there any record to show specifically that the remaining six persons were brought to the police station as suggested.

86. The suggestions to Inspector Judhithir Babu in cross-examination—that he entered the hostel of the Basic Training School, allowed the policemen to assault the trainees, that as a result of the assault two heads were broken, that he arrested eight trainees inside the hostel including Mr. Kunjaban Patra who was unconscious and that he took them to the SDOs office premises—were all denied (C. W. 36 Inspector Judhithir Babu Qq. 243, 244)

87. These suggestions to the Inspector were falsified by the answers of P. W. 24 Mr. Kunjaban Patra himself to questions put to him. He said to the effect that the policemen who went inside the hall of the hostel—7 or 8 in number—were all constables and there were no officers; he knew the difference between an officer and a constable in respect of their dress, etc.; he said that the policemen were holding long lathis and had not seen anybody holding revolver (P. W. 24 Kunjaban Patra Qq. 128-132). This completely falsified the charge that Inspector Judhithir Babu, along with the OMP constables, had gone inside the hall of the Basic Training School Hostel, assaulted them and brought eight inmates to the police station.

88. The Headmaster in his letter dated October 29, 1964, Ext. C/84 to the SDO informed him that, while the trainees of the school were inside the school compound and hostel dormitory in the recess hours, the police people entered inside the school compound and the

[46 Home - 0]

dormitory and arrested the trainees ; that some of the students closed the doors and shutters from inside out of fear but they were not spared ; the Headmaster in that letter prayed that the eight trainees named therein might be sent back to the institution as they were innocent and not concerned with the strike. It is significant that there was no mention in the letter that Mr. Kunjaban Patra and Mr. Premraj Pati or any other inmate of the hostel had been severely assaulted. Thus, there is no allegation in the letter about the policemen having beaten any student inside the hostel. This shows that the Headmaster was not correctly informed about the actual position which evidently was suppressed by the students. Apparently, the Headmaster was not informed whether or in what circumstances the said two students received the injuries. It can reasonably be inferred that the students did not disclose to the Headmaster that they joined and participated in the activities of the other students in the mob and that in course of the lathi charge by the police the said two students got the injuries. If, in fact, any of the students were assaulted inside the hostel, then the Headmaster, in the normal course, would have certainly been informed or would have come to know about it, and he would have accordingly mentioned in the letter to the SDO the fact of his students having been beaten inside the hostel.

89. The charge, that the policemen entered the Basic Training School hostel and beat the inmates including Mr. Kunjaban Patra and Mr. Premraj Pati, cannot be said to have been established for reasons hereinbefore discussed.

G. Alleged forced entry by about six policemen inside the house of Mr. Prabhallad Satpathy : allegation of alleged wrongful entry and threatening by Inspector Judhithir Babu :

90. Mr. Prabhallad Satpathy, an Advocate of Bargarh, alleged certain excesses on the part of the police as stated in his affidavit and also in evidence. He said that on the date of the incident on October 29 he was staying in a house just behind the Civil Court building ; at about 1 P. M. he was taking his meal in his house when he heard some running footsteps outside and came to learn that the police force was chasing and mercilessly beating the public ; on that day there were some guests present in his house ; some of them shut the door by fixing the chain from inside out of fear ; just a few minutes thereafter he heard a dashing sound at his door ; he hurriedly finished his meal and while, washing his hand and

mouth, heard the sound of his front door being broken open and all on a sudden a group of Gurkha Military Police, numbering about 6 or 7 armed with lathis, rushed inside his house. He also said that, at this sight, his children and guests hid themselves in different rooms ; some bolted from inside ; he ran to the Gurkhas to check them from further intrusion but some of them did not listen, intruded further and struck at the bolted door with lathis.

91. It was also stated in the affidavit of Mr. Prahallad Satpathy that, after the police party left, he came to his passage room and found that the inside chain of his front door was lying on the ground which was displaced due to severe blows on the door by Gurkha Military Police; he also found that two of the bicycles belonging to his guests were lying on the ground which were thrown by the Gurkha Military Police when they dashed into his house.

92. Apart from these general allegations of excess against the policemen, Mr. Prahallad Satpathy in his affidavit made certain allegations against a particular police officer about the way he is alleged to have behaved inside his house. The material portions of his allegations in the affidavit are these :

- “ 5. That an officer also came inside my house having a revolver in addition to the lathi and I was almost surrounded by them and was in apprehension of assault on me while my wife was standing in front of the kitchen and the house-maid was in the courtyard and they were all shivering with fear of assault on me and on themselves because of the Gurkhas' appearance and conduct.
6. That I protested against this intrusion into my house at which the officer was enraged and gave me some threatenings and some time after they went out of my house.”

93. It is to be noticed that the name of the particular officer, who is stated to have entered the house of Mr. Prahallad Satpathy, was not mentioned in his affidavit. It was after Inspector Judhisthir Babu, who was examined before the Commission at Bargarh on November 25, 1965, admitted that he had entered the alleged house of Mr. Satpathy for the purpose of arresting two persons, that P. W. 25 Mr. Prahallad Satpathy, who was subsequently examined on December 5, 1965 also at Bargarh, mentioned the name of Inspector Judhisthir Babu as the Officer who entered his house as stated in paragraphs 5 and 6 of his affidavit quoted above.

94. As regards this alleged excess on the part of the police inside the house of Mr. Prahallad Satpathy, the SDO

Mr. S. K. Lai in paragraphs 33 and 34 of his counter affidavit, while dealing with the affidavit of Mr. Prahallad Satpathy, stated that no allegation of the nature described in the statement was ever brought to his notice; that after perusal of Mr. Satpathy's statements he had enquired from Inspector Judhisthir Babu and the Officer-in-charge Banamali Das and he was informed that to their knowledge no such incident took place; the allegations and averments were denied and it was submitted that Mr. Satpathy be put to strict proof of the same.

95. It is significant that Inspector Judhisthir Babu in his affidavit did not deal with the allegations of Mr. Prahallad Satpathy made in his affidavit. In evidence however C. W. 36 Inspector Judhisthir Babu admitted that the military police consisting of some Gurkhas entered inside a house which was vacant; he did not see Mr. Satpathy. Inspector Judhisthir Babu denied that he entered Mr. Satpathy's house and threatened him. The evidence of the Inspector is that inside that vacant room, which he entered, he saw two persons who after running away entered inside that vacant room; he and the policemen arrested those two persons there (C. W. 36 Judhisthir Babu Qs. 81—85). The explanation of Inspector Judhisthir Babu, in substance, was that during the chase he followed 5 or 6 constables in front of a house which appeared to have been abandoned, and arrested one Sagua Barik and another who were members of the brickbatting mob; the house which he entered was a vacant house and he did not see Mr. Satpathy there. In fact, when Mr. Satpathy appeared in course of the Commission sitting, the Inspector denied having seen him. In evidence, while the attention of Inspector Judhisthir Babu to paragraphs 5 and 6 of the affidavit of Mr. Prahallad Satpathy was drawn, he denied the facts stated in the said paragraphs (C. W. 36 Judhisthir Babu Q. 106).

96. Admittedly at about 1 P. M. during the fifth charge on the advancing mob by the policemen, some Gurkha constables entered a lane behind the Civil Court building; during this chase the policemen entered the houses for the purpose of making arrests of the persons who were stated to have been throwing brickbats on the police party. It was also admitted that Inspector Judhisthir Babu entered one house in that lane which he found was vacant and apparently abandoned. It was also admitted that two arrests were made, namely, of Sagua Barik and another from inside one of the houses in that lane.

97. In the situation, as it then was, when police had to chase to disperse the mob, it would not be excess on the part of the police to chase the unlawful mob into the lane to make arrests of some members of the mob whom the police saw brickbatting; in such a case, it would not be unjustified action on the part of the police to make arrests of such running away members of the unlawful assembly from inside a vacant room in the lane. If, on the other hand, the police had entered any private house without any justification in that if they had entered such a house merely to harass the inmates and there were no undesirable persons in such house to be arrested, then certainly such action on the part of the police would not be justified.

98. The question then is: Where did the police party, led by Inspector Judhithir Babu, make the arrest of the two persons—one Sagua Barik and another? The explanation of Inspector Judhithir Babu is that he made the arrest of two persons from a house which was vacant; he did not see Mr. Prahallad Satpathy there. The charge of Mr. Prahallad Satpathy is to the effect that the police party, followed by Inspector Judhithir Babu, forcibly entered inside his house and that no arrests were made from his house. In support of Mr. Satpathy's case, Mr. Basudeb Naik, a Mukhtar practising at Bargarh, filed an affidavit stating that he was sitting in his house situated on the back side of the Civil Court building and found some people running away in fear and some police people chasing them with lathis; one of the policemen in spite of protest, forced inside his house, dragged and assaulted Sagua Barik one of his clients who had come to court on court work; he (Mr. Basudeb Naik) however, did not mention about the other man having been arrested from his house. If, therefore, Sagua Barik was arrested from the house of Mr. Basudeb Naik and not from the house of Mr. Prahallad Satpathy, then there was no justification for the policemen to enter the house of Mr. Prahallad Satpathy.

99. The question is: Whose story is acceptable? The evidence of Inspector Judhithir Babu was that, in course of that particular chase by the policemen at about 1 P.M., he went towards the back of the Munsif's court, arrested two persons and brought them with him; their names were Sagua Barik and Arjun Meher. As regards the particular place, from which both these two persons were arrested, the evidence of Inspector Judhithir Babu is this:

“ Q. 70 Wherefrom did you arrest Sagua Barik

A. Sir, I found them inside a vacant room situated just behind the Munsif's court. In course of chasing those two persons entered inside that room, the constables caught hold of them.

Q. 71 Caught hold of them inside the room.

A. Yes, Sir.

Q. 92 Put a cross mark in RED PENCIL showing the position of the house from where you made the arrests.

A. Here it is (The witness puts a RED CROSS MARK in the spot map Ext C/76 showing the position of the house where from the two arrests were made.”

The position on the spot map Ext.C/76, where Inspector Judhisthir Babu put red cross mark, was stated to be a vacant house; and it was not the house of Mr. Basudeb Naik (P. W. 28).

100. As regards the affidavit of Mr. Basudeb Naik that Sagua Barik was arrested from his house, the attention of Inspector Judhisthir Babu was drawn to paragraph 6 of the affidavit, and the reaction of Inspector Judhisthir Babu to the said affidavit was this:

“Q. 96 And this Sagua Barik was arrested from the house of Shri Basudev Naik, Mukhtar.

A. No, Sir

Q. 97 Shri Basudev Naik, Mukhtar states on affidavit in paragraph 6 that “One of them in the teeth of protest forced inside my house and dragged and assaulted Sagua Barik of Phullapali, PS Barpa'i, one of my clients who had come to court on court work”. Have you any comments to make on this ?

A I do not believe this because, all the force who were with me did not go anywhere excepting entering that vacant house and bringing out those two persons.

Q. 98 You did not enter the house Did you.

A. Later on I went to that particular room after those 4 or 5 constables entered inside the room.

Q. 99 So, yourself with the 4 or 5 constables entered inside the room.

A. Yes, that particular room which I have already said.”

101 It is clear from the evidence of Inspector Judhisthir Babu that both Sagua Barik and Arjun Meher were arrested from inside one particular vacant room whereas according to P. W. 28 Mr. Basudeb Naik, it was only one person Sagua Barik who was arrested from inside his house. In evidence also Mr. Basudeb Naik reiterated his story that policemen entered his house, arrested Sagua Barik, dragged and assaulted him. He also said that it was a Gurkha constable

who arrested. As regards the time, when the arrest is said to have been made from inside his house, Mr. Basudev Naik said that so far as he remembered it was between 2 and 3 P. M. whereas according to other witnesses it was about 1 P. M. In fact, by the time between 2 and 3 P. M. the police party, including Inspector Judhishir Babu, were already on the chase towards the Jira river. Therefore the time as given by Mr. Basudev Naik -between 2 and 3 P. M. -when Sagua Barik is said to have been arrested from inside his house does not appear to be correct.

102. The main arguments, on behalf of the administration on this point, are these : Several months prior to the date of the incident, Mr. Satpathy was not staying in any house in that lane ; he had already, by the date of the incident, left that house and gone to his newly constructed house; it was not likely that the three persons, mentioned by Mr. Satpathy, were staying with him as his guests in that house; the circumstance that after the alleged forced entry into his house by the police in the manner alleged, Mr. Satpathy never mentioned about it, to the SDO or made any complaint about such alleged excess. These arguments on behalf of the administration are not convincing.

103. It is clear from the evidence that Mr. Satpathy was still living in the house in that lane. It is not unlikely that he had some guests in his house at that time. It is not improbable that, in the situation at the time, the police party led by the Inspector entered into Mr. Satpathy's house. It is also not improbable that out of fear of the local police, Mr. Satpathy did not mention about this to the SDO nor did he make any complaint. Although this is an unfortunate phenomenon in the present state of things, the fact remains that people do not unnecessarily invite troubles by making complaint against the police.

104. The question then arises: Was the police party, led by the Inspector, justified in entering the house of Mr. Satpathy? The incident, which took place inside the lane, was at about 1 P. M., that is, during the fourth chase of the violent mob by the policemen in different directions. In course of these successive chases, the policemen were advancing to a certain distance and then receding for fear of being overpowered by the huge mob. The reinforcement from Sambalpur did not arrive even up to that time. The administration had to deal with the meagre force available to them at the spot operating from the SDO's

court compound. Order under Section 144 Criminal Procedure Code was then in force. The chase had to be done in three different directions with the meagre force then available. The earlier chases were ineffective in that the receding mob was again returning and brickbattling on the police force. This was the situation from the morning, since the procession arrived; thereafter by 1 P. M. the police force was getting exhausted. It was in this situation that the police had to deal with the mob effectively; the police could only do it by making arrests and tackling the situation more firmly.

105. The conduct of the police party, led by Inspector Judhithir Babu, has to be considered, keeping in mind the surrounding circumstances and the grave situation at that particular time. In course of police operations as directed by the SDO, six or seven constables, followed by the Inspector, were chasing the violent mob inside the lane. Certain members of the mob, who were brickbattling, entered these houses in the lane. It was these brickbattling members of the mob that the police had to effectively tackle in handling the situation. In course of such chase, the policemen had to enter and did enter several houses inside the lane—which was a trouble spot at the time. Inspector Judhithir Babu was behind the chasing police constables. From his evidence it is clear that it is not that he entered the house along with the chasing constables but he entered later on. In such a situation, it is not unlikely that there was some confusion as to which one of these adjacent houses—one looking just like the other as they appeared on local inspection—the Inspector entered where his constables entered before him in course of the chase. It was certainly the duty of the Inspector to keep control over the actions of these constables. It was for this obvious reason that the Inspector entered the house. So, the entry of the Inspector into the house, in the circumstances he did, was not unjustified.

106. Then the next question is: How did the Inspector behave inside Mr. Satpathy's house? This appears from the evidence of Mr. Satpathy (P.W. 25) himself which was this:

“ Q. 103 Did the officer have a revolver in one hand and a lathi in the other.

A. No. The officer had his revolver fixed to his waist. Most probably, inside a leather case and he had the lathi in his hand.

- Q. 104 Was it a long lathi or small lathi.
- A. It was a short lathi about 2 feet long.
- Q. 105 Did he give any particular orders to the Gurkha police.
- A. Inside the house he did not give any order.
- Q. 106 Either to continue inside the house or to go out of it— Did he give any indication.
- A. After some altercation between myself and the police officer he asked the Gurkha police to come out.

To Commission

- Q. 107 What was the altercation between you and Judhisthir Babu
- A. I said to him that you have no right to intrude into my house.
- Q. 108 And what he said.
- A. He said, "Now I have every right to enter".

To Mr. Patnaik

- Q. 109 Did you enquire from him what was the purpose of his entry.
- A. I said, "why have you entered" and he said, "I have the right to enter into the house".
- Q. 110 What happened thereafter.
- A. Thereafter he came away with the Gurkhas (Adds) After my questioning him that "why did you enter into my house", he was enraged and said that "I have right to enter and also he threatened me to arrest."

107. The evidence of Mr. Satpathy is that Inspector Judhisthir Babu brought back the constables who had entered the house. It is quite clear that, in course of the chase, the constables had entered the house in that lane—may be under a mistaken belief that some brickbatting members of the unlawful assembly had entered the house; such mistaken belief on the part of the constables in course of the chase in such a situation is not improbable. In any event, it was the duty of the Inspector to see what the constables were doing inside the house and to see that the constables did not, in any way, commit any excess. Mr. Satpathy's evidence is that Inspector Judhisthir Babu asked the Gurkha police to come out (Q. 106). It cannot be denied that it was the Inspector's duty to bring out the charging constables from inside the house. It was in the course of discharge of that duty that the Inspector had to enter the house and bring out the constables which he did.

108. Taking into consideration the evidence of Mr. Prahallad Satpathy who is an Advocate and the evidence of Mr. Basudev Naik, Mukhtar—both of the local Bar—on the one hand and the evidence of Inspector Judhithir Babu on the other, it is quite clear that the police constables, led by the Inspector, entered the lane in course of the chase and tackled certain brickbattering members of the unlawful assembly; in course of such tackling certain arrests were made from some of those houses; the Inspector, who followed the chasing constables later on, entered one of these houses to bring back the policemen who had gone inside for making arrests.

109. Apparently, there is some confusion in the evidence of both Mr. Basudev Naik and Inspector Judhithir Babu as to from which of these houses in that lane—all looking alike—the two arrests were made, and which particular house the Inspector entered. The evidence of Mr. Basudev Naik is that Sagua Barik was arrested in his house; there is however no evidence as to in which particular house Arjun Meher was arrested. Neither Mr. Prahallad Satpathy nor Mr. Basudev Naik mentioned about where Arjun Meher was arrested. There was also no serious attempt for clarification of these points on either side.

110. In the result, therefore, on the evidence, the Commission is unable to find that there was any excess on the part of the police party or Inspector Judhithir Babu, who was in charge of it, as alleged.

II. Alleged wrongful entry by police into another private house and causing damage to the garden by plucking guava fruits and breaking some branches :

111. In support of this charge against the police, P. W. 28 Mr. Basudev Naik in paragraph 7 of his affidavit said this :

“ 7. That another police personnel came to the house of Shri G. S. Panigrahi, teacher whose house is adjacent to my house and enquired if any student concealed inside that house. He entered to the Bari of Shri Panigrahi and plucked Guava fruits and broke some branches.”

In paragraph 9 of his affidavit Mr. Basudev Naik stated that the statements in the said paragraph quoted above are true to his information, which he received from his friends and believed them to be true. Thus, he was not an eye-witness to what he said about the alleged excess on the part of the police personnel as stated above. In his evidence also, he said that he heard from Mr. G. S. Panigrahi and also from

Mr. Prahallad Satpathy that there was also an incident in the Bari of Mr. O. S. Panigrahi; that police went inside the Bari, plucked guava fruits and broke some branches. In answer to a direct question put to Mr. Basudev Naik as to whether he himself saw it, he replied that at the time of plucking guava fruits he had not seen; that subsequently he had seen broken branches (P. W. 28 Basudev Naik Qq. 19—'1).

112. This charge against the police does not appear to have been seriously pressed in course of the hearing. There is no satisfactory evidence in support of the charge. What Mr. Basudev Naik stated in his affidavit and in his evidence was mere hearsay.

113. The Commission finds that this charge against the police was not established.

I. Findings of the Commission :

114. As already indicated in the foregoing paragraphs, the findings of the Commission, on the basis of the evidence, may be summarised as follows:

(i) *Re: How on October 29 the situation deteriorated from stage to stage:*

- (a) that since the previous night the SDO apprehended troubles; he came to his office at about 7.30 A. M. and sent a section of APR to the police station along with the Magistrate as a precautionary measure; the SDO kept with him the other two sections of OMP which were deployed within the court premises;
- (b) that at about 8.30 or 9 A. M. the SDO received two more sections of OMP in response to his request to the District Magistrate in the previous night for reinforcement; the two sections which arrived were also kept in the SDO's office premises;
- (c) that about 9 or 9.30 A. M. a procession, which the SDO was apprehending, came towards his office on the road with a black flag and a microphone mounted on a rickshaw; in the procession there were students and also other persons who, from their appearance, could not have been reasonably believed to be students;

- (d) that when the procession stopped in front of the SDO' office, it was about 1500 strong—of them 300/400 were students; the mob was shouting all kinds of filthy abuses through the mike; some of the abuses were directed at the SDO;
- (e) that at about 10 A. M. two students came to the police cordon which was formed; they handed over an unsigned memorandum to the SDO containing certain demands; after handing over the memorandum, these two students went back to the procession which continued to hurl abuses and also shouted slogans; the procession was extremely aggressive in its mood, and violence by the mob was reasonably apprehended;
- (f) that three students, including the two who had come earlier to hand over the memorandum, again came up to the cordon; the SDO asked the Second Officer and also some police officers to go over to the cordon and find out as to what the students wanted; the students were arguing very heatedly with the officers there without any provocation whatsoever; after a few minutes, the SDO himself went there and asked the students as to what they wanted; they could not make out exactly what they wanted but said that replies to their demands had not yet been given to them; they threatened that they would resort to lawlessness if this was not done immediately ;
- (g) that in course of persuasion, the SDO explained to the students that the administration did not mind if the students abused, provided they maintained peace so that the hands of the administration were not compelled to take any action which might not be very pleasant; the students who came were fully convinced that the best way to carry on the agitation was a peaceful and constitutional way;
- (h) that when the SDO asked the students to go back to the procession and ask the processionists to go away peacefully, they said that the processionists would not be convinced;

with what they would tell and that they would not be able to abandon their plan of action ;

- (i) that it was clear from this that the student leaders, who came to the SDO, could be persuaded to carry on the agitation peacefully but they were not able to control the procession, which they had brought to the court premises; in fact, one of the students went back to the procession and suggested peaceful way of carrying on the agitation; but the said student was ridiculed, was made fun of by the processionists and was asked not to forget the pledge;
- (j) that it was evident from the way the processionists were behaving that the majority of the processionists were anti-social elements, who got mixed up with the students, and the student leaders had no control over them ;
- (k) that again, 3 to 4 students came to the SDO in an aggressive mood; they were going to break the cordon with the object of creating a situation which might involve tackling by the administration from the point of view of keeping law and order; the said 3-4 students, who were advancing in an aggressive manner, were stopped by the police cordon; the students were told to carry on the agitation peacefully ; ultimately, after some discussion, they agreed that that was the best course but they expressed that they had no confidence in the crowd which was there; so, they did not venture to go back to the crowd to give advice for peaceful agitation;
- (l) that some 10 to 12 years old boys were sent to the SDO in batches of 2-4 wave after wave ; apparently, they were instigated by the mob to advance towards the cordon just with a view to embarrass the administration and create a situation ;
- (m) that apparently, the attitude of the student leaders to carry on a peaceful demonstration was not to the liking of the anti-social elements of the mob; the mob was getting frustrated because of the action of the student leaders who went to the SDO in that the student leaders relented after discussion with the SDO ;

- (n) that at that stage, from a sense of frustration, the anti-social elements in the procession took control of the situation and gave an ultimatum to the SDO through the mike which they brought with them; the nature of the ultimatum as described by the SDO in his evidence was this : the first ultimatum was "10 minutes to SDO"; next ultimatum given was "5 minutes to SDO", another ultimatum was given "2 minutes to SDO" or "1 minute to SDO"; then it came down to seconds and they said "50 seconds to SDO"; "40 seconds to SDO" ;
- (o) that what probably they meant by such ultimatum was that the processionists wanted a reply from the SDO to their earlier demands; if within 40 seconds the SDO could not give a favourable reply, the mob would take charge of the situation and overrun the SDO and the police party ; this was what evidently the ultimatum meant ;
- (p) that, apart from shouting, there was heavy stone-pelting by the mob from all sides; it was noticed that the broken bricks, then lying near ARCIS's office adjacent to the SDO's court building on the right hand side, were being picked up by the mob and hurled towards the police and the magistrates on the spot; the situation was taking an ugly turn ; apparently, the student leaders had no control over the anti-social elements who had joined the procession; it was then about 10 or 10-10 A. M.
- (ii) *Re : First declaration of the unlawful assembly : initial lathi-charge : three directions : 10-15 a. m. :*
- (a) that as soon as the mob uttered the final ultimatum "40 seconds to SDO". heavy pelting of stones, brickbats and ballasts started; the mob moved aggressively towards the SDO's office; the SDO then, with the help of a mike, warned the mob and asked them to stop brickbating but in spite of the warning there was howling from the side of the mob ;

- (b) that at about 10-15 A. M., the SDO declared the assembly unlawful, and told the mob that if they did not disperse within two minutes, he would order the use of teargas and lathi-charge to disperse them; the warnings did not get any good response from the mob--rather they became more aggressive in their attitude shouting more abuses, pelting more and more stones, ballasts and shooting Gutkas from Gulels;
- (c) that the mob did not disperse in spite of the warnings; the SDO ordered the use of teargas and lathi-charge;
- (d) that as soon as the policemen started charging, the mob withdrew in three directions--one group ran in the direction of an open space near the District Agricultural Office which was in between the Munsif's court and the Central Ware House; another group took its position inside Munsif's court premises behind the court building; the third group withdrew itself on the main road near the bus stop, some members of the mob went inside the residence of PWD SDO and Munsif, some were also in the Inspection Bungalow which the mob trespassed;
- (e) that all this time the mob was throwing stones and ballasts, shooting Gutkas from Gulels, some were also using lathis;
- (f) that in spite of the shower of brickbats, stones and ballasts, the charging police force was able to throw the mob back from their original position which they occupied on the road in front of the SDO's office ; the mob thus receded in these three directions because of lathi-charge by the police.
- (g) that the police party were charging, the mob closing in, and again the police party charging and so on; in this manner there was lathi-charge on the mob by the policemen in different directions up to the distance to which the mob receded; the mob, however, continued pelting stones, they kept on facing the police force which was charging on them;

- (h) that the policemen could not proceed further because they were small in number—it was only three sections of policemen who were operating in these three directions; roughly speaking 8-10 policemen with lathis were used for the purpose of dispersing in each direction; teargas was shot by 2-3 constables from the fringe of the court compound; they could not go further;
- (i) that after firing teargas, the more effective way of dispersing a crowd was lathi-charge; as a result of lathi-charge, the mob fell back; there was, however, a tendency among the mob to attack the constables while returning; in any case, the constables could not have gone any further for chasing them in order to disperse because they might have been overpowered by the mob;
- (j) that when for a minute or two the chasing constables were out of sight, bugles and whistles were sounded and the charging constables were brought back to their position within the court compound which, by then, had been cleared of the mob;
- (k) that as the mob was aggressive, lathi-charge had to be continued on the road in three directions on the mob chased by the police upto a certain distance ;
- (l) that one group of the mob was chased upto a point near DAO's office at a distance of 200 feet from the SDO's office; another group went in front inside the Munsif's court to a distance of another 200 feet ; the third group was chased in the direction of the State Transport office to a distance of 100-200 ft. ;
- (m) that the SDO and DSP came upto the road to see the position of the constables and the mob in all the three directions ; it was apparent that the members of the mob, constituting the unlawful assembly, were adopting hide-and-peek tactics;
- (n) that in cases, where some of the constables went a little further within the Munsif's court

premises and went out of sight for a minute or two, immediately they were brought back by the sound of bugles or by whistles because there was danger of their being overpowered by the huge number of the mob;

(iii) *ke* : *Second declaration of the unlawful assembly : second lathi-charge: further chase: 11 a. m.: loss of teeth by constables hit by brickbattling by the mob .*

(a) that as the constables returned to the SDO's court compound after the chase and initial lathi-charge, the mob reappeared from the three directions and started stoning ;

(b) that at this stage, it was noticed that the members of the mob, who looked like students, were reluctant to carry on with such types of lawlessness which were being committed at that time: the anti-social elements, who constituted the majority of the mob, however, jeered at and hooted those who were reluctant to indulge in violence; in fact, some aggressive members of the mob started shouting at the students calling them cowards and shouting that it was for them that they joined the procession that morning, came in front of the SDO's office and so they (students) could not run away like that;

(c) that the aggressive members of the mob, who appeared to be Goondas of the town, coerced the students to return and take the lead in committing violence; thus instigated and coerced, the students again joined--led violence: they again started stoning and brick-battling heavily;

(d) that the SDO repeated the warnings which he gave earlier and asked the mob to refrain from stoning and go away peacefully ; the mob, however, did not listen to the order of the SDO ;

(e) that at about 11 A. M. in this situation, the SDO was again compelled to declare the mob unlawful assembly and directed the use

of teargas and lathi-charge for the second time ; accordingly, the constables charged on the mob after teargassing ; the mob again fell back from the road in those three directions; they kept on pelting stones, shooting Gutkas from Gulels and indulging in other such lawless activities; after sometime, the mob again reappeared from the three directions ; the strength of the mob was greater this time ;

- (f) that by this time, the students somehow slipped into the background ; the anti-social elements—mostly the Goonda elements of the locality—took the lead; they shouted filthy abuses and kept on pelting stones heavily and shooting Gutkas from Gulels ; the pattern of the mob behaviour, during this phase, was somewhat different from the earlier phase in that the mob, in greater strength, moved menacingly towards the SDO's office and, in fact, it moved a few feet inside the compound of the SDO's office ;
- (g) that it was indeed a situation which called for firing; warning and repeated declarations of the mob as unlawful assembly had no effect on the mob ; that they did not care for the SDO's orders to disperse ; that there were only three sections of policemen with lathis which were till then trying their best to keep the mob away from the SDO, his party and his office ; the mob this time came in larger number ; the Goonda elements of the town took the control and were leading the movement ; SDO's warnings were responded by people showing their private parts, dancing naked on the road, calling people to come and attack the SDO's office; there was heavy ceaseless stoning from all the directions and repeated shots from Gulels; the mob was also wielding lathis ; in this situation lathi-charge could not be effective; the administration had the responsibility to protect the offices, the persons and properties in the court premises ;

- (h) that in course of heavy brickbattings by the mob, there were some serious casualties among the members of the armed force; a constable, who was standing nearby, was hit with brickbats and lost four teeth; he fell down unconscious; his shirt got drenched in blood; another constable, who also was very near, was hit very hard on his chest by a stone ;
- (i) that it was in this grave situation that the SDO asked the DSP to get the section with rifles or muskets to come and be ready so that firing could be opened if the mob did not disperse and did not relent in its pressure on the SDO and others;
- (j) that, it was at this stage, some prominent persons of the locality ran towards the SDO and suggested that they might be given a last chance to appeal to the mob so that they might go away peacefully and thus firing might be avoided;
- (k) that, in spite of the menacing attitude of the mob and the continued unabated stoning by the mob, these publicmen insisted on their being allowed to go and plead with the mob as a last chance ;
- (l) that, ultimately, these publicmen proceeded and approached the mob facing stones coming towards them; the mob abused them ; these publicmen were asked by the mob to go back ; the mob threatened that they would operate against the police and the magistrates ;
- (m) that even in the face of such situation, the said publicmen approached the mob, could manage to shout to all the students there to go back to their houses ; after a few minutes, when their appeal did not receive proper response, these gentlemen returned and expressed disappointment;
- (n) that one good effect of these publicmen's move to pacify the mob was that the situation eased to some extent in that the mob was found slightly relenting from the menacing attitude, and firing was avoided .

(iv) *Re ; Third declaration of unlawful assembly ; further charge 12 noon ; promulgation of section 144 order at 12-30 p. m. ;*

- (a) that after the said publicmen returned from the mob, although the stone-throwing, lathi-weilding and Gutka-shooting still continued, the situation slightly eased and was less terrible than it was shortly before ; the SDO then decided to disperse the unlawful assembly by further lathi-charge instead of firing ;
- (b) that at 12 noon, the SDO declared the assembly unlawful and asked them to disperse peacefully within two minutes; the mob did not listen; thereupon the SDO again ordered the use of teargas and lathi-charge on the mob;
- (c) that accordingly, lathi-charge was by the police in the same manner towards the same directions to which the mob fled; the constables could go only a little distance and disperse the mob from their original position only temporarily; this continued tussle between the mob and the charging policemen—the policemen chasing and the mob again closing in and so on—helped in saving the SDO's office, the State Bank which was in the same building and other offices that all contained valuable records ;
- (d) that such operation of lathi-charge by the policemen was wholly controlled in that when the constables went to a distance where they could not be observed, bugle was sounded as ordered by the DSP, and the charging constables used to be brought back to their position within the court compound;
- (e) that on this occasion, the charging policemen partly succeeded in throwing back the mob and demoralising it but this was only temporary and did not last long; although there was a slight pause in the movement of the mob, further trouble was scented soon thereafter;
- (f) that at 12-30 p. m. the SDO promulgated order under section 144 Criminal Procedure Code

which was ordered to be announced immediately within the town; the SDO personally took the mike and from the court premises announced the promulgation of the order which could be heard in the vicinity ;

- (g) that the mob, however, again reappeared from the three directions on the road, again indulged in the same lawless activities, again started throwing stones and shooting Gutkas from Gulels; the SDO warned the mob this time that section 144 order had been promulgated and so it must disperse; the mob did not listen: it responded with filthy abuses and filthy exhibition of private parts and other ugly behaviour; it was evident from this attitude on the part of the mob that it was still determined to continue the assault on the magistrates and the police party:
- (v) *Re : Fourth declaration of unlawful assembly: further lathi-charge: 1 p. m. : students recede to the background : Goonda elements in the forefront: arrival of District Magistrate with DIG with reinforcement:*
- (a) that, by this time, it could be appreciably noticed that the few students that were in the mob receded to the background—physically at the back of the mob; it was the Goonda elements who by now had come to the forefront and took the lead in violence;
- (b) that at 1 p. m. the SDO again declared the assembly unlawful; he again warned them to disperse peacefully within two minutes time; yet they did not disperse;
- (c) that the SDO again ordered lathi-charge; this time the charging constables could successfully disperse the crowd towards the direction of the Munsif's court and also the unruly mob near the District Agricultural Office.
- (d) that in a few minutes, the District Magistrate, accompanied by the DIG Sambalpur, arrived with reinforcement of one platoon of OMP; even after the District Magistrate arrived, the SDO continued to remain in charge of the law

- and order situation under the guidance of the District Magistrate ;
- (e) that at that stage, the mob regrouped in the direction of the State Transport Office and faced the SDO's office from that side ; this time there was no appearance of the mob from the other two directions ; the mob which reappeared and regrouped near the State Transport Office started stoning at the Magistrates and the policemen ;
- (vi) *Re ; Fifth declaration of unlawful assembly : last order for lathi-charge : 1.45 p. m. : chase mainly on the National Highway and sometimes into lanes :*
- (a) that at this stage, the mob again reappeared and concentrated near about the State Transport Office on the National Highway heavily throwing brickbats ; the SDO again warned them ; but the mob jeered at the SDO's warning ; it responded with heavier shower of brickbats, Gutkas from Gulels and other ways of violence ;
- (b) that as the mob did not disperse, the SDO ordered lathi-charge ; as by this time reinforcement had arrived from Sambalpur, force was available to the SDO for his use to deal with the situation ;
- (c) that the SDO and the other officers, with some reinforcement, moved from his office compound and went ahead on the road towards the police station to disperse the unlawful assembly on the National Highway ;
- (d) that after passing the police station the SDO and his party proceeded through the market area towards Dharmasala ; while they were going and pushing the mob back, showering of stones by the mob, which continued, fell on them ; some members of the mob left the main road and got into small lanes ;
- (vii) *Re : What was the necessity for chase of the mob by the police party led by the SDO through Bargarh town right up to the river Jira : the entire picture how the situation was saved :*
- (a) that, evidently, it was because of inadequacy of police strength at Bargarh at the time

that the local administration was handicapped in the matter of dealing with the situation more effectively and quickly which could have been done if there was a stronger police force at the station ;

- (b) that it was because of the weakness of the police strength that it was not possible for the SDO to continue the chase by the lathi party beyond a certain distance, otherwise there was the apprehension of the charging constables being overpowered by the mob which was much bigger in strength than the force ;
- (c) that in spite of the gravity of the situation at the time which even necessitated resorting to firing, the administration somehow could avoid it; timely intervention of some publicmen and their parley with the mob, though unsuccessful, to a certain extent gave respite and eased the situation at a critical stage;
- (d) that the successive declarations of the assembly as unlawful, the chase and the tackling of the mob by chasing them up to a certain distance and then recalling the force so that it might not be overpowered by the mob—saved the situation; it was a tactful move by the SDO; in fact the steps taken by the local administration at Bargarh since morning gave time for the reinforcement to arrive from Sambalpur;
- (e) that if from the very beginning in the morning of October 29, there was sufficient force available to the local administration at Bargarh, the situation could have been tackled more effectively much earlier; with the meagre force available to the administration it was not possible for the SDO and the police party to move out of the court compound and pursue the mob to a safer distance;
- (f) that apart, the stock of teargas shells and grenades at Bargarh was also not very encouraging; it would be about 35 or 36 shells and grenades of teargas which were available to

the local administration; in course of the successive use of teargas during lathi-charge, whatever teargas stock they had was already spent up by the third time when the SDO ordered dispersal of the unlawful assembly;

- (g) that after the reinforcement arrived from Sambalpur at 1 P. M., there was definitely a change in the position; it was then possible for the SDO to move out of the court compound, to pursue the mob and to restore law and order in the town;
- (h) that the SDO was justified in himself taking out the force for the purpose of the chase throughout the town; senior police officers were also with him to have complete control over the police party in their operations in the town;
- (i) that the strength of the unlawful assembly—at the point of time the policemen, led by the SDO and the senior police officers in command of the force, started the chase—was approximately 700 or even a little more;
- (j) that in course of the chase there was no lathi-charge, that is to say, striking of the mob by the policemen with lathis; the actual lathi-charge stopped after a very short distance in the direction of the police station; that is to say, the effective lathi charge—actual use of lathis—was up to the police station; beyond the police station, as the police was proceeding, the mob was receding while stoning;
- (k) that there is no basis for the suggestions, made on behalf of the public, that beyond the police station the police was using both lathis and brickbats, that some members of the public were hit by brickbats on the front and that fleeing people had also been hit on their back-side by brickbats and lathis;
- (l) that in the process of the chase while going on the main road, the policemen had also to enter a little distance on the side-roads—lanes

and bye-lanes; in that process the policemen also went into a bye-lane off the National Highway near the Basic Training School; thus, in all, the policemen in the process of the chase entered 3-4 lanes and bye-lanes to disperse the mob who were pelting stones and brickbats from there ;

- (m) that while tackling the situation by chase, the policemen entered some lanes and bye-lanes, precaution was taken that the chasing policemen did not go out of sight of the police officers in command; this was done with a view to keep control on the police operation;
- (n) that whenever police people entered into the lanes and the bye-lanes, they were mostly visible to the SDO or to a police officer; after giving a chase to a short distance, the policemen used to come back to their position on the main road--the National Highway;
- (o) that as a result of the chase, the mob gradually receded; as and when they receded, they were gradually thinning down; in this process by the time they reached the Jira bridge, it would be about 100; many of them went down the Jira river and some of them crossed the bridge; by the time the mob was dispersed beyond the waters of river Jira, it lost and was purged of its unlawful character;
- (p) that there is no basis for the allegations made by Mr Puranmal Agarwal in his affidavit and evidence nor for the allegations made by Mr. Mansaram Agarwal in his affidavit; the various charges made by them have not been established;
- (q) that on the evidence, it is not possible to find that the policemen were making indiscriminate assaults on passersby or throwing stones on those who were running away for safety or that 6 or 7 Guklia policemen manhandled two boys in the manner as alleged or that there was any other excess as alleged by Mr. Puranmal Agarwal and Mr. Mansaram Agarwal ;

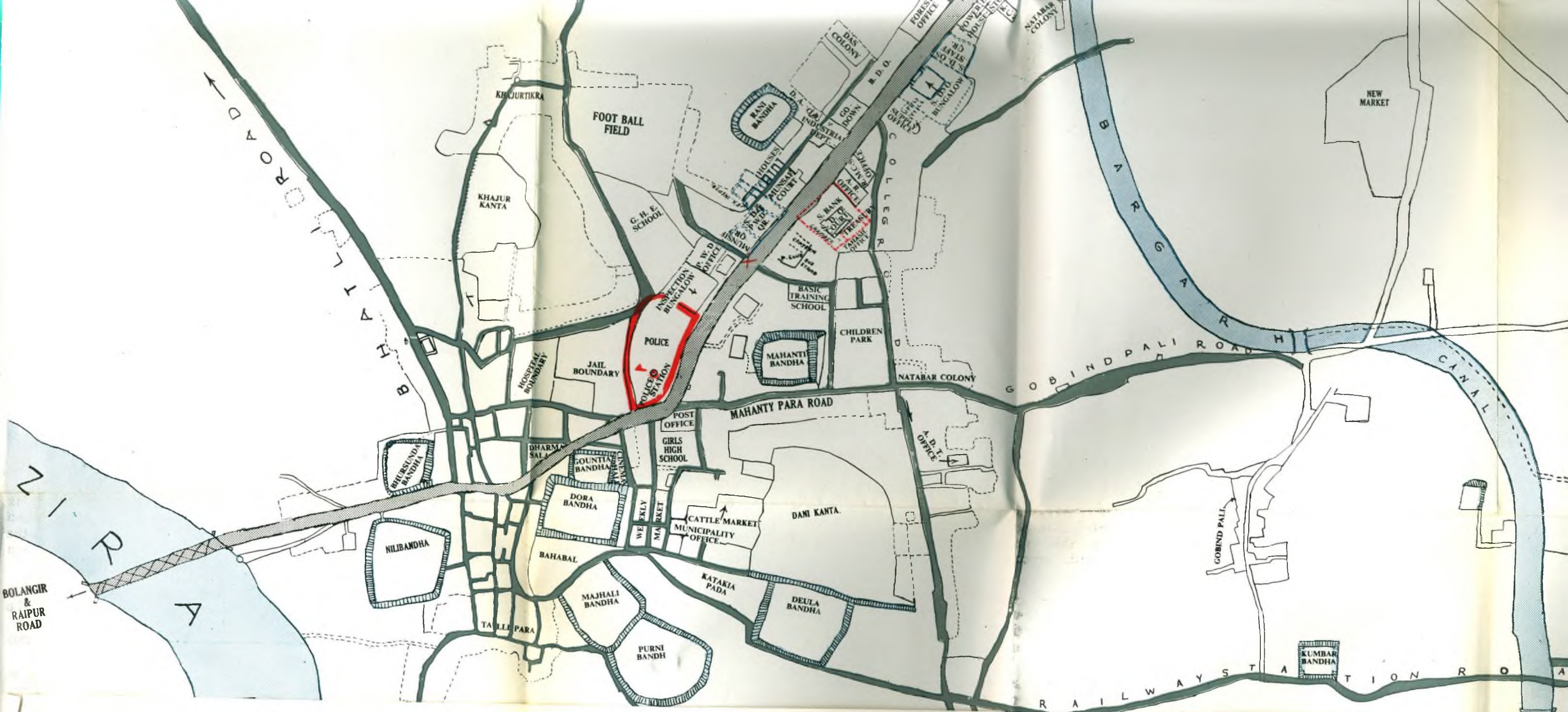
(viii) *Re : Alleged wrongful entry of policemen with the SDO into the Basic Training School Hostel room, alleged assault and arrest of the inmates of the hostel including Mr. Kunjabun Patra:*

- (a) that Mr. Kunjabun Patra (P. W. 24) in evidence had completely gone back on what he had stated in the affidavit where he made a serious allegation against the SDO that he entered the hostel along with the policemen who abused and assaulted them inside the hall as a result of which he received a lathi blow on his head, fell down and lost his senses;
- (b) that the SDO was on the main road all along and did not go near the Basic Training School; the police force, wherever they were going, were within sight and were returning after chase to a certain distance; so there could not arise any question of their having entered into the Basic Training School or to any private house or any institution while they were proceeding on their way through the town to the river Jira;
- (c) that in the manner in which close watch was kept on the movement of the force in the directions of the lanes and bye-lanes during the chase and due to the fact that the section of the constables who entered the lane leading to the Basic Training School was in charge of a senior police officer, it was not possible for the force in operation to go astray, enter the hostel, abuse or assault the inmates in the manner they are alleged to have done or at all;
- (d) that upon seeing a group of the mob pelting stones at the police from the bye-lane in front of the Basic Training School, Inspector Judhisthir Babu, with one section of OMP, rushed in that direction; the charging constables used lathi as a result of which some of the members of the mob were hit; the constables caught hold of two persons near the compound of the Basic Training School—Mr. Kunjabun Patra and Mr. Premraj Pati—who had already injuries on their head as hit in course of the earlier successive lathi-charge on the violent mob on the main road;

- (e) that there is no evidence that Inspector Judhishir Babu, along with OMP constables went inside the Basic Training hostel, assaulted and brought 8 inmates to the police station as suggested;
- (f) that, in the ultimate analysis, the charge—that the policemen entered into the Basic Training School and beat the inmates, including Mr. Kunjaban Patra and Mr. Premraj Pati—cannot be said to have been established;
- (ix) *Re : Alleged forced entry by about six policemen inside the house of Mr. Prahallad Satpathy : allegation of alleged wrongful entry and threatening by Inspector Judhishir Babu:*
- (a) that at about 1 P. M. during the fourth charge on the advancing mob by the policemen, some Gurkha constables entered into a lane behind the Civil Court building; during this chase the policemen entered the houses for the purpose of making arrests of the persons who were stated to have been throwing brickbats on the police party. Inspector Judhishir Babu entered one house in that lane; one Sagua Barik and Arjun Meher were arrested from some house or houses in that lane;
- (b) that it is clear from the evidence that Mr. Satpathy was still living in the house in that lane; it is not improbable that in the grave situation at that time the police party, led by the Inspector, entered into Mr. Satpathy's house;
- (c) that the incident of police entry into Mr. Satpathy's house inside the lane took place at about 1 P. M., that is, during the fourth chase of the violent mob by the policemen in different directions; the reinforcement from Sambalpur had not yet arrived up to that time; the administration had to deal with the situation with the meagre force available to them at the spot operating from the SDO's court compound; order under section 144 was then in force; the chase had to be done in three different directions with the meagre force then

available; the earlier chases were ineffective in that the receding mob was again returning and brickbatting on the police force; this was the situation from the morning since the procession arrived;

- (d) that by 1 P. M. the police force was getting exhausted; it was in this situation that the police had to deal with the mob effectively; the police could only do it by making arrests and tackling the situation more firmly;
- (e) that in course of police operation by chase, as directed by the SDO, six or seven constables followed by Inspector Judhithir Babu were chasing the violent mob inside the lane; certain members of the mob, who were brickbatting, entered some of the houses in the lane; it was these brickbatting members of the mob that the police had to effectively tackle in handling the situation;
- (f) that in course of such chase the policemen had to enter and did not enter several houses inside the lane which was a trouble spot at the time; Inspector Judhithir Babu was behind the chasing police constables; it is not that the Inspector entered the house along with the chasing constables but he entered later on;
- (g) that in such a situation it is not unlikely that there was some confusion as to which one of these adjacent houses—one looking almost like the other as they appeared on local inspection—the Inspector entered where his constables entered before him in course of the chase;
- (h) that it was certainly the duty of the Inspector to keep control over the actions of these constables; it was for this obvious reason that the Inspector entered the house; so, the entry of the Inspector into the house, in the circumstances, was not unjustified;
- (i) that it is clear from the evidence of Mr. Satpathy that Inspector Judhithir Babu brought back the constables, who had entered the house in course of the chase in that lane presumably under a mistaken belief that some brickbatting members of the unlawful assembly had entered





FOOT BALL FIELD

KHAJUR KANTA

G. H. E. SCHOOL

POLICE STATION

POLICE

POST OFFICE

GIRLS HIGH SCHOOL

WEEKLY MARKET

CATTLE MARKET

MUNICIPALITY OFFICE

DANI KANTA

MAJHALI BANDHA

PURNI BANDHA

DEULA BANDHA

KATAKIA PADA

BAHABAL

TALLI PARA

NILIBANDHA

DEKURUND BANDHA

DHARMA SALA

COUNTIA BANDHA

MAHANTI BANDHA

CHILDREN PARK

BASIC TRAINING SCHOOL

MUNICIPALITY OFFICE

MUNICIPAL COURT

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ZILLA - SAMBALPUR

SETTLEMENT No. 311

0 SCALE 1320 Ft.

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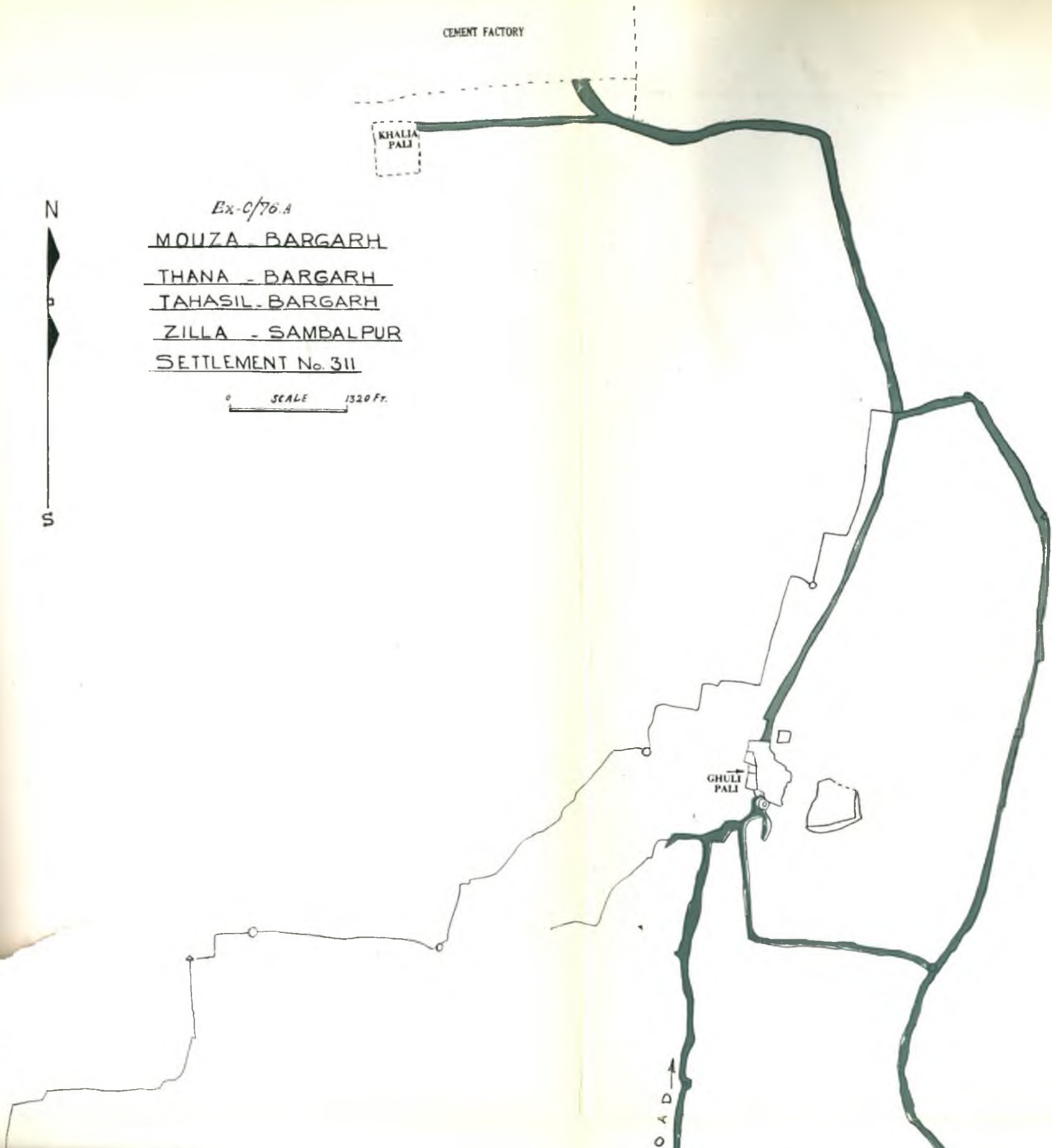
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GHULI
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the house; such mistaken belief on the part of the constables in course of the chase in such a situation is not improbable:

- (j) that in any event, it was the duty of the Inspector to see what the constables were doing inside the house and to see that the constables did not in any way commit any excess;
 - (k) that evidently Inspector Judhithir Babu ordered the Gurkha police to come out of Mr. Satpathy's house; it was in the course of discharge of that duty that the Inspector had to enter the house and bring out the constables which he did;
 - (l) that in the ultimate analysis of the evidence, it is quite clear that the police constables, led by the Inspector, entered the lane in course of the chase and tackled certain brickbattering members of the unlawful assembly; in the course of such tackling, certain arrests were made from some of these houses; the Inspector, who followed the chasing constables, later on himself entered one of these houses to bring back the policemen who had gone inside for making arrests;
 - (m) that in the result, therefore, on the evidence, it is not possible to find that there was any excess on the part of the chasing police party or Inspector Judhithir Babu as alleged;
- (x) *Re: Alleged wrongful entry by police into another private house and causing damage to the garden by plucking guava fruits and breaking some branches:*
- (a) that this charge against the police does not appear to have been seriously pressed in course of the hearing;
 - (b) that there is no satisfactory evidence in support of the charge; what Mr. Baudev Naik stated in his affidavit and in his evidence was mere hearsay,
 - (c) that the charge that another police personnel entered the house and bari of Mr. G. S. Panigrahi, a teacher, plucked guava fruits and broke some branches as alleged was not established;

CHAPTER XVIII

BHUBANESWAR INCIDENT

	Paragraph		Paragraph
Introduction ..	1-10	Why other measures taken by the police for dispersing the mob between 2 and 4 p. m. failed	94-99
A. Charge against the police : defence of the administration	11-15		
B. Background : alleged assault on a student by a bus-conductor : "Mock Assembly" by students in the Legislative Assembly at Bhubaneswar on September 2 and events which followed	16-42	G. Fourth phase : arson, hooliganism and attack on houses of Ministers and others in the evening and during night	102-104
"Mock Assembly" incident on September 2 : its after effect	17-42	Attack on the Chief Minister's (Mr Biren Mitra's) residence	105-108
C. General picture of what happened on October 28 from morning till night	43-51	Attack on Mr Biju Patnaik's residence	109-114
D. First phase : in front of SDO's office	52-60	Attack on the Education Minister Mr. Satyapriya Mohanty's tenanted house near Kalpana crossing	115-122
Use of tearsmoke was sufficient : no lathi charge was necessary	57-60	Attack on Kalinga Automobiles ..	123-130
E. Second phase : at Rajmahal crossing	61-65	Attack on the Finance Secretary Mr. H. K. Ghosh's house	131-137
F. Third phase : at the Capital Police Station between 2 and 4.30 p. m. culminating in the firing of six rounds :	66-99	Arson at furniture factory known as "Shree Enterprisers"	138-139
How was the firing executed on the north west : its effect on the mob	81-83	Attack on police statue	140-143
Was the firing on the north-west in front of the police station justified	84-85	The situation during the rest of the night of October 28	144
In what circumstances there was firing on the eastern side : how was it executed : was the firing justified	86-93	H. Discussion of evidence of the public witnesses :	145-159
		P. W. 21 Banamall Das ..	145-149
		P. W. 20 Sridhar Behera ..	150-152
		P. W. 19 Umesh Chandra Mohanty	153-159
		I. Findings on the facts ..	160

INTRODUCTION

Bhubaneswar became the capital of Orissa in 1950. Cuttack was the capital since 1936 when Orissa became a separate State. The State Secretariat was shifted to Bhubaneswar after it became the capital. Bhubaneswar is at a distance of about 21 miles from Cuttack.

2. In common parlance, Bhubaneswar stands for the locality, where the famous Lingaraj Temple is situated, now called old Bhubaneswar. In what is now known as New Capital are situated the Raj Bhavan, Secretariat and other official headquarters of the State, which have been set up in the vast space of lands beyond the railway line across the bridge. It is since fast developing with wide roads and new buildings coming up.

3. It gives the impression of New Delhi in the early thirties. Some of the public buildings are specimens of fine architecture which is impressive. Thus, greater Bhubaneswar

consists of old Bhubaneswar with its presiding deity in the Lingaraj Temple which commands the view all around from a distance and the area which has been recently growing as the official headquarters of the State—the New Capital. It is a beautiful sight from the bridge on the river Kuakhai.

4. It has an ancient historical background known to be the seat of Kalinga dynasty. It is thus associated with India's glorious past as the seat of an ancient civilisation of which the country is proud.

5. In recent years, as the capital of the State, Bhubaneswar has assumed great importance in the estimation of all—both in India and abroad. It is the centre of all political activities; the leaders from all over the State have their centres in the capital where the State's Legislative Assembly is situate.

6. Bhubaneswar is an important centre of Indian culture. In Orissa, people from all areas—North and South including those from merged States (popularly known as Gadjat areas)—all meet here as the capital of the State. In fact, Bhubaneswar is the meeting place of all shades of opinion. In many senses, it is a cosmopolitan city of which not only Orissa but India is well proud.

7. In international field also, Bhubaneswar is known all over the world. Every year, foreigners come to Bhubaneswar as almost on a pilgrimage—from here foreigners go to visit the famous Konark temple and the temple of Lord Jagannath at Puri. In Bhubaneswar itself, apart from Lingaraj temple, there are many other ancient temples, some of them said to be of the Budhist times; Udayagiri and Khandagiri temples are said to belong to an age several hundreds of years ago from now.

8. There is an air-station at Bhubaneswar connecting it with different parts of India.

9. Bhubaneswar is the central seat of learning for the State. The Utkal University is situate at Vanu Vihar in Bhubaneswar. Around the University campus, throughout the city, educational institutions have come up—Buxi Jagabandhu College, Agricultural College, Night College, Regional School, Post graduate College attached to the University and other educational institutions—schools and colleges having vast lands all around with scope for future development.

10. In the present context, it is to be noted that it was from Bhubaneswar—the State's central seat of learning, its University and all the main educational institutions all around—that the 1964 student movement started which ultimately spread all over the State. It was the Bhubaneswar students who gave the lead.

**A. Charge against the Police : defence
of the administration :**

11. The charge is confined to the incident at Bhubaneswar on October 28, 1964. The case of the public is stated in the affidavit filed by P. W. 19 Mr. Umesh Chandra Mohanty and in his evidence. The material portions of his affidavit, containing the charge, are these:

- “ 1. That on 28-10-1964, the students of B. J. B. College were coming in a peaceful procession on the main road, from their College shouting slogans, condemning police excesses and lathi charges and against the corruption of the Congress ministry.
2. That immediately the armed police pickets who were previously stationed near the Court, in pursuance of the declared policy of the State Government to take revenge against the students community, as was clear from the Government Press Communique issued at the beginning of the students unrest charged the students with lathis, threw brickbats and opened teargas shells causing injuries to large number of students and thereafter the students in utter confusion ran hither and thither.
3. That due to the teargas shells, the lawyers, litigants and the Courts and their officials who were in their normal and regular duties, could not work and the whole work of the Courts and offices were suspended.
4. That at about 12 noon, the students again assembled near the Capital Cabin Chhak and proceeded in a peaceful procession shouting anti-police and anti-Government slogans towards the weekly Hat at New Capital, and on the way in front of the Hat they were lathicharged without any prior warning and immediately after, they were teargassed and fired on, as a result of which two persons were seriously injured on the spot and one of them is still in hospital undergoing treatment.
5. That after the firing, the police being vindictive rushed inside the nearby Hat which was in full swing, assaulted the people there, looted the shops and arrested the people indiscriminately.
6. That the arrested people were also mercilessly beaten, abused in vulgar language and were detained illegally in the Thana lock-up without any food or medical treatment given to them.
7. That in horror, the people left the place and their cycles in the stand, and their articles in the Hat and the entire Hat was completely deserted. The police also entered into the market building eastern tower, broke the doors of many shops and also opened fire there.

8. That on the next day when the people went to the Hat to get back their cycles, and articles they were indiscriminately assaulted, abused in vulgar language and mercilessly beaten. Some of the cycles were not available.
9. That the police atrocities on the peaceful students procession and the general public of Bhubaneswar were most uncivilised and inhuman, and the life and property of the Government servants at that time were most unsafe. Some police even forced into the quarters of Government servants and assaulted the inmates.
10. That the same night curfew was imposed and in the days following the people and the Government servants were also harassed and beaten as a result of which the Government work in the Secretariat and other offices was completely dislocated and general public lives at Bhubaneswar was paralysed."

12. P. W. 21 Banamali Das, a student of U. P. School, also filed an affidavit Ext. 36 stating that he had been hit with a bullet on the knee of his left leg during the firing by the police as stated in his affidavit; he also gave evidence.

13. P. W. 20 Mr. Sridhar Behera also filed an affidavit on alleged police excesses at village Badagada, about two miles from Bhubaneswar. In course of hearing before the Commission, the learned counsel appearing for the public did not press the alleged excesses at village Badagada as outside the scope of the terms of reference.

14. In substance, the charge was that the police made indiscriminate use of force—tear-smoke, lathi charge and firing causing two gunshot injuries, one each to two victims.

15. The case of the administration was that the use of force, as resorted to by the police at different stages, was unavoidable in view of the situation; the attitude of the mob was evident from their hooliganism in the evening and arson at night at different places in the city as hereinafter described. In support of their case, the SDO, Bhubaneswar C. W. 31 Mr. R. K. Sahu, ASP C. W. 30 Mr. Ranjan Roy and the Magistrate C. W. 32 Mr. Sudarsan Das filed affidavits and also gave evidence. The District Magistrate, Puri also filed two affidavits—one about the general background and the other about the particular incident on October 28. That apart, affidavits were also filed by others including officers concerned about various matters in connection with the incident—all as stated in their affidavits hereinafter discussed. The exhibits, on which they relied, are Ext. C/64 series to Ext. C/71 series—all inclusive—in support of their case.

**B. Background : alleged assault on a student
by a bus-conductor : "Mock Assembly"
by students in the Legislative Assembly
at Bhubaneswar on September 2, 1964
and events which followed :**

16. In the sequence of events in connection with the students' disquietude in Orissa in 1964, the attack by the students on the Assembly House at Bhubaneswar on September 2, 1964 is the first in the series of student incidents which took place all over Orissa stated to be by way of chain reaction. In fact, the deplorable incident of "Mock Assembly" by students is stated to be one of the immediate causes of the State-wide movement beginning from the radio shop incident at Cuttack on September 26, 1964 ; it is said that connivance of the authorities with the students' misbehaviour in the Assembly at Bhubaneswar had so emboldened the students that they thought that they were a privileged class not amenable to the normal course of the law of the land.

17. "*Mock Assembly*" incident on September 2 : *its after effect* : The immediate cause of the students' grievance against the police and authority, by reason of which they had attacked the Assembly House in the violent manner they did, is stated in sequence hereunder.

18. There was an assault by a bus-conductor of ORT (Orissa Road Transport) Company on a student of Agricultural College, Bhubaneswar. In the usual course, the police arrested and put the conductor in the lock-up at the Capital Police Station on a charge under Section 341/323 Indian Penal Code on the basis of a complaint by the student. A case was registered, and the student, who was assaulted, was sent to the Capital Hospital for examination.

19. The students were not satisfied with the action that the police had taken under the law. They demanded handing over of the conductor to them for dealing with him in the manner they thought proper. Some of the students are said to have shouted that they wanted blood for blood and nothing less than that would satisfy them.

20. On September 2, 1964 the students from Vani Vihar became agitated over the alleged misbehaviour on the part of the bus-conductor towards one of their fellow students as aforesaid. They came down to the bus stand near the Capital Police Station, having in the meantime contacted students and Student Union leaders of various other colleges

to demand immediate action both by the police and by the ORT Company Management. The students in a large body came to the police station and demanded the arrest of the conductor and the handing over of him to them so that they would deal with him themselves. What they wanted was immediate justice. When this could not be acceded to under the law, the students turned their attention to the bus stand and damaged a number of buses. They also stopped traffic on Rajpath and made one or two of these buses return from Rajmahal crossing to the bus stand.

21. At about 4 P. M. the students suddenly decided that they would go to the Assembly. It was not possible to stop this large body of students at the Assembly gates. The students managed to enter inside and in their fury caused damage and misbehaved with everybody, including the Chief Minister, in the manner they did as hereinafter described.

22. In the meantime, on an intimation over telephone for police help at about 5-45 P. M., the Circle Inspector of Bhubaneswar came to the Assembly with one and half section of armed police reserve, with half section of tearsmoke squad in a vehicle through the Southern Secretariat gate. The Inspector could not come through the main entrance gate as the rioters started brickbattling when they saw the police vehicle coming with force. Intimation was also sent to the Capital Police Station to send armed force to the residence of the Chief Minister as it was apprehended that the rioters might attack his residence.

23. At about 6 P. M. the DIG, Central Range, Cuttack arrived at the Assembly and was followed by two platoons of OMP which came from Cuttack in about an hour's time and entered into the Assembly premises through the southern gate. They faced shower of brickbats from the student rioters while coming through the main gate. At that time, most of the rioters had come out to the open ground from inside the Assembly House building after causing utmost damages.

24. At about 7 P. M. the IG also arrived at the Assembly Hall. After the arrival of the reinforcements from Cuttack, the police got prepared to get the rioters out of the Assembly House building by use of force.

25. It was then at about 7-10 P. M. that the Deputy Speaker of the Assembly sent for the DIG, SP and

the District Magistrate and discussed the situation with them. The Deputy Speaker agreed to the dispersal of the student rioters by whatever force necessary.

26. Thereafter the District Magistrate repeatedly warned the rioters to disperse failing which force would be applied to throw them out of the Assembly building and premises. The students, however, were found to be least moved by these warnings by the District Magistrate. Even when the lathi party and the tearsmoke section had taken their position to start action, the student rioters did not take it seriously and made it appear as if they were least bothered by such warnings.

27. At about this time, some members of the Legislative Assembly were seen moving in batches in front of the Assembly building with student agitators and trying to persuade them to disperse peacefully. There was, however, no response whatsoever from the student rioters.

28. As the force was just about to act, a message is said to have been received from the Chief Minister directing the police officers not to apply any force for the dispersal of the unlawful assembly of the rioters. The police officers were informed that the Chief Minister would come out of the Assembly Hall to address the student rioters with a view to pacify them. Before the police officers could contact the Chief Minister, he came out to the portico entrance to address the student rioters.

29. What evidently emboldened the student rioters was the interference by the Chief Minister with the action of the police and condonation of the students' misbehaviour in the Assembly. The exact position was this : As the Chief Minister was approaching the portico entrance, he was greeted with brickbats from the student mob. The police officers thought it proper to bring the police force closer to be able to take effective action for the protection of the person of the Chief Minister, in case the student rioters committed any other act of violence while he was addressing them. The Chief Minister, however, ordered the police force to fall back which created a feeling of thrill and jubilation amongst the student rioters who clapped and came close to the police force and asked them to fall back as directed by the Chief Minister ; some of them even went to the extent of playing pranks with the uniform of policemen ; the student rioters even passed indecent remarks at the police officers and men present there. The

policemen had to fall back according to the order of the Chief Minister ; this demoralised the police force on duty there.

30. While the Chief Minister was approaching the main portico entrance gate to address the students, one of the leading student rioters snatched away the cigarette tin in the hand of the Chief Minister, distributed the cigarettes amongst the student rioters and danced in joy for his act of supposed great achievement. It is said that most of the students appeared to be satisfied by the assurance given by the Chief Minister that their grievances would be looked into.

31. It was about 8-30 P. M. that night by when all the Ministers, most of the MIAs and majority of the students left the Assembly. Then there was a heavy shower of rain which lasted for about 20 minutes ; some of the student agitators, who stayed on, entered into the Assembly Hall, sat down there, remained in possession of the House. While there, the student rioters staged a "Mock Assembly" with one of the student agitators as the "Speaker" and some of them on "Treasury Benches" and some on the "Opposition". They also caused damage as hereinafter described.

32. After the student rioters left the Assembly Hall, it was found that the retiring rooms of the Ministers and the Assembly Hall - the targets of attack by the rioters--were in utter shambles ; they all presented a picture of ruins--most of the glass panes of the windows, doors and sky lights of the several retiring rooms were destroyed ; glass tumblers and jars were broken to pieces ; mirrors in bath rooms were damaged ; a number of door and window curtains were missing from the retiring rooms ; carpets were stained with ink, speech equipments inside the Assembly Hall were twisted and broken ; cigarette ends were thrown all over the carpets in the lobby ; furniture in the rooms of the Speaker, Deputy Speaker and the Ministers were damaged.

33. The rioters not only indulged in acts of vandalism but also displayed vulgarity of the worst type by writing obscene things on slips of papers left on the tables of MIAs and in the calendars in the rooms of some Ministers. In the MLA's attendance register in the lobby, some rioters wrote "Chief Minister, vacate your seat--B. J. B. College Students". Some of the cars belonging to Ministers and the car of the Deputy

Speaker, which were kept outside, were also damaged ; flag staffs were taken out from them. Some of the drivers of those cars were also assaulted. There was hardly a single flower pot which was left without being damaged by the mob ; the entire front verandah of the Assembly and the front corridor were littered with broken pieces of flower pots. In fact the whole Assembly building, the Hall and the corridors presented a desolate picture of desecration and ruins.

34. From the administration's point of view, if police had been allowed to take action according to law against the student law-breakers as in the case of any other citizen, the student agitation, which subsequently took a violent form all over Orissa, probably could have been avoided ; it is said that action, in the normal course, would have also maintained the morale of the police force ; the student rioters left that night with the impression that they belong to a privileged class which is entitled to preferential treatment even in the eye of law, and therefore they are free to break the law with impunity ; this impression amongst the students persisted all throughout the student agitation in Orissa in September-November 1964 with serious consequences. The lenient attitude, shown by the Chief Minister, emboldened the student community in the acts of lawlessness.

35. In a democracy, fear of the law and sanctity of authority and institution are the safeguards against disorder and chaos. It is unfortunate that our students—the future of the country—had no respect for authority, respect for institution, no fear of consequences of their action ; apparently they did not consider that attack on the Assembly amounted to attack on the democracy itself. There was no idealism behind all that the students did inside the Assembly Hall in that evening of September 2.

36. This unseemly demonstration by students at Bhubaneswar of lawlessness and indiscipline had its immediate reaction at Cuttack and thereafter—by way of chain reaction—at other places all over Orissa. On September 26 and 27, the Cuttack students created disturbance in a radio shop at Station Bazar which spread all over College Square area followed by use of tearsmoke, lathi charge and arrests—all as hereinbefore described.

37. Anticipating student trouble also at Bhubaneswar on the Cuttack issues, orders under Section 144 Criminal Procedure Code were promulgated in Capital Police Station Bhubaneswar, in the morning of September 28, 1964.

38. As a protest against alleged police excesses at Cuttack on September 26 and 27, there was a meeting of 200 students on September 28 at Vani Vihar, Bhubaneswar, which was attended by four students of Cuttack. At that meeting it was decided that they would violate the orders under Section 144 Criminal Procedure Code by coming out on the road by batches of ten. When the students came out of the campus on the National Highway, they were persuaded by some professors of the University to get back inside the campus, as a result of which more than fifty per cent of the students returned to their hostel; the other students persisted and remained on the Highway for violating the orders under Section 144 Criminal Procedure Code. The police arrested them. It was then that the fellow student supporters threw brickbats on the police force. Thereupon, the police threw tear-smoke grenades on the demonstrators after giving them warning to disperse. There was still hurling of brickbats by some students. Then the police resorted to mild lathi charge, as a result of which all students, except ten, ran inside the campus. The ten students, who remained sitting on the ground, were arrested and forwarded to jail. It is said that in this connection the police instituted a case which was ultimately withdrawn as per Government orders.

39. It was when the schools and colleges reopened after the Puja Vacation on October 22, 1964 that trouble again started at Bhubaneswar. The students were having demonstration, procession and generally agitation. Apprehending trouble, orders under Section 144 Criminal Procedure Code were promulgated on October 23 in the area comprising the office of the Accountant-General, the Secretariat and the Assembly.

40. The students, however, continued the agitation, they were holding meetings, going out in procession and having demonstrations at times—all in violation of the order under Section 144—at the Secretariat and Assembly area. It was apprehended that more serious types of demonstrations might take place. It came to be known from the meetings organised by the students that they were planning to march to the Secretariat to the office of the SDO and other Government offices as well as the residences of Ministers to put forth their grievances on a much larger scale than they were doing up till then.

41. It was in this situation that, with effect from October 27, morning, orders under Section 144 Criminal Procedure Code

were promulgated throughout the whole of Capital Police Station area. This order was widely promulgated by means of loud-speaker fitted to vehicles throughout the town.

42. It was about 10 or 11 A. M. on October 27, that information was received at the police station that a large number of students from the Veterinary College and Agricultural College, Bhubaneswar, were coming towards the Secretariat along a bye-lane which was behind the Chief Minister's residence. As orders under Section 144 were in force the SDO and the ASP, along with a force of one platoon, went to intercept this procession. It was near the Bhubaneswar Club Tennis Court that they met the processionists and persuaded them to disperse. The students, however, refused to go away from there and threatened that they would march on to the Secretariat. Thereupon, after necessary warnings a tearsmoke grenade was thrown at the mob. Immediately, the students ran back towards their colleges. In that connection 15/20 boys, who were more determined than others, had to be arrested. Thereafter, nothing of any consequence happened during the rest of the day. It is, however, said that some of the student leaders were organising meetings and were making speeches calling for co-operation of other students, evidently by way of preparation for demonstration and procession for the following day- the date of the incident October 28.

C. General picture of what happened on October 28, 1964 from morning till night:

43. At about 8-30 A. M. the SDO was in the Capital Police Station, and there he received a phone call from his Second Officer who was then at the SDO's office; at about 10-30 A. M. the SDO along with the ASP came to the SDO's office on receipt of the information. In front of the SDO's office a gathering was found. Immediately the SDO asked the mob to disperse, they however did not listen. Suddenly brickbatting was started by the mob towards the police party that was stationed there. The situation was such that the SDO had to order dispersal of the mob by teargas and lathi. This was at about 11 A. M. It was at about 11-30 A.M. when ultimately the police could disperse the mob from the front of the SDO's office.

44 Thereafter at about 12-30 P. M., the SDO, along with the ASP, proceeded towards the Capital Police Station. On their way, they found the mob a little towards west of the Rajmahal crossing on the main road and a police party under

the charge of C. W. 32 Magistrate Mr. S. Das facing the crowd. There were already 200 people on both sides of the road. A mob of 200 to 300 was seen coming from the Rajmahal side shouting slogans and were trying to advance towards the police station. The mob was 30 to 40 yards from the police cordon which had to be put there. The SDO tried to persuade the mob to disperse but they did not listen. The police wanted to disperse the mob first by resorting to tearsmoke and lathi charge. Five tearsmoke shells or grenades were fired; some fell inside the crowd, some fell on the ground; some were carried away by the mob covered with wet sacks. As a result of use of tearsmoke the mob dispersed in different directions; they got into bye-lanes and houses; they got scattered. After the mob was thus dispersed, the Magistrate and the policemen advanced a few yards towards the Capital Police Station. It was then about 2 P. M.

45. Again after 2 P. M., gradually the mob started gathering all around the police station. It was then that small police parties of 6 to 8, armed with lathis, were sent out to pursue the mob to disperse. As these small police parties, sent out by batches, were not given any order to use lathi or any force, they could only chase the mob but the mob were throwing brickbats at the policemen from a distance; thus these police parties could not disperse the mob. The policemen were under heavy shower of brickbats and so retreated; as soon as the policemen retreated, the mob, which had by then swelled up to 4,000 in all, were closing in and advancing. This was the situation from 2 P. M. till 3-30 P. M.

46. It was at this time at about 3-30 P. M. that the SDO felt that the situation could not be tackled without using force, because the police parties which were sent out were retreating under heavy shower of brickbatting by the mob. It was in this situation that the SDO gave orders for use of tearsmoke and lathi charge but they were not effective.

47. At about 4 P. M. the number of the mob was about 4,000 to 5,000 all around. The mob was closing in; police fell back to the gate of and inside the police station. 50 to 60 policemen had already received injuries from brickbatting by the mob. The situation was then grave. The SDO placed the Magistrate Mr. S. Das in charge of the force on the eastern flank, while the SDO himself along with the ASP and a number of policemen remained on the northern side in front of the police station.

48. It was from 4 P.M. that the situation further deteriorated. The SDO then decided that nothing could be done except firing. He called the Magistrate Mr. S. Das who was on the eastern flank and also the ASP, and discussed the situation with them. They all agreed that firing was necessary. Accordingly, the SDO gave necessary instruction to the Magistrate Mr. S. Das who was to watch the situation on the eastern side and use his own discretion in resorting to firing on the eastern side.

49. Ultimately at about 4-30 P. M., as the situation further deteriorated, the SDO ordered firing on the northern side as a result of which one person fell down injured ; after that the mob which was on the north and north-west side receded. At about the same time, under the orders of the Magistrate Mr. S. Das, there was also firing on the eastern side and one person was injured. As a result of the two firings, the mob receded but they went to the west and east of the police station along Rajpath and to different corners of the main market building—east, west and north.

50. Sometime thereafter at about 7 P. M. the street lights got fused. It was at this time between 7 and 7-15 P. M. that information came that the Chief Minister's house had been attacked. It was about 7-30 P. M. that further information came that Mr. Biju Patnaik's house near the aerodrome had been attacked. Then also came the information that the furniture factory of Sree Enterprisors-- of which the Chief Minister's wife was the managing partner—near the railway lines had been set on fire ; that some other houses - one house belonging to the Minister Mr. Satyapriya Mohanty and one house belonging to the Finance Secretary Mr. H. K. Ghosh had already been attacked. The flames from the burning furniture factory of Sree Enterprisors could be seen from the Capital Police Station. It was then that the police parties were sent to different places. The SDO remained at the police station throughout the night.

51. With this brief narration of the different incidents of October 28, follows the consideration of the question whether or not the use of force—tear-smoke, lathi charge and firing—which was resorted to, during the different phases from morning till afternoon, was warranted by the situation as arose at different times of the day.

D. First phase : in front of SDO's office :

52. At about 10-30 A. M. on October 28 a mob of about 200 to 300 persons, most of them looking like students, gathered in front of the SDO's office in violation of the order promulgated under Section 144 Criminal Procedure Code on the previous day. It is said that an agitated mob of 200 to 300 was found near the gate of the SDO's office shouting slogans. A section of the mob with garlands and vermilion—said to be symbol of sacrifice—was near the portico. One or two of them announced that they were there to violate the order under Section 144 and to court arrest. The SDO, who by that time had arrived at his office, announced through a mike fitted to the police van that the mob should at once disperse as Section 144 order was in operation throughout the jurisdiction of the Capital Police Station ; that the mob had assembled in violation of the said order ; they were thus committing an offence. This announcement was repeated through the mike but it produced no effect on the mob ; they were all along shouting that they would get inside the SDO's office building and violate the order under Section 144.

53. It is significant that the mob was carrying a black flag ; it appeared that the object of the mob was to overpower the policemen at the gate and to rush inside the SDO's office and to hoist the black flag over the building. In fact, the mob was shouting that it would hoist the black flag on the office building and paralyse the Government.

54. By that time, the policemen at the spot had formed a cordon at the gate. The strength of the police force, at the time in front of the SDO's office, was one platoon of OMP with long lathis, which was taken to the SDO's office by the SDO and the ASP who arrived there on receipt of a message from the Magistrate and some ordinary reserve constables with short lathis who were already there—the total number being 30 or 35 ; 2 or 4 were armed with rifles ; one-fourth of a section, that is two constables carried teargas equipments. The warning produced no effect on the mob ; they wanted to push through the police cordon at the gate. It was then that the SDO announced through the mike that unless the mob dispersed at once, force would be used to disperse them. This announcement was repeated but it had also no effect on the mob.

55. Although warnings over the loudspeaker continued, the mob did not disperse ; the mob which collected outside the gate hurled a few brickbats at the police personnel who were inside the compound of the SDO's office ; about 5 or 7 policemen were hit and one received a bleeding injury. The relevant injury reports are Ext. C/68 (11) to Ext. C/68 (17) both inclusive. The brickbatting by the mob continued for sometime.

56. It was when further warnings had no effect on the mob that the SDO directed the officer-in-charge of the OMP to disperse the mob by use of tearsmoke and lathi-charge. As the ASP was present there, he controlled the use of tearsmoke and directed the particular officer-in-charge of the OMP to use one tearsmoke grenade first. As soon as this grenade was thrown, its smoke and the noise of the explosion caused the mob to run away from the road - away from the gates of the SDO's office ; still a section of the mob continued to remain at the gate ; they were pushed away by the policemen who were there. Thereafter, the mob did not venture to further close in at the gate of the SDO's office but remained a little distance away. It was not until about 12 or 12-30 P. M. that the mob ultimately dispersed and began moving towards Kalpana Cinema crossing on their way towards the Capital Police Station.

57. *Use of tearsmoke was sufficient : no lathi-charge was necessary :* After use of tearsmoke, most of the mob dispersed ; a section of the mob which still remained at the gate was pushed by lathi, but not by way of lathi-charge.

58. A question was raised : What is meant by lathi-charge ? Does it not mean pushing by lathi ? This aspect was clearly explained by the SDO stating that charging the mob with lathi means raising lathi and holding it side-wise ; there may be different ways of movement of lathi. The implication of pushing with lathi is different from that of lathi-charge ; for the purpose of pushing the mob, the holding of the lathi horizontally and driving the mob is not charging the mob with lathi ; although such horizontal pushing with lathis may also cause injuries, it causes different types of injury.

59. In front of the SDO's office, the police asked the section of the mob, who still remained there, to disperse and then the police pushed them ; as soon as they pushed a little distance, the remaining portion of the mob just

melted away ; there was no use of force to push the crowd of about 50 persons , the police used lathis to push the crowd away, but there was no lathi-charge there as such.

60. In the present context, the phrase " using lathis " meant that the police were at the gate forming the cordon with lathis ; with these lathis they pushed away the crowd which was at the gate ; the police were not wielding the lathis to hit. This was how the situation in front of the SDO's office was dealt with by the Magistrate and the policemen. The use of tearsmoke and pushing away of the mob in the manner it was done were justified.

E. Second phase : at Rajmahal crossing :

61. The mob, which was dispersed from near the court area round about midday, proceeded towards Kalpana Cinema crossing and then on Rajpath towards the Capital Police Station. It was there that they were intercepted and obstructed on the way, a few yards to the west, by a police party in charge of a Magistrate. The mob had gone beyond Rajmahal crossing towards the Capital Police Station.

62. It was 1 O'clock : a mob of about 400 to 500 were seen on both sides of Rajpath just west of Rajmahal crossing ; a police party had cordoned Rajpath in between the police station and Rajmahal crossing to face and stop the mob from advancing towards the police station. The DSP, along with a Magistrate Mr. S. Das who had in the meantime arrived there, was present there at the spot. Evidently, the mob was throwing stones and brickbats which were lying on certain portion of Rajpath.

63. In this context, the affidavit of the Magistrate Mr. S Das shows that he found a crowd of about 500 or more unruly students advancing towards the police station from Rajmahal crossing. The crowd was asked to disperse, but instead of dispersing, they began throwing stones at policemen. All persuasions and verbal requests to disperse failed and brickbattling continued. The Magistrate then ordered the Jamadar to disperse the crowd by tearsmoke and lathi-charge ; none was injured as a result of this action. In evidence, the Magistrate explained in details about the situation on Rajpath near Rajmahal crossing. He said that the crowd was 30 to 40 yards from the police cordon ; he tried to persuade the crowd to disperse ; but it had no effect. Ultimately, he ordered use of tearsmoke and lathi-charge

which were carried out by 8 to 10 policemen ; 5 tearsmoke shells were fired ; some of them fell inside the mob and some of them fell on the ground. As a result of the use of tearsmoke, the mob dispersed.

64. The SDO and the ASP, who were returning from the SDO's office, also saw the Magistrate Mr. S. Das along with other officers and the police party on the western side of Rajmahal crossing facing the mob. As the SDO and the ASP could not advance further on Rajpath, they made a detour towards south and came to the Capital Police Station by a different route.

65. In view of the situation that the mob was continuously brickbatting, there was no other alternative than to resort to use of tearsmoke to disperse the mob in the manner it was done. After the mob was dispersed by the use of tearsmoke, the Magistrate and the police party went to the Capital Police Station.

**F. Third phase : at the Capital Police Station
between 2 and 4-30 p.m. culminating in the
firing of six rounds :**

66. After the mob dispersed from Rajmahal crossing, they gathered near the police station from 2 P. M. to about 4-15 P. M. By that time, groups of the mob of 1,500 or 2,000 persons had collected at various points around the police station both on Rajpath itself as well as at the bus stand, the market areas to the west and to the east. These groups of people were shouting at the policemen and at the small police parties who had gone out to face these sections of the mob that was throwing stones at the policemen. The police parties had been sent out in order to persuade these people not to congregate in such large groups in view of the prohibitory order in force.

67. The SDO along with the senior police officers including the DIG Mr. Chhotray, the ASP, and some other police officers along with the OMP were present at the police station. It was being repeatedly announced that the mob which had gathered there had violated order under Section 144, which was then in operation in the Capital Police Station; that they were brickbatting and thereby committing offence ; that they should disperse at once. It is said that the Assistant District Public Relations Officer, who was present there, also announced these warnings over the mike as per the directions of the SDO. In spite of these

warnings, brickbatting continued and by 3-30 p. m. it became intense. The SDO then ordered the Officer-in-charge of the police parties to disperse the mob by tearsmoke and lathi-charge.

68. At about this point of time, the strength of the force at the Capital Police Station was 13 ordinary unarmed constables; 30/40 police constables had been withdrawn from the outposts at Bhubaneswar, apart from them there was one section (1 Havildar and 8 constables) of APR with tearsmoke and arms; there were 3 platoons of OMP, each platoon consisting of 24 constables mostly carrying lathis; normally every OMP man is to carry a weapon, but because of the situation then prevailing, only about half of the section or even less—probably 2 men—were carrying rifles and the majority of them were carrying only lathis. The evidence of the ASP is that there were 2 or 4 armed men for each platoon (C. W. 30 Ranjan Roy Qq. 30, 318, 319 and 320).

69. It was with this strength of the police force at the Capital Police Station that small parties of policemen were deployed outside the police station to disperse the brickbatting mob. There were intermittent use of tearsmoke shells and chasing with lathis. The brickbatting sections of the mob were always keeping a safe distance from the policemen with lathis and whenever the policemen used to hit the mob, they (mob) used to run away and again reassemble at a striking distance from the police parties and continued throwing brickbats.

70. The use of tearsmoke did not produce appreciable results due to the fact that there was vast open space all around and the mob did not concentrate at any particular place but scattered all over. That apart, as soon as tearsmoke grenades fell, wet sacks were put over them and the mob fled away from that place.

71. Similarly, the lathi-charge also had not the desired effect because the brickbatting mob used to keep at a safe distance from the police lathi party; when the police charged the mob, the police were subjected to heavy shower of brickbats thrown by the mob from different directions. It was because of this disadvantage in which the police lathi party was placed that towards the latter part of the operation, the party had to retreat very often. This was the situation till about 4-15 p. m.

72. From about 4 P.M. the situation had become very tense ; the crowd had swelled up and become very aggressive ; it was steadily advancing towards the Capital Police Station. By that time, 50/60 policemen had sustained injuries—several of them had bleeding injuries. At about 4-15 P. M., the police parties who were deployed outside the police station premises were forced to withdraw close to the police station as the mob had advanced towards it under cover of brickbats. It was a highly agitated and angry mob bent upon forcing inside the police station and overpowering the police.

73. The situation for about half an hour, prior to the actual firing, was this : The mob at the time was about 4,000 to 5,000 all around ; it was a weekly market day and the people who had come to the market, adjacent to the police station, had also joined the mob. The SDO found it difficult to manage the situation because from all sides the mob was closing in. He asked the Magistrate Mr. S. Das to remain in charge of the police party on the eastern side and he himself remained in the front on the northern side. The crowd had come very close and the policemen had fallen back ; some were inside the barbed wire fencing of the police station compound and some were standing just in front of the police station ; by then, a number of policemen had already received brickbat injuries. The SDO himself was also injured on the left shoulder, and at the back which was bleeding.

74. Apart from the weekly market side, the mob spread out in front of the police station at a distance of 50 or 60 yards. When policemen fell back, the mob naturally felt emboldened and steadily advanced towards the police station from all sides. Although there was barbed wire fencing in between the police station and the Daily Market, the mob could have cut the wires ; even the brickbats thrown by the mob were enough to endanger the lives of the people inside the police station. The situation had become very serious.

75. It was realised that if the mob was not dispersed at that stage, it would come and enter into the police station and raze it to the ground. The strength of the police force then at the Capital Police Station was not sufficient to keep away the mob ; tearsmoke and lathi had become ineffective ; brickbattling was so heavy that if the crowd had come further nearer, they could have fatally injured the persons inside the police station ; they could have crossed the barbed

wire fencing by cutting the wire ; heavy brickbatting was still going on , some brickbats, stacked by the side of the road for repairs, were utilised by the mob against the police.

76 In this grave situation, the SDO decided that nothing could be done except firing. He called the Magistrate Mr. S. Das who was on the eastern side and the ASP was also there. The SDO told them that the situation was such that firing would have to be resorted to. They agreed with the SDO. It was discussed whether it would be possible for the mob to come inside because there was barbed wire fencing around the police station. The SDO rightly took the view that if they allowed the mob to come near the barbed wire fencing, the mob would just by simple brickbats kill the people inside ; if the police people would retire inside the police station building, there would be no check whatsoever , the mob then could come through the gate and overpower all inside the police station. So, it was decided that the mob was not to be allowed to come in further nearer the police station.

77. Accordingly, the SDO gave instructions to the Magistrate Mr. S. Das to remain in charge of the eastern flank. It was arranged that the SDO would give warnings through the mike; if the warnings failed, he would give firing order on the north and north-west. As regards the eastern side, the Magistrate Mr. S Das was directed to keep watch; if he saw that firing was effective and the mob receded, then perhaps he was not to do anything, but if he found that situation was not improving, then he (Magistrate Mr. S. Das) was directed to use his own discretion and see that the mob was dispersed. As regards the southern side, there were police quarters on that side; and evidently there was no mob on that side of the police station. The majority of the mob was on the northern side and on the eastern side also--where there was a field--all surrounding the police station.

78. Thereafter, the SDO announced over the mike once again addressing and warning the mob that they had gathered all around the police station and asked them to disperse wherever they might be; that unless they dispersed, he would have to resort to firing. The SDO repeated this warning from a position near the gate on the north inside the police station compound for about five minutes. The mob, however, did not listen. In spite of the warning, the mob did not disperse; they continued heavy brickbatting and were steadily advancing.

79. It was then at about 4-30 P. M. that the SDO gave written order to the Commander in charge of the police force for firing and asked the ASP to control the firing. At the point of time when the SDO ordered firing, the main portion of the mob was 15 yards away and some of them had advanced further, all throwing brickbats. It was under the order of the SDO that four rounds were fired; in the last round one person (referring to Dibakar Rath) fell down at a distance of 15 to 20 yards. The injured person Dibakar Rath was brought inside the police station and was given first-aid and he was sent to the hospital in an ambulance a little later. By then 60 or 70 policemen had been injured. A medical officer was also requisitioned to come to the police station to attend to these injured persons. The mob immediately retreated after this firing. Policemen went out in sections to prevent the mob from coming nearer. The mob was pushed to the end of the open market area; on the west it went beyond the bus stand; on the east the mob retreated towards Rajmahal crossing. All the policemen who were fit for duty were sent out to see that the mob did not again reassemble in front of the police station and attack it again. A little later some reinforcements came from Cuttack and they were deployed. The policemen, who were earlier on duty the whole day, were withdrawn.

80. At about the same time of the firing on the north-west two rounds were also fired by the police party on the eastern side of the police station under the order of the Magistrate Mr. S. Das in the situation hereinafter described. The evidence of the SDO is that he made a quick survey of the situation after firing on the north-west and found that on the eastern flank, the mob that was there was still advancing. Apparently, the firing on the northern side had no effect on the eastern side. It was then that two rounds were fired on the eastern side and one person (referring to P. W. 21 Banamali Das) was injured. A little later, the crowd on the eastern side also dispersed.

81. *How was the firing executed on the north-west: its effect on the mob :* Before the SDO ordered firing, the SDO repeatedly announced to the mob for about 6 to 8 minutes that unless they dispersed, firing would be opened on them. By then, the crowd had come very close to the police station gate; they were converging towards the gate. The SDO's warnings had no effect on the mob; they were jeering, shouting and throwing stones.

82. Then the police firing party, consisting of 4 military policemen, was lined up outside the gate on the road; even this move that the police were ready to fire had no effect on the mob. The mob began concentrating and were continuously brickbattling. It was about 4-30 P. M. when the SDO gave a final warning—two minutes' warning—to the mob that unless they dispersed, they would be fired upon. Then the SDO had passed an order in writing [Ext. C/66 (6)] to the Commander to employ force including firing to disperse and; control the mob at the front of the Capital Police Station.

83. After the SDO ordered firing, the ASP controlled the firing. In front of the gate there were four policemen; at the direction of the ASP they were all asked by the Subedar to load; they were ordered that they would fire only when indicated. Accordingly, firing was opened by the man who was on the extreme left; the ASP first showed the direction towards the west where the policeman was asked to direct his firing; this round proved ineffective. The second round was opened again in the same direction; this also had no effect. By the second and third rounds, the crowd had gone about 50 yards both in the east and north-west as well as in the front. It was only by the fourth round that a man (referring to Dibakar Rath) was hit and he fell down injured at a distance of about 30 to 40 yards from the position of the policeman who fired the fourth round. It is said that the victim was throwing brickbats. It is clear from the evidence that in between the rounds, the mob was repeatedly warned to disperse, but this had absolutely no effect. The reaction of the mob during the first three rounds was that they continued advancing and throwing brickbats. Evidently, the first three rounds having caused no injury, the mob thought that these were blank firings; it was only when the fourth round was fired and a man fell down that immediately the mob dispersed.

84 *Was the firing on the north-west in front of the police station justified:* In view of the menacing mood and movement of the mob as hereinbefore described, there was real danger to the police station. It was reasonably apprehended that the mob would enter inside the police station; once brickbattling had started, it was apparent that they were out to hurt and injure the policemen; as the mob began to close in, it was obvious that they wanted to enter inside; and in fact, the mob had come within 20 yards of the barbed wire fencing, retreating again and closing in again. Although there was barbed wire

fencing, it was no protection against brickbats. The mob had advanced up to about 15 to 20 yards from the barbed wire fencing.

85. In these circumstances, it cannot be found that the firing was not justified; in fact, if there had been no firing at that time, the entire city of Bhubaneswar would have been left to lawlessness; the mob would have succeeded in locking up the police inside the police station; the entire city in darkness would have been completely in the hands of anti-social elements.

86. *In what circumstances there was firing on the eastern side : how was it executed : was the firing justified :* At about 4 p. m. in the afternoon, the SDO who was there in the police station ordered the Magistrate to guard the eastern flank of the police station since there was already a crowd of about 1,000 or 1,500 trying to get into the police station. The Magistrate had one Havildar and four constables under his command when he was asked to take charge of the eastern flank. The SDO further told the Magistrate that he (SDO) could not see the eastern side and requested him to be in charge of the police party on the eastern side. It was thus that the Magistrate Mr. S. Das was left in charge of the situation on the eastern flank.

87. Thereafter, there was heavy pelting of stones and brickbattling from the eastern side on the police force which was posted on that side as well as on those who were in the police station. The Magistrate saw from a distance of 50 yards or so that the mob was trying to get into the police station from the eastern side. When he saw that the mob was advancing slowly step by step, he asked the Havildar Major to use teargas. After that, the Magistrate gave warning to the mob that unless they dispersed from that place, he would be forced to use force to disperse them. Then at about 4-25 p. m., one teargas shell was fired at the mob to disperse them and the mob was pushed back 10 to 15 yards. Then after a lapse of about a minute or two, again the mob threw stones towards the police party inside the police station and the mob was also advancing further. After waiting for a minute or two, another teargas shell was thrown to force back the mob; it had some effect. After about 15 minutes, the mob on the eastern side began swelling up and began advancing towards the police station.

88. Prior to the above, at about 4-15 or 4-20 P. M., the SDO, who was on the northern side, sent for the Magistrate from the eastern side and told him that he (SDO) had decided that to stand against the furious mob there was no other way out for them but to open fire. The instruction to the Magistrate was to watch the situation on the eastern side; if he saw that the firing on the northern side was effective and the mob receded then perhaps there might not be any necessity for firing on the eastern side. It was, however, made clear to the Magistrate that if he found the situation on the eastern side was not improving, then he was to use his own discretion and see that the mob was dispersed (C. W. 31 R. K. Sahu Q 38). The Magistrate was to be very careful, cautious and the decision about the opening of fire on his side, that is, on the eastern side was to be taken by him in case there was absolute need for the same. The Magistrate was told that no firing should be opened on the eastern side until firing had been opened on the front side (north and north-west) of the police station; it was, however, made clear to the Magistrate that he was to use his own discretion according to the circumstances (C. W. 32 S Das Qq. 27, 28).

89. In this context, the answer of the Magistrate to Q. 174 apparently gave an impression as if the Magistrate had no discretion, but it was for the SDO to decide about the firing on the eastern side; as if the Magistrate was to act mechanically. The answer of the Magistrate to Q. 174 was this :

“ Q. 174 So it was for the SDO to decide about the firing and you were to follow shooting. That was the position.

(Question explained and repeated)

A. Yes.”

The context in which this answer was given by the Magistrate is clear from his answers to the other questions put to him. That apart, the evidence of the SDO about his instructions to the Magistrate further clarifies the position. It was from a keen anxiety on the part of the SDO to avoid unnecessary firing that he gave these instructions to the Magistrate Mr. S. Das :

“ You be there and I will now give warnings through mike . . . If the warnings fail, I will give firing orders on north and north-west. You please watch and if you see that the firing is effective and the mob recedes then perhaps you need not do anything but if you find that the situation is not improving then use your own discretion and see that the mob is dispersed.”
(C. W. 31 R. K. Sahu Q. 38 last portion)

90. It is clear that the discretion was left with the Magistrate about firing on the eastern side. There was no ambiguity in the instructions given by the SDO ; the Magistrate also understood the SDO correctly. The instructions given by the SDO, as stated in his answer to Q. 38 quoted above, show the anxiety of the SDO to avoid unnecessary firing as far as possible. The approach of the SDO was that firing on the north might infuriate the mob on the eastern side, so that there might not be time enough for the SDO to take command of the eastern side. That apart, even if there was time, the SDO could not have left northern side because the mob might advance from the north as well. So he asked the Magistrate to take charge of the eastern flank and use his discretion.

91. Then the question arises : In what situation on the eastern side was the firing order passed by the Magistrate ? It is evident that firing on the northern side did not have the effect of scaring away the mob on the east ; firing on the north made the mob on the eastern side more furious and aggressive and they advanced with brickbats. This aspect was made amply clear by the Magistrate Mr. S. Das in his evidence. He said that it was an angry and furious mob ; they could have cut through the barbed wire fence ; with force they could have snapped the barbed wires and could have broken through them ; if huge force was applied, the wires would immediately give way. The situation was that, in spite of the firing on the northern side, the mob on the eastern side had not dispersed ; they became more furious after the firing on the north, advanced and were attacking the police station with brickbats. It was in this situation that the Magistrate ordered for opening fire on the mob on the eastern side to disperse the mob (C. W. 32 S. Das Qq. 37, 38).

92. Accordingly, two rounds were fired by two constables, one after the other. The first round was not effective ; it did not produce any effect on the mob ; nobody was injured ; the mob was still advancing towards the police station. It was then the second round was fired ; one person was injured at a distance of 50 yards. The mob then began dispersing ; the injured person was also carried away by the mob ; the policemen could not reach the mob as there was barbed wire fencing ; by the time they went round ; the public and the students had already carried away the injured person.

93. It is thus clear from the above discussion of the evidence that the firing order as given by the Magistrate was unavoidable, in view of the grave situation, as then developed on the eastern side.

94. *Why other measures taken by the police for dispersing the mob between 2 and 4 p. m. failed :* At 2 p. m., the police parties had not any order to use lathi or any other force. They were just going near the mob to chase them away, but they were always meeting showers of brickbats by the mob.

95. The reason why tearsmoke was not effective was this : There are two types of tearsmoke : grenades which are thrown by hand, one can throw them up to 30 to 35 yards; there are long range teargas shells and short range teargas shells: the maximum range of a long range teargas shell is about 180 yards and that of a short range teargas shell is about 100 yards or so. From about 3-30 p. m. it became necessary to use teargas, but unfortunately, the teargas shells were ineffective because the area was too wide and too open for teargas to have any effect. About 20 to 30 tearsmoke grenades were thrown by hand inside the mob; they mostly reached the mob, but sometimes did not reach. In view of the huge mob scattered all over the area at long distances, tearsmoke had to be used at different places because the wide area was an open space and the mob did not concentrate at any particular place.

96. Similarly, the reason why lathi-charge also was not effective was this : The area was too wide; heavy brickbattling was continued by the mob which always kept themselves 20 to 30 yards away from the police lathi parties. When the policemen advanced, the mob naturally receded further. After the mob dispersed for the time being and when the policemen fell back, the mob again reassembled and started throwing brickbats. In such a situation, this sort of chasing by the police was ineffective. Evidently, such ineffective lathi-charge by the police emboldened the mob even more, by about 4 p.m. stones were heavily thrown by the mob on the police station itself— even on the building and the verandah. By that time, the police lathi parties who were outside were all falling back towards the police station for safety. They were faced with the difficulty in that stones were being thrown on them while posted outside at different spots; they were injured and harassed by the pelting of stones by the mob; the police lathi parties were helpless; they could not

tackle the mob in spite of the order for lathi-charge and use of tearsmoke. The lathi parties were gradually falling back to the police station compound itself.

97. A question was raised : Why was it not possible for the police to cordon up the whole place ? In view of the open ground all around the police station where the mob spread out, cordoning up was not possible. What exactly happened was that the mob purposely always maintained a safe distance of about 20 to 30 yards between themselves (mob) and the policemen: as such, whenever the mob were throwing stones at the policemen and the policemen advanced further, the mob fell back even more; when the policemen came back to their position, the mob again advanced and began throwing stones. The whole area was wide open on all sides. It was not possible to cordon up the whole place. Necessarily, the policemen had to advance and face the mob where the concentration was more.

98. There was also a mobile loudspeaker with the police force over which the SDO and others were repeatedly announcing to the mob that they were violating the order under section 144 and asked them to disperse. This also had no effect; the mob was still increasing.

99. Thus, all measures—tearsmoke, lathi charge and the possibility of cordoning up the place—all failed; there was no alternative but to resort to firing in the circumstances hereinbefore stated.

**G. Fourth phase : arson, hooliganism and
attack on houses of Ministers and others
in the evening and during night :**

100. Some time thereafter the same evening after it had become dark, information was received that there was some trouble in front of the residence of the Chief Minister where a large number of persons had congregated; the SDO and the ASP proceeded to the spot and found about 100 persons had gathered around Mr. Biju Patnaik who happened to be present there at the Chief Minister's (Mr. Biren Mitra's) residence at that time; and heated discussion was going on. The DIG Mr. Chhotray also arrived at the place. After the SDO and the ASP arrived with armed police, the mob dispersed.

101. The same evening, information was also received at the police station that the furniture factory of Shree Enterprises in which the wife of Chief Minister Mr. Biren Mitra

is said to have some interest as hereinafter stated—had been set on fire and had been completely gutted. It was reported that the building of Mr. Satyapriya Mohanty, Education Minister had been attacked and set on fire. There were also reports of attacks on other houses, namely, Kalinga Automobiles, residence of the Finance Secretary Mr. H. K. Ghosh and the residence of Mr. Biju Patnaik. It was also reported that the police statue just beyond Kalpana crossing was badly damaged by the mob. At the direction of the DIG Mr. Chhotray, police patrol parties were sent out to different places to prevent such acts of arson and looting all over Bhubaneswar.

102. In support of the administration's allegations of arson and hooliganism committed by the mob at different places as aforesaid, the SDO and the ASP filed affidavits. From the side of the public and students there was no denial of the case of the administration about such acts of violence committed by the mob. On the other hand, the case of the public and the students, as suggested to the ASP in cross-examination, was that there was general opinion and discontent amongst the people against the Ministry at the time for the alleged acts of corruption practised by individual ministers; several ministers were said to have been misusing powers; their houses and properties were also the target of public criticism because they were considered to be visible exhibits of corrupt activities of the ministers and certain public officers (C. W. 30 Ranjan Ray Q. 403). At the same time it was also suggested, on behalf of the public to the SDO, that it was with the help of some policemen and some supporters of police, arson and damages were cooked up for the purpose of giving a justification of firing (C. W. 31 R. K. Sahu Q. 664). The acts of hooliganism and damage done by the mob were, however, not denied.

103. On the night of October 28, 1964 Bhubaneswar was seen on fire from miles' distance from the city; its atmosphere all around was grim, uncanny, there was complete collapse of the administration; there was reign of anarchy for the time being. A lonely observer, from the bridge on the river Kuakhai, of that horrible sight of Orissa's Capital in flames in the darkness of that night would be reminded of St. Petersburg in flames during the 1917 Revolution in Russia.

104. What exactly happened at the different places in the city which were attacked, damaged or burnt by the mob are all discussed hereunder.

105. *Attack on the Chief Minister's (Mr. Biren Mitra's) residence:* At that time, Mr. Biren Mitra was the Chief Minister of the State. At the time of attack on his residence by the mob in the evening, he was not present. Mr. Biju Patnaik happened to have come there just then.

106. At about 7 P. M., electric lines were fused all over Bhubaneswar. Between 7 and 7-15 P. M., a message was received that the Chief Minister's house had been attacked. The SDO and the ASP with some force proceeded to the Chief Minister's residence. When they reached there, Mr. Biju Patnaik was found standing. He was surrounded by the mob and his car parked just inside the gate of the Chief Minister's residence; the glass panes of the car were broken; splinters were there; Mr. Biju Patnaik was talking to the mob which was rather agitated; the DIG Mr. Chhotray also reached the spot; after that, within a minute or two, the mob dispersed.

107. In this context, the ASP in his evidence gave a clear picture of what had happened. It was this: It was 6 or 6-30 P. M. when it was found that the street lights were not burning and the whole place was completely dark; it was learnt that probably the members of the mob had either disconnected or cut off the electric lines which connected the street lights; by then it was about 7 or 7-15 P. M.; soon after, information was received by the ASP at the police station that a large mob had gathered in front of the Chief Minister's residence and were shouting and brickbattling into his house. When the SDO and the ASP reached the Chief Minister's residence, Mr. Biju Patnaik was already there; brickbattling by then had stopped, but it was found that the lights on the gates were broken; there was a large number of stones inside the compound; the garden was destroyed; a lot of boulders were lying on the road; and on their arrival, the mob dispersed.

108. It appears from the F.I.R. at the Capital police station [Ext. C/71(12)] that at 7 P. M. it was reported that the mob in a batch surrounded the Chief Minister's residence and threw stones; some constables were posted around the residence. The mob was warned that if they entered into the compound breaking the gate or jumping over the hedge, the police would charge with lathis at whistle to save the Chief Minister's residence. In spite of the warning by the Police, the mob threw stones in large numbers and tried to enter into the compound; it was just then Mr. Biju Patnaik reached the

gate; the mob threw stones to his car and damaged it. He was explaining to the mob; at this time the DIG and the ASP reached there with force; then the mob dispersed.

109 *Attack on Mr. Biju Patnaik's residence:* Soon thereafter at about 8-15 or 8-30 p. m., information was received at the police station that a mob had attacked Mr. Biju Patnaik's residence near the aerodrome. A police party was sent out there in a vehicle. By the time the police party reached, destruction was already complete. The police saw the section of the mob fleeing towards Bhubaneswar old town.

110. Mr. M. Darvesh, Private Secretary to Mr. Biju Patnaik filed an affidavit stating in details about the attack. It is said that the building "Naveen Nivas" near the aerodrome, which was attacked, belong to Mrs. Gyana Patnaik, wife of Mr. Biju Patnaik where she and her children stay at times when they come to Bhubaneswar, whereas Mr. Biju Patnaik stays at Unit No. IV in the MLA's quarters allotted to him. In order to look after the maintenance of the building, a staff of servants were being maintained there who had been provided with attached quarters. In the evening of October 28, 1964 there were the bearer, the gardener, the choukidar and others when a section of the mob attacked "Naveen Nivas". It is said that Mr. Darvesh at about 8 p. m. in the night received a phone message from "Naveen Nivas" that a mob had attacked the building and started breaking doors and windows. He said that, while still on the phone, he caught some breaking noise of glass panels and the phone connection suddenly went off. He reported this matter to the Capital police station on phone and proceeded to "Naveen Nivas" immediately in a jeep. By the time he reached "Naveen Nivas", the hooligans had left the place and the building was in complete darkness. With the help of his torch light, he went round the building and inspected all its rooms including bed rooms, drawing rooms, kitchen and other places.

111. Mr. Darvesh further stated that he noticed that the hooligans had caused devastation to the building by breaking doors, windows, furniture and many other things. The bearer, gardener and choukidar who were present when the mob attacked, reported to Mr. Darvesh about the behaviour of the mob who not only damaged the building, furniture and other things by breaking but also by setting fire to some of them; the mob had also carried away certain articles. The choukidar reported that some members of the mob tied his hands at his back with the help of his towel and took away his Kurki (Gurkha knife).

112. The same night Mr. Darvesh lodged F. I. R. [Ext. C/71(7)] at the police station that in the evening at about 8 P.M. about 200 persons in four trucks, one car, one jeep and others on cycles forcibly entered into "Naveen Nivas" by breaking the main gate; they came armed with lathis, crow-bars, knives, petrol and other weapons; they committed burglary; they tied down the Durwan Sukdev Rana (Nepali) and took away his Kurki; they broke open the office room, drawing room and kitchen on the ground floor and damaged the glass panes, furnitures, etc.; they set fire to the windows of the office room; took away many valuable articles, stones and food stuffs by breaking the almirah.

113. As regards extent of the loss and damages to "Naveen Nivas", an Overseer Md. Jaffar Ali along with an Assistant Engineer Mr. T. C. Ipe, both of Kalinga Tubes Limited, proceeded to assess the loss and damages to "Naveen Nivas" building used by the Company. Md. Jaffar Ali also filed an affidavit stating that Mr. Biju Patnaik's Private Secretary Mr. Darvesh handed over a list of articles. Md. Jaffar Ali and the Assistant Engineer, who had accompanied him, examined the damages to the building, furniture, electric installations, garden equipments and other miscellaneous articles and prepared a list giving details of those alleged damages. They also examined the list of properties lost during the mob violence; in this connection they examined the bearer, the gardener and the choukidar for assessment of the extent of the alleged loss and damages. They valued the same which was estimated to be Rs. 25,149.00 according to the market rate. The statement giving particulars of the alleged loss and damages was annexed as forming part of the affidavit of Md. Jaffar Ali. There was also a supporting affidavit by Mr. Radhamohan Sahu, CID, Crime Branch, Cuttack who is stated to have visited "Naveen Nivas" among other places and noticed the damages alleged to have been caused by the hooligans.

114. A photographer Mr. Natabar Das of the Public Relations Department, under the orders of the Director, had also taken snaps of burnt and broken things inside "Naveen Nivas".

115. *Attack on the Education Minister Mr. Satyapriya Mohanty's tenanted house near Kalpana crossing*: In support of the alleged attack by the mob on Mr. Satyapriya Mohanty's tenanted house near Kalpana crossing, three tenants had filed affidavits stating in details as to how the mob had attacked and what damage they caused to the house.

116. Mr. Harihar Sahu, one of the tenants, had taken two rooms in the buildings of Mr. Satyapriya Mohanty near Kalpana crossing and had started a hotel since about one and half years. The hotel is named as "Ashutosh Hotel and Restaurant" serving tiffin and meals. Mr. Harihar Sahu filed an affidavit stating what he himself had seen. About the attack on the building of Mr. Satyapriya Mohanty he (Mr. Sahu) said that at about 8 P. M. on October 28, 1964 a mob of about 500/600 surrounded the building of Mr. Satyapriya Mohanty near Kalpana crossing consisting of a grocery shop, a laundry and a cushion repairing shop. A section of the mob is stated to have shouted :

"This is Minister Satyapriya Babu's building ; let us burn it, take away the things at once."

Mr. Harihar Sahu further stated that they all took away the articles in their respective shops when the mob said like this. The mob, however, did not wait long ; they set fire within a short time and began to break some articles by entering into the shop. Due to fear of life, they could not stop the mob. The mob destroyed many things in course of the incident. Mr. Sahu reported about the incident at the Capital Police station. He is said to have suffered the loss estimated to be Rs. 840.00 as mentioned in his affidavit. He said that he had personally seen the incident describing it as an "untold operation of the students and 'goondas' on the innocent people" like them.

117. Another tenant of Mr. Satyapriya Mohanty was Mr. Arjun Singh Sahani, proprietor of a laundry called "Super Deluxe Dyers and Dry Cleaners" at New Capital, Bhubaneswar which was situate in the building of Mr. Satyapriya Mohanty close to Kalpana crossing. Mr. Arjun Singh Sahani also filed an affidavit stating that on October 28, he was absent and his brother was looking after the management of the laundry. Mr. Arjun Singh Sahani received information on October 29, 1964 in Calcutta over phone from his salesman Gurbaohan Singh that his laundry was burnt by mob violence. It is said that there were costly belongings in the laundry, some of which belonged to customers and some to his staff. On his return to Bhubaneswar on October 30 evening, he learnt from his brother and others how his shop and those of others were burnt by the mob. In his affidavit, he gave a list of the articles which are alleged to have been lost or damaged to the extent of Rs. 4.830 as per particulars given in the affidavit. Some of these articles were burnt and some stolen.

118. Mr. Sila Mallikarjun was another tenant of Mr. Satyapriya Mohanty. He had opened a grocery shop taking on rent three rooms in the building of Mr. Satyapriya Mohanty. He filed an affidavit stating as to how he suffered loss and damage because of the attack by the mob on his grocery shop. He said that at about 10 p. m. in the night of October 28 he heard that the mob had burnt the building of Mr. Satyapriya Mohanty as a result of which all the shops therein had been burnt. He could not go to the spot that night as there was curfew order at Bhubaneswar. The next day he went to the spot and found that many articles of his shops had been stacked in front of the shop; all the shops had been burnt. On examination he found many articles belonging to him had been damaged. The extent of his loss is stated to be Rs. 1,686.25 P.

119. Apart from these two affidavits filed by the tenants, Mr. Satyapriya Mohanty's driver and Goomasta Anadi Charan Sahu, who was looking after the personal property of Mr. Satyapriya Mohanty, also filed an affidavit. He used to remain with Mr. Satyapriya Mohanty at Bhubaneswar and he narrated the incident thus: At about 8 p.m. on October 28 he heard that an unlawful mob had set fire to the buildings of Mr. Satyapriya Mohanty. He ran to the spot. He found that there was rush on the road and there was no light. People in batches were going here and there. It was with difficulty that he went up to the railway line over the bridge. He could not advance as it was dark. People told him that if the mob came to know that he (Anadi Charan Sahu) was Mr. Satyapriya Mohanty's man, the mob would put him into fire. He came back after seeing that the house was on fire. The next morning, he went there and saw that the door and window frames had been burnt; the shops therein had also been burnt and some broken; the centering of the roof of the first floor had fallen through.

120. Mr. Rajkishore Mohanty, an Assistant Engineer of Capital Construction Division, in his affidavit said, that on the following morning of October 29 he saw the building of Mr. Satyapriya Mohanty and found it burnt and damaged. On November 1, 1964, at the request of Mr. Satyapriya Mohanty, he prepared an estimate in details about the extent of damages to the said building due to fire. This was estimated at Rs. 4,749.10 P. This amount does not include the alleged loss to the shops in the building.

121. The relevant F. I. Rs filed by the affected tenants of Mr. Satyapriya Mohanty are [Ext. C/71(4)(5)(6) & (8)] about the alleged rioting, dacoity, house-breaking, mischief by setting fire and violating order under Section 144 Criminal Procedure Code--three of which were filed the same night on October 28 between 8 P.M. and 11 30 P.M.; the F. I. R [Ext. C/71(8)] by Mr. Sila Mallikarjuna was filed the following morning at 7-30 A. M. of October 29, 1964.

122. The photographs, showing the nature of damage to the laundry known as "Super Deluxe" and the photograph relating to a scene showing damaged portion of the said laundry in the building of Mr. Satyapriya Mohanty, have been tendered and marked [Exts. C/64(9) and (10)] which are the same as [Exts. C/70(9) and C/70(10)].

123. *Attack on Kalinga Automobiles:* Kalinga Automobiles had taken on rent the house of Mr. Brundaban Naik, Minister, Community Development & Panchayati Raj of office and garage at Kalpana crossing. They are dealers of Hindusthan Motors, Ambassador Cars and Bedford trucks; they also undertake repair works of vehicles including cars and trucks.

124. Mr. T. V. N. Sharma, Service Engineer, working under Kalinga Automobiles at the time was in his office on October 28 evening when the situation at Bhubaneswar was tense—a large number of students and public moved in groups in the city shouting slogans. He gave an account of the attack on Kalinga Automobiles and other neighbouring houses. He came out of his office room and to his surprise saw a big flame of fire to the north of Kalinga Automobiles and learnt that furniture shop of Shri Ved Prakash was set on fire by some hooligans. Soon thereafter, a batch of hooligans was found blocking roads with stones and bricks. Soon after this, he also saw the mob having entered into the premises of the Finance Secretary Mr. H. K. Ghosh and started brickbattering at his doors and windows. The mob forcibly broke open the same and entered inside. The breaking sound of articles is said to have been heard by him from the building of Mr. H. K. Ghosh.

125. Apprehending similar fate to Kalinga Automobiles, their Service Engineer Mr. T. V. N. Sharma and the staff immediately arranged closing of their office against the impending attack. He heard some body shouting to set fire to the building of Mr. Brundaban Naik (referring to Kalinga Automobiles).

126. In his affidavit, Mr. Sharma described the attack on Kalinga Automobiles thus : Mr. Sharma with the Sales Manager Mr. P. K. Nanda and the Accountant Mr. Kailash Chandra Mohanty faced the mob at the gateway of Kalinga Automobiles and requested the mob not to raid their concern. They did not listen ; they started pelting stones ; they charged the doors and windows with lathis which some of them had carried ; they entered the room by breaking open the doors and windows ; threw away the files and furniture here and there ; completely damaged the show-room and scattered spare parts on the floor. Kalinga Automobiles' people could not contact the police for help for want of telephone connection. They also could not see the details of what the individual hooligans were doing because of darkness due to no electricity. The hooligans wanted petrol from them, but they (Mr. T. V. N. Sharma and others) pleaded their inability. The mob then gave them time to remove their vehicles outside to enable them to set fire to the building. They themselves removed the vehicles one by one. All the time, the Kalinga Automobiles' people were imploring to spare their concern.

127. In this process, about an hour or so passed and then some good sense prevailed with some of them. Thereafter they rushed to the building of Mr. Satyapriya Mohanty which they attacked. The mob had also wanted to take a vehicle from Kalinga Automobiles' garage, but were disappointed as none of the vehicles took start. Thereafter, the mob ran in different directions and due to darkness they could not be tracked. The mob, which carried on such depredation from place to place as stated above, was fairly a big one and some of them carried lathis.

128. Mr. Sharma personally examined and estimated the damages which Kalinga Automobiles are said to have sustained due to mob violence. According to his estimate, the alleged total damage at market value came to about Rs. 1,131-00 as per particulars given in Annexure I to his affidavit.

129. In support of this, Sub-Inspector Gouri Shankar Mohanty of CID, Crime Branch, Cuttack said that he visited, among other places, the site of Kalinga Automobiles and that the damages, caused to their properties, were estimated by their Service Engineer Mr. Sharma to be the amount as stated by him.

130. Mr. P. K. Nanda, Sales Manager of Kalinga Automobiles filed F. I. R. at the police station the following morning at 11 A. M. stating that on October 28, 1964 at about 7:30 P.M. a gang of revolutionaries rushed to their premises with a view to set fire and destroy all the movable and immovable properties lying there; they threw bricks and stones as they liked and struck the doors and windows by means of lathis; glasses of windows were broken to pieces and the show-room destroyed; the spare parts stored in the show-room damaged, broken and lost. He also reported that the mob forcibly entered and rushed into their office rooms, destroyed files, office stationeries and type-writer; they were shouting in colloquial Oriya very bitterly thus:

“This building belongs to Brundaban Naik, Minister. So destroy and set fire, set fire.”

The mob made such disturbances there for about one and half an hour and then left for setting fire to other places.

131. *Attack on the Finance Secretary Mr. H. K. Ghosh's house*: Mr. H. K. Ghosh was at the time the Finance Secretary to Orissa Government. His residence was adjacent to the cinema at Kalpana crossing. Mr. Ghosh's two orderly peons Banambar Das and Sk. Saffi Uddin were at the residence of Mr. Ghosh with his two little sons; Mr. Ghosh had gone to Cuttack with his wife and daughter. The orderly peon Banambar Das filed an affidavit stating that in the evening some people in a gang forcibly entered into the residence of Mr. Ghosh, threw pebbles and broke windows and doors. Both the orderly peons out of fear of life entered Kalpana cinema compound taking with them the two sons of Mr. Ghosh; the mob entered into his house and broke things there. It was at 9 P. M. that Mr. Ghosh with his wife returned from Cuttack and saw the destruction. The orderly peons also returned to the house when Mr. Ghosh searched for them. They found that the mob had also broken main parts of the house and some of them had been taken away by the mob. It was all darkness due to no electric light when the disturbance by the mob was going on. The following morning at 10 A. M. Mr. Ghosh filed an F. I. R. at the police station stating in details how the damage was done there by the mob. What was reported by him to the police is narrated hereunder:

132. On October 28, 1964 at about 9-30 P. M. on his way back from Cuttack, Mr. Ghosh saw the fire raging in the furniture workshop in front of the Capital Motor Workshop.

He found the road blocked but somehow he pushed ahead; near Kalpana Cinema his car was stopped by a mob of about 200 people. When he got down from car he was prevented from proceeding ahead to his residence. But when he protested, the mob stated that no one was allowed to go and brandished lathi towards him. One amongst the mob took the lead to control the mob and asked the mob to allow Mr. Ghosh's car to pass. It was with great difficulty that Mr. Ghosh came to his residence where he found that the entire house had been ransacked and that his children were not there; telephone lines and water connection to the building had been cut off as early as 6-30 P.M. when the mob set fire to the furniture workshop. Then he got information from the cinema side that his children had been sheltered there. As there was mob outside, it was with great difficulty that Mr. Ghosh, his wife and daughter could escape over the back wall which is about eight feet high and took shelter in the cinema. During all this time, the mob was setting fire to the house of Mr. Satyapriya Mohanty, Minister. After some-time, the police party arrived when the mob left the place.

133. Mr. Ghosh also reported that a mob consisting of students and public were apparently at a later stage trying to do bodily violence to his wife, children and to himself; he did not know what would have happened if his wife and himself were present then.

134. As regards damages, he stated that his entire ground floor rooms were looted, all furniture and crockery completely damaged. He attached a separate list of damaged and lost properties. Many of the Government files had been damaged and some of them including a lot of his own books had been put in the lily pond in front of his portico.

135. The SDO, who visited Mr. Ghosh's house in the morning of October 29, said that some glass panes were broken; lily pond was completely damaged; some papers were lying scattered; gate lights were broken. The SDO, however, did not enter Mr. Ghosh's house; he went inside the compound.

136. In this context, the affidavit of Mr. Radhamohan Sahu, CID, Crime Branch, Cuttack who visited Mr. Ghosh's house mentioned the amount of loss and damage caused to the property of Mr. Ghosh; they were examined and estimated by an Assistant Engineer to be Rs. 1,581 65 P. as regards the alleged loss and damages to other properties

of Mr. Ghosh, he made over a list of such properties with their approximate value which is stated to be Rs. 1,986.00. Thus the total amount of alleged damage and loss to the building, furniture, crockery, electrical and pipe supply fittings, house decoration, clothes and other things belonging to Mr. Ghosh was worth Rs. 3,567.65 P.

137. In support of this, the Assistant Engineer Mr. K. Parida filed an affidavit stating in details the result of his inspection of the house of Mr. Ghosh and his examination of the damages to movable and immovable properties. The Assistant Engineer had prepared and submitted the valuation statement to the Executive Engineer which was subsequently sent to Mr. Ghosh. A copy of the valuation statement prepared by Mr. Parida was annexed to his affidavit.

138. *Arson at furniture factory known as "Shree Enterprisers"* : It was suggested on behalf of the public that "Shree Enterprisers" were originally owned by "Orissa Agents" a Firm in which the Chief Minister Mr. Biren Mitra's wife was the managing partner. (C. W. 30 Ranjan Roy Q. 396). It was a furniture making industry; the roof of the factory was either of asbestos sheets or corrugated iron sheets; there were wooden walls.

139. At about 7-30 P.M. on October 28, Capital police station was informed that the furniture factory of "Shree Enterprisers" near the station had also been set on fire and that some other houses of the Education Minister Mr. Satyapriya Mohanty and Finance Secretary Mr. H. K. Ghosh had also been attacked. Actually one could see the glow of fire of the furniture factory from Capital police station. Then, on receipt of information, police parties were sent to different places. The scene of destruction of the factory is shown by the photographs—Ext. C/64(7) is a photograph relating to a scene showing burnt motor car in the furniture factory; Ext. C/64(8) is one relating to the scene showing a portion of the burnt factory and Ext. C/64(9) is one relating to a scene showing another portion of the burnt factory.

140. *Attack on police statue* : There is a police statue in the triangular park near the State Museum, Bhubaneswar. It is in charge of Capital police station for its maintenance. Sub-Inspector Rabindranath Panda of Capital police station filed an affidavit stating that at about 9-30 P.M. on October 28, 1964

while he was patrolling the road by the side of the police statue, he noticed the damage done to it in the manner as hereinafter described.

141. On enquiry, he learnt that the damages were caused by an angry mob which attacked it at about 6 P.M. the same evening. Next morning, the Sub-Inspector inspected the statue again and noticed the head gear (Pugree) had been broken, the nose damaged and the hands broken; the whole statue was disfigured. It is said that the metal rifle of the statue was kept in deposit at Bhubaneswar police station.

142. The ASP in his evidence said that, a few days prior to the occurrence, the police people had observed 'Police Commemoration Day' at the police statue. The day after the disturbance he went, saw the statue and found it badly damaged; metal rifle was missing; both its hands had been broken; it appeared as if it was hit with something like a crow-bar. Apart from that there were small pillars around the statue which had been broken; the garden had been uprooted; the boundary wall around the triangular park appeared to have been damaged at places.

143. The significance of the attack even on the police statue and damage caused to it is that there was a feeling of deep apathy in the public towards the police in general.

144. *The situation during the rest of the night of October 28* : At about 9-30 or 10 P.M., the police party, who were sent in different directions, returned to the police station; They reported that they had not been able to intercept any section of the mob who had committed arson and other damages. By this time, the area around the police station was deserted; numerous road blocks were found at different places— from Rajmahal crossing to Kalpana crossing, then again on the Highway from Kalpana crossing towards the railway station and towards the old town. In view of the attacks on the several houses as described above, some small patrolling police parties in vehicles were directed to move round the town to see that further acts of arson and looting did not take place. Precautions were taken regarding the residences of the Ministers because there was a rumour that they might be attacked. Then the Revenue Divisional Commissioner, IG, SP, ADM. Puri came to Bhubaneswar and are said to have seen the situation as it then was. Thereafter, nothing important is said to have happened that night.

H. Discussion of evidence of the public witnesses

145. *P. W. 21 Banamali Das*: He is a young boy aged 15 years. After he was hit by bullet from firing by the police, he could not be taken charge of by the police as he was carried away by the mob. Admittedly, he was injured by police firing. There is no evidence from the side of the administration whether he was hit on the northern or on the eastern flank. The case of the administration is that some body fell down injured on the eastern flank in the circumstances hereinbefore described.

146. The case of Banamali Das is that there were with him four to six persons on the eastern side when he was hit by the bullet. The relevant portion of his evidence in this context is this:

“ Q. 109 How many persons on the east of the police station were brickbatting?

A. They were only 4 or 5 persons standing and I had not seen anybody brickbatting.

Q. 110 The space from the eastern barbed wire fencing of the police station right up to the road on the east is an open space - a Padia?

A. Yes.

Q. 111 Is it your evidence that in the open space to the east of the police station and the road to the east of the police station taken together there were not more than 4 or 5 persons?

A. There were people in the open space beyond the barbed wire fencing to the east of the police station.

Q. 112 There were at least not less than 200 to 300 persons?

A. 20 to 30 persons.

Q. 113 I put it to you that there were more than 400 to 500 persons. Can you deny?

A. There were not so many people when I was there: they might be earlier.

Q. 114 You have not counted the people. It may be more than 100 to 200. Can you deny?

A. No, I cannot say.

Q. 115 If I say that there were more than 300 to 400 persons you cannot deny it?

A. No, I do not know.”

147. The tenor of his evidence clearly shows that he was amidst the mob on the eastern flank. Evidently, his answers to the questions put to him in cross-examination were

evasive; he wanted to avoid—though he failed—the position that he was mixed up with the mob who were brickbatting. It is possible that he himself was not brickbatting, but it is clear from the evidence that he was hit by a bullet when he was in the midst of the unlawful assembly on the eastern side of the police station.

148. That apart, his evidence appears to support the case of the administration that the mob was brickbatting. He admitted that by the time he reached the Capital Cabin Chhak, he must have seen a lot of students and sensed that there was trouble ahead; that when he was returning from Rajmahal crossing right up to the police station, the road sides were filled up with groups, batches and concentrations of people; there were people in front of the weekly and daily market and in the open space in front of the police station beyond the Rajpath; there were very large number of people. He said that when so much trouble was going on, he was afraid; so he turned first to the east of the police station; he heard the policemen and people from inside the police station shouting at the people to go away and not to create trouble; but the people were not listening and still staying on; there were a lot of brickbats on Rajpath covering the total frontage of the police station.

149. It was argued, on behalf of the administration, that in view of the nature of the injury on the left thigh of Banamali Das as appears from injury report Ext. C/68(89), he could not have been hit with a bullet when he was on the eastern side. His evidence is that when he was hit by the bullet, he was facing the back side of the police station. According to the administration, if his evidence is true that he was going the way he stated, he could not have been hit on his left thigh. This reasoning is not convincing. After all, there was a mob; there was also trouble in front of the police station on the northern side; when there was the first firing on the northern side, it was possible that the attention of Banamali Das was diverted towards the northern side and he turned in that direction; it was almost immediately thereafter that there was police firing towards the eastern side as a result of which he was hit with a bullet causing injury on his left thigh as appears from the injury report. This is how the injury on the left thigh can be reasonably explained.

150. *P. W. 20 Sridhar Behera* : He had a cloth shop in the Hat in New Capital. On October 28, he saw what was

happening in front of the police station; he was there up to 4 P.M. ; but thereafter he had not seen because he was in his shop inside the Hat.

151. He did not make any allegation of any police excess in his examination-in-chief. On the other hand, on some points, he supported the case of the administration. He said that people got inside the Hat; that there was golmal at 4 P.M. close to his shop; it was then that he closed his shop and went away. He further said to the effect that as there was gondgol outside, people rushed inside the Hat; then apprehending trouble, he closed his shop and went to his village as he did not want to get involved in all these troubles; because of the golmal, he went by a circuitous route out of the market through the gate on the western side; then he came near about the playground which is near the Girls' School, then he went by the way passing by the side of BJB College and then returned home. He went this circuitous way although the short-cut way to his village Badagada was through Rajpath in front of the police station leading to Kalpana crossing. In answer to the question put to him as to why he did not come by the short-cut way, he said that there was golmal on the way, brickbatting, the police people were chasing the mob and the mob was also running after the police so he did not go by that road (P. W. 20 Shridhar Behera Qq. 28, 29, 30).

152. As regards the strength of the mob in front of the police station which it said to have been chased by the police, P. W. 20 Mr. Sidhar Behera said that there were people all around from the bus stand; he could not even estimate; he had seen students throwing brickbrats. Although in answer to Q. 35 he said that police people were also throwing brickbats, but later on in answer to Q. 62 he said that he had not seen with his own eyes policemen throwing brickbats; he had heard about it.

153 P. W. 19 *Umesh Chandra Mohanty* : He is said to be an employee of a licensee in charge of a cycle stand near the daily Hat. He is said to be an omnibus eye witness to what had happened both at the SDO's Office and also at the Capital Police Station from the beginning until the firing. He also filed an affidavit in which he verified his statements in paragraphs 1, 2 and 3 about the alleged police excess in front of the SDO's Office as true to the best of his information, whereas in evidence he said that he personally had seen them (Qq 3, 4, 5, 67 to 72, 76, 77). It is not that he signed the affidavit without the contents having been explained to him

before he signed it; he said that the contents were explained; he understood what was written in the affidavit and said that the statements in the affidavit were correct. Nor was it that the affidavit was ignorantly drafted; it is said to have been drafted by a lawyer on the materials given by the witness (Q. 36).

154. It was commented on behalf of the administration that he was an interested witness who was exploited for the political purpose of giving such an affidavit. In support of this comment, the attention of the Commission was drawn to paragraph 2 of the affidavit of the witness where he referred to a Government Press Communique in the said paragraph hereinbefore quoted. In evidence, he was asked about the Government Press Communique in connection with the students' agitation. He said that he did not remember the contents nor he had heard from anybody about the Government Press Communique regarding students. Then in answer to a specific question (Q. 205) put to him as to what were the contents of the Government Press Communique to which he referred in his affidavit, he said that he did not remember. Then in answer to a further question put to him whether he also did not know or remember what were the contents of the said communique when he swore the affidavit, he answered in the negative and said that he did not know or remember at the time he swore the affidavit. The suggestion made on behalf of the administration was that this witness under instigation of somebody had sworn a false affidavit. The witness, however, denied the suggestion (Qq. 202 to 207).

155. On the point whether the police entered the weekly market and the cycle stand prior to the firing, the material portion of his evidence in answer to Q. 8 in examination-in-chief is this :

“.....When the police chased them, they ran hither and thither. Some entered into the Hat. I was then near the cycle stand. Many of the cycles were damaged by police lathi strokes. Then police people entered inside the Hat and assaulted some of the vendors and also threw away their articles. Thereafter firing was resorted to.”

According to this witness, before the firing the policemen entered inside the market, assaulted some of the vendors and threw away their articles. In cross-examination, however, he said this :

“Q. 146 Is it your evidence that prior to firing, police have not come towards the cycle stand or the weekly market or dally market ?

A. Police had not come to weekly market and to the cycle stand prior to the firing.

156. Then again, in paragraph 9 of his affidavit he said that some police even forced into the quarters of Government servants and assaulted the inmates. In his evidence, however, he said that the facts stated in paragraph 9 are not true to his knowledge as mentioned in the verification part of his affidavit. He further said that he did not know from whom he heard about the alleged entry of the policemen into the residential quarters of Government servants. In fact, he denied having seen policemen entering into any private house.

157. As regards the alleged ill-treatment and beating of Government servants by policemen as stated in paragraphs 9 and 10 of his affidavit, he verified them to be as true to the best of his knowledge. In his evidence the witness said that he had not seen any Government servant being beaten, nor could he name any Government servant who had been beaten. He also said that he had no knowledge that as a result of alleged beating and harassment to Government servants, work in the Secretariat was completely dislocated as stated in his affidavit (Qq. 215, 216, 218).

158. Then, with regard to his allegation of the cycles having been damaged or lost as stated in paragraphs 7 and 8 of his affidavit which were verified as true to the best of his knowledge and which he reiterated in his evidence in examination-in-chief (Q. 8) quoted above, the witness in cross-examination said that he could not name any single individual who had complained to a Magistrate or any authority about his cycle having been damaged in any way nor did the witness complain about such alleged damage to anybody. If, in fact, cycles were damaged or lost in the manner as stated by the witness, it is improbable that there would not be any complaint to anybody about such loss or damage.

159. The evidence of this witness does not support the public case. On the other hand, on certain points, his evidence supports the case of the administration. He said that at about 12.30 or 1 p. m. the strength of the mob near the Capital Cabin Chhak or Rajmahal crossing was about 300; that this gathering of students remained there for about 15 to 20 minutes; after that, they began to proceed towards the police station. The effect of his evidence is that by about 1-15 p. m. the mob was moving towards the Capital Police Station. All these generally support the case of the administration about the movement of the mob towards Capital Police Station at about the time in the manner they did.

I. Findings on the facts.

160. On the evidence on which reliance may be placed and on the probabilities of the case and in the light of the discussion of the arguments, the Commission finds—

(i) *Re : Background; alleged assault on a student by a bus-conductor: "Mock Assembly" by students:*

- (a) that on September 2, 1964 on the basis of a complaint by a student of Agricultural College, Bhubaneswar, that he had been assaulted by a bus-conductor of ORT (Orissa Road Transport Company) the police in the usual course arrested and put the bus-conductor in the lock-up at the Capital Police Station on a charge under section 341/323 Indian Penal Code ; a case was registered and the student who was assaulted was sent to the Capital Hospital for medical examination ;
- (b) that in spite of all steps taken by the police according to law, the students were not satisfied ; the students demanded handing over of the bus-conductor to them for dealing with him in the manner the students thought proper ; some of the students shouted that they wanted blood for blood and nothing less than that would satisfy them ;
- (c) that the students from Vani Vihar having been agitated over the alleged misbehaviour on the part of the bus-conductor towards one of their fellow students, came down to the bus stand near the Capital Police Station ; in the meantime the students contacted the Student Union leaders of various other colleges to demand immediate action both by the police and by the ORT Company Management ;
- (d) that the students in a large body came to the police station and demanded the arrest of the bus-conductor and the handing over of him to the students so that they would deal with him themselves ; what the students wanted was immediate justice ; when this could not be acceded to under the law, the students damaged a number of buses ; they also stopped traffic on

Rajpath ; they made one or two of these buses return from Rajmahal crossing to the bus stand ;

- (e) that at about 4 P. M. on September 2, the students suddenly decided that they would go to the Assembly ; it was not possible to stop this large body of students at the gates ; they managed to enter inside ; in their fury they caused damage and misbehaved with everybody including the Chief Minister ;
- (f) that evidently, the interference by the Chief Minister with the intended action by the police and condonation by him of the students' misbehaviour in the Assembly emboldened the student rioters that day ;
- (g) that after about 8-30 P. M. that night (September 2) by when all the Ministers, most of the MLAs and majority of the students left the Assembly, some of the student agitators who stayed on entered the Assembly Hall, sat down there and remained in possession of the House ; while there, the student rioters staged a "Mock Assembly" with one of the student agitators as the "Speaker" and some of them on "Treasury Benches" and some on the "Opposition" ; they caused damages all over the Assembly House and premises ; they not only indulged in acts of vandalism but also displayed vulgarity of the worst type showing bad taste by writing obscene things on slips of papers left on the tables of MLAs and in the calendars in the rooms of some Ministers ;
- (h) that in the circumstances, the police should have been allowed to take action in the usual course according to law against the law breakers as in the case of any other citizen ; the lenient attitude shown by the Chief Minister was not appreciated by the students in the right spirit ; it apparently emboldened the student community in the acts of lawlessness ;
- (i) that it is unfortunate that the students did not appreciate that in a democracy fear of the law, sanctity of authority and institution are the safeguards against disorder and chaos nor did

they consider that attack on the Assembly amounted to attack on the democracy itself ; the students had no respect for authority, no respect for institution, no fear of consequences of their action ; there was no idealism behind all that the students did inside the Assembly Hall on September 2 ;

- (j) that in the sequence of events during the students disquietude in Orissa in 1964, the attack by the students on the Assembly House at Bhubaneswar on September 2, was the first in the series of successive incidents which took place all over Orissa by way of chain reaction;
- (k) that the incident in the Assembly had its immediate reaction at Cuttack and thereafter—by way of chain reaction—at other places all over Orissa ;
- (l) that after the incidents at Cuttack, anticipating further trouble at Bhubaneswar on the Cuttack issues, order under Section 144 Criminal Procedure Code was promulgated in Capital Police Station, Bhubaneswar, in the morning of September 28;
- (m) that as a protest against police excesses at Cuttack there was a meeting of 200 students on September 28 at Vani Vihar which was attended by four students of Cuttack; it was decided that they would violate the order under Section 144 Criminal Procedure Code by coming out on the road by batches of ten; when the students came out of the campus on the National Highway, those of them, who persisted and remained on the highway in spite of persuasion by some Professors of the University, were arrested by the police for violating the order under Section 144: then the fellow student supporters threw brickbats on the police force; the police threw teargas grenades on the demonstrators after giving them warning to disperse: there was still hurling of brickbats by some students; then the police resorted to mild lathi-charge as a result of which all students, except ten, ran inside the the campus; the ten students who remained were arrested and sent to jail.

- (n) that the trouble again started at Bhubaneswar when the schools and colleges reopened after the Puja vacation on October 22; the students were having demonstration, procession and generally agitation; apprehending trouble, order under Section 144 Criminal Procedure Code was promulgated on October 23 in the area comprising the office of the Accountant-General, the Secretariat and the Assembly;
- (o) that the students were holding meetings, going out in procession and having demonstrations at times—all in violation of the order under Section 144; it was apprehended that more serious types of demonstrations might take place. The administration came to know from the meetings organised by the students that the students were planning to march to the Secretariat, to the office of the SDO and other Government offices as well as the residences of Ministers to put forth their grievances on a much larger scale than they were doing up to then;
- (p) that it was in this situation that with effect from October 27 morning order under Section 144 Criminal Procedure Code was promulgated throughout the whole of Capital Police Station area; this order was widely promulgated by means of loudspeakers fitted to vehicles throughout the town;
- (q) that on October 27 at about 10 or 11 A.M. the SDO and the ASP along with a force of one platoon intercepted the procession of a large number of students from the Veterinary College and Agricultural College, Bhubaneswar, coming near the Bhubaneswar Club Tennis Court and persuaded them to disperse; the students, however, refused to go away from there and threatened that they would march on to the Secretariat; thereupon after necessary warnings a tearmoke grenade was thrown at the mob; immediately the students ran back towards their colleges; in that connection 15/20 boys, who were more determined than others, were arrested.

(ii) *Re : First phase : in front of SDO's office. October 28 :*

- (a) that at about 10-30 A.M. an agitated mob of about 200-300 was at the gate of the SDO's office shouting slogans; a section of the mob with garlands and vermilion came near the portico; some of them announced that they were out to violate the order under Section 144 and to court arrest;
- (b) that thereupon the SDO announced through the mike that the mob should at once disperse as Section 144 order was in operation; the warning produced no effect on the mob; they were all along shouting that they would get inside the SDO's office building and violate the order under Section 144;
- (c) that the mob was significantly carrying a black flag with the apparent object of overpowering the policemen at the gate, rushing inside the SDO's office and hoisting the black flag over the building; in fact, the members of the mob were shouting that they would hoist the black flag over the office building and paralyse the Government;
- (d) that the strength of the police force in front of the SDO's office was one platoon of OMP with long lathis and some ordinary reserve constables with short lathis, the total number being 30 or 35 including about 4 armed with rifles and 2 constables with teargas equipment; the policemen at the spot formed a cordon at the gate;
- (e) that the SDO's warning produced no effect on the mob; they wanted to push through the police cordon at the gate; it was then that the SDO repeatedly announced through the mike and warned that unless the mob dispersed at once force would be used to disperse them; the repeated warnings had still no effect on the mob; the mob which collected outside the gate hurled brickbats at the police personnel who were inside the SDO's office compound; 5 or 7 policemen were hit and one had a bleeding injury; the brickbatting by the mob continued for sometime;

- (f) that in that situation, the SDO directed the officer-in-charge of the OMP to disperse the mob by use of tearsmoke and lathi-charge; the seniormost police officer at the spot the ASP, controlling the use of tearsmoke, directed the use of one tearsmoke grenade first;
- (g) that after the use of tearsmoke, most of the mob dispersed; a section of the mob which remained at the gate was pushed by the police; as soon as they were pushed a little distance the remaining portion of the mob just melted away; there was no use of force to push out the remaining crowd of about 50 persons; the police used lathis to push the crowd away but there was no lathi-charge in the sense it is used as discussed above: the police did not wield the lathis to hit the crowd, they just used the lathis to push the crowd without hitting them;
- (h) that it was not until 12 or 12-30 P. M. that the mob who remained a little distance away ultimately dispersed and began moving towards Kalpana Cinema crossing on their way towards the Capital Police Station;
- (i) that this was how the situation in front of the SDO's office was dealt with by the magistrate and the policemen; the use of tearsmoke and pushing away of the mob in the manner it was done were justified.

(iii) *Re : Second phase : at Rajmal crossing :*

- (a) that at about one O'Clock a mob of about 400-500 on both sides of Rajpath, just west of Rajmahal crossing, were intercepted and obstructed on the way by a police party in charge of a magistrate, who had cordoned Rajpath in between the Capital Police Station and Rajmahal crossing the policemen faced and stopped the mob from further advancing towards the police station;
- (b) that the mob were throwing stones and brickbats which were lying on certain portion of Rajpath, the mob were asked to disperse but instead of dispersing they began throwing stones at the policemen; all persuasions to disperse failed brickbattng by the mob continued ;

- (c) that it was at that stage that the magistrate ordered the Jamadar in charge of the force to disperse the crowd by tearsmoke and lathi-charge which were carried out by 8 to 10 policemen ; 5 tearsmoke shells were fired ; some of them fell inside the mob and some of them fell on the ground ; as a result of the use of tearsmoke the mob dispersed ;
- (d) that after the mob was dispersed by the use of tearsmoke, the magistrate and the police party went to the Capital Police Station ;
- (e) that in view of the situation that the mob was continuously brickbatting, there was no other alternative than to resort to the use of tearsmoke and lathi-charge to disperse the mob in the manner it was done.
- (iv) *Re : Third phase : at the Capital Police Station between 2 and 4-30 p. m. culminating in the firing of six rounds :*
- (a) that after the mob dispersed from Rajmahal crossing, they gathered near the police station from 2 P. M. to about 4-15 P. M. ; by that time the mob -1,500/2,000 persons- had collected in groups at various points around the police station both on Rajpath itself as well as at the bus stand and the market areas to the west and to the east ; these groups of people were shouting at and throwing stones on the police parties who had gone out ;
- b) that the mob were repeatedly warned by announcement that they had violated order under Section 144 and that they should disperse at once ; the Assistant District Public Relations Officer present there also announced these warnings over the mike according to the directions of the SDO ;
- (c) that at about 3-30 P. M., when in spite of these warnings the mob still continued brickbatting and the situation became tense, the SDO ordered the officer-in-charge of the police parties to disperse the mob by tearsmoke and lathi-charge ;

- (d) that at this point of time the strength of the force at the Capital Police Station was 13 ordinary unarmed constables ; 30/40 constables withdrawn from the Outposts at Bhubaneswar ; apart from them there was one section (1 Havildar and 8 Constables) of APR with tearsmoke and arms ; there were three platoons of OMP, each platoon consisting of 24 constables mostly carrying lathis ; 2 OMP men were carrying rifles and others were carrying only lathis ;
- (e) that it was with this strength of the force at the police station that small police parties were deployed outside the police station to disperse the brickbatting mob ; there were intermittent use of tearsmoke shells and chasing with lathis ; the brickbatting sections of the mob were always keeping a safe distance from the policemen with lathis and whenever the policemen used to hit the mob, they (mob) used to run away and again reassemble at a striking distance from the police parties and continued throwing brickbats ; therefore the lathi-charge had not the desired effect because the brickbatting mob used to keep at a safe distance from the police lathi parties ; it is because of this disadvantage, in which the police lathi parties were, that towards the latter part of the operation the police parties had to retreat very often due to heavy brickbatting by the mob ; this was the situation till about 4-15 P. M. ;
- (f) that the use of tearsmoke also did not produce appreciable results due to the fact that it was a vast open space all around ; the mob did not concentrate at any particular place but scattered all over, that apart, as soon as tearsmoke grenades fell, wet sacks were put over them and the mob fled away from that place ;
- (g) that in view of the open ground all around the police station where the mob spread out, cordoning up of the whole place was also not possible, necessarily the police parties had to advance and face the mob where the concentration was more ;

- (h) that from about 4 p. m. the situation became very tense; the mob swelled up and became very aggressive; they were steadily advancing towards the police station; by that time 50/60 policemen had sustained injuries--several of them had bleeding injuries;
- (i) that at about 4-15 p. m. the police parties who were deployed outside the police station premises were forced to withdraw close to the police station as the mob further advanced under cover of brickbats; it was a highly agitated and angry mob bent upon forcing inside the police station and overpowering the police;
- (j) that the situation for about half an hour prior to the actual firing was that the mob at the time had swelled up to 4,000-5,000 all around; it was a weekly market day and the people, who had come to the market adjacent to the police station, also joined the mob; it was difficult to handle the situation because from all sides of the police station the mob were closing in; the mob came very close and the policemen fell back;
- (k) that although there was barbed wire fencing around the police station, the mob could have cut the wires; even the brickbats thrown by the mob were enough to endanger the lives of the people inside the police station; if the mob were not dispersed at that stage the mob would have come, entered the police station and razed it to the ground; the strength of the police force then at the police station was not sufficient to keep away the mob; tear smoke and lathi charge had become ineffective; brickbatting was so heavy that if the mob came further nearer, they could have fatally injured the policemen inside the police station; they could have crossed the barbed wire fencing by cutting the wire; heavy brickbatting was still going on; some brickbats had been stacked outside by the side of the road for repairs; these brickbats were utilised by the mob against the police;
- (l) that in this grave situation the mob could not be stopped without firing; the SDO, in consultation with the other magistrate and the ASP

who were there on the spot, decided that firing had to be resorted to ; the SDO rightly took the view that, if the mob were allowed to come near the barbed wire fencing they would just by simple brickbats kill the people inside ; if the police people would retire inside the police station building, there would be no check whatsoever ; then the mob could come through the gate and overpower all inside the police station ; the mob could not be allowed to advance further nearer the police station ;

- (m) that accordingly, the SDO remained in front of the police station and the magistrate Mr. S. Das in charge of the eastern side who was to use his own discretion and see that the mob was dispersed ;
- (n) that thereafter the SDO announced over the mike once again addressing and warning the mob that they had gathered all around the police station and asked the mob to disperse wherever they might be ; that unless they dispersed firing would be resorted to ; the warning was repeated from a position near the gate on the north inside the police station compound for about five minutes ; the mob however did not listen ; they did not disperse ; they continued heavy brick-batting and were steadily advancing ; by then 60 or 70 policemen were injured ;
- (o) that it was then at about 4-30 P. M. that the SDO gave order to the Commandant in charge of the police force for firing and asked the ASP to control the firing ; at that point of time the main section of the mob in front of the police station was 15 yards away and some of them had advanced further, all throwing brickbats ; under the order of the SDO four rounds were fired ; the reaction of the mob during the first three rounds was that they still continued advancing and throwing brickbats ; evidently the first three rounds having caused no injury the mob thought that these were blank firings ; it was only when the fourth round was fired that one person (referring to Dibakar Rath) fell down at a distance of about 15 to 20 yards ; the injured person

Dibakar Rath was brought inside the police station, was given first-aid and sent to the hospital in an ambulance a little later ;

- (p) that as a result of the firing on the north under the order of the SDO the mob immediately retreated ; then the policemen went out in sections to prevent the mob from coming nearer again and the mob were pushed in different directions ;
- (q) that at about the same time of firing on the north-west under the order of the SDO, two rounds were fired by the police party on the eastern side of the police station under the order of the Magistrate Mr. S. Das who found that after the firing on the north-west the mob were advancing from eastern side ; apparently the firing on the northern side had no effect on the eastern side ; it was in this situation that two rounds were fired on the eastern side and one person (referring to P. W. 21 Banamali Das) was injured ; a little later, the crowd on the eastern side also dispersed ;
- (r) that as regards the firing on the eastern side under the order of the magistrate as described above, the magistrate in his own discretion rightly ordered the firing on the eastern side when he found that the firing on the northern side did not have the effect of dispersing the mob on the east ; in fact, the firing on the north made the mob on the eastern side very furious, aggressive and they were advancing with brickbats ; it was at that stage that two rounds were fired by two constables, one after the other ; the first round did not produce any effect on the mob ; nobody was injured ; the mob was still advancing towards the police station ; it was then the second round was fired ; one person was injured at a distance of 50 yards ; the mob then dispersed ; the injured person was carried away by the mob ;
- (s) that the firing order as given by the magistrate was unavoidable in view of the grave situation as then developed on the eastern side also ;

- (t) that all measures—tearsmoke, lathi charge and the possibility of cordoning up the place—failed ; there was no other alternative but to resort to firing ;
- (u) that in view of the menacing mood and movement of the mob, there was real danger to the police station ; in such circumstances the firing was not unjustified ; in fact, if there had been no firing at that time, the entire city of Bhubaneswar would have been left to lawlessness ; the mob would have succeeded in locking up the police inside the police station ; the entire town in darkness would have been completely in the hands of the anti-social elements.
- (v) *Re : Fourth phase : arson, hooliganism and attack on houses of Ministers and others in the evening and during night :*
- (a) that at about 7 p. m. in darkness when electric lines were fused—presumably cut off by the mob—the residence of the then Chief Minister Mr. Biren Mitra was attacked by the mob ; it was by reason of the timely intervention of Mr. Biju Patnaik who had just arrived there in his car followed by the SDO and ASP with some police force that the Chief Minister's residence was saved ; the glass panes of the car of Mr. Biju Patnaik were broken ; splinters were found there ; the mob were agitated in their altercation with Mr. Biju Patnaik ; with the arrival of the police force the mob dispersed ;
- (b) that the damages done by the mob during the short time they attacked the residence of the Chief Minister are as described in the report ; the mob were brickbatting into his house ; as a result lights on the gates were broken ; the mob threw a large number of stones inside the compound ; the garden was destroyed ;
- (c) that at about 8-15/8-30 p. m. a section of the mob—about 200 persons in four trucks, one car, one jeep and others on cycles—forcibly entered into the residence of Mr. Biju Patnaik 'Naveen Nivas' near the aerodrome by breaking the main gate ; by the time the police party arrived the destruction was already complete ;

- (d) that the mob attacked the building and started breaking doors and windows, glass panes, furniture and many other things; they also set fire to some of them and carried away certain articles; some members of the mob tied the hands of the Choukidar in the house at his back with the help of his towel and took away his Kurki (Gurkha knife);
- (e) that evidently the mob came armed with lathis, crowbars, knives, petrol and other weapons; they committed burglary in the house; they broke open the office room, drawing room, kitchen on the ground-floor; damaged the glass panes, furniture and other things; they set fire to the windows of the office room; took away many valuable articles, stores and foodstuffs by breaking the almirah;
- (f) that as regards the nature of loss and damages to the house 'Naveen Nivas', they were assessed and shown by experts in the manner as stated in paragraphs 113 and 114 above;
- (g) that the same night there was also attack on the tenanted house of the Education Minister Mr. Satyapriya Mohanty near Kalpana crossing as described in paragraphs 115 to 127 above;
- (h) that the same night the mob also attacked the house of Mr. Brundaban Naik, Minister, Community Development and Panchayati Raj, which was taken on rent by Kalinga Automobiles, dealers in cars and trucks and repairers, for office and garage at Kalpana crossing in the manner as described in paragraphs 123 to 130 above; the nature, extent of the loss and damages as assessed by them are also stated therein;
- (i) that the mob also attacked the residence of Mr. H. K. Ghosh, Finance Secretary of the Orissa Government, when his two little sons were there; a section of the mob forcibly entered into his residence, threw pebbles, broke windows and doors; both the orderly peons out of fear escaped to the Kalpana Cinema compound taking with them the two sons of Mr. Ghosh; the mob had also broken the main parts of the house; the entire house had been ransacked; telephone lines

and water connection to the building had been cut off as early as 6-30 P. M. when the mob set fire to the furniture workshop; the entire ground-floor rooms were looted; all furniture and crockery were damaged; many of the Government files were damaged, and some of them including a lot of his own books were put in the lily pond in front of his residence; some glass panes were broken; lily pond was completely damaged; gate lights were broken;

- (j) that the manner in which the mob attacked the house and the nature, extent of the loss and damages said to have been caused as estimated are all stated in paragraphs 131 to 137 above;
 - (k) that at about 7-30 P. M. the same night the mob also set fire to the furniture factory known as 'Shree Enterprisers' a furniture making industry which it is said were originally owned by 'Orissa Agents' a firm in which the Chief Minister Mr. Biren Mitra's wife was the managing partner as stated in evidence; actually one could see the furniture factory in flames from as far as the bridge on the river Kuakhai;
 - (l) that the scene of the destruction of the factory is shown in the photographs tendered as exhibits herein and as stated in paragraphs 138 and 139 above;
 - (m) that the apathy of the public and the students towards the police was so much that they did not spare the police statue in the triangular park near the State Museum, Bhubaneswar; the mob caused damage to the statue in that the headgear (Pugree) was broken, the nose damaged and the hands broken; the whole statue was disfigured, the metal rifle was missing, it appeared as if it was hit with something like a crowbar; the manner in which the police statue was damaged is stated in paragraphs 140 to 143 above.
- (vi) *Re : Allegations made by P W. 19 Umesh Chandra Mohanty:*
- (a) that there is no basis for the allegations made by him in his affidavit and in evidence; there is no proof of the various charges made by him in his

affidavit; they are merely exaggerated statements not supported by evidence; his version of the incident as narrated in the affidavit and in evidence is not acceptable ;

- (b) that admittedly his allegation of alleged entry of the policemen into the residential quarters of the Government servants was mere hearsay ; in fact he denied having seen any policemen entering into any private house; he had not seen any Government servant being beaten nor could he name any Government servant having been beaten as alleged ;
- (c) that he had no knowledge that as a result of the alleged beating and harassment of the Government servants, work in the Secretariat was completely dislocated as alleged in his affidavit; allegations made by him are without any foundation whatsoever;
- (d) that there is no evidence of any cycle having been damaged as alleged; he could not name any single individual having complained to any magistrate or any authority about any cycle having been damaged nor did he himself complain of such alleged damage to anybody.



Exts. C/64 (1) & C/70 (1)
A scene of a section of mob in front
of S. D. O.'s Court on 28-10-1964

Exts. C/64 (2) & C/70 (2)

A scene of the students rushing inside the
S. D. O.'s Court Compound on 28-10-1964





Exts. C/64 (3) & C/70 (3)

A scene of the road in front of Capital
P. S. on 28-10-1964 at about 2 p.m.

Exts. C/64 (4) & C/70 (4)

A scene showing the stones and brickbats
lying in front of the Capital P. S. on Rajpath





Exts. C 64 (5) & 70 (5)

Scene showing the stones and brickbats on the stretch of road in front of the Capital Police Station and extending towards west

Exts. C/64 (6) & 70 (6)

Scene showing stones and brickbats on stretch of road running in front of the Capital Police Station towards Rajmahal Hotel



Exts. C/64 (7) & C/70 (7)



A scene of burnt car in the
factory of Sri Enterprises

A scene showing the burnt
factory of Sri Enterprises



Exts C/64 (8) & C /70 (8)

Exts C/64 (9) & C/70 (9)



A scene showing the burnt factory of Sri Enterprises

A scene showing the burnt and damaged building of Shri Satyapriya Mohanty



Exts. C/64 (10) & C/70 (10)

Exts. C/64 (11) & C/70 (11)



A scene showing a portion of the burnt and damaged building of Shri Satyapriya Mohanty

A scene showing crockery and other articles damaged in a room of Shri H. K. Ghosh's residence



A scene showing furniture damaged in a room of Shri Biju Patnaik's house



A scene showing the burnt window, frame and Shri Biju Patnaik's picture at Shri Biju Patnaik's residence



A scene showing articles damaged in a room of Shri Biju Patnaik's residence

A scene showing the articles damaged in a room of Shri Biju Patnaik's residence





A scene showing the damaged and burnt
articles lying in front of the residence
of Shri B. Patnaik

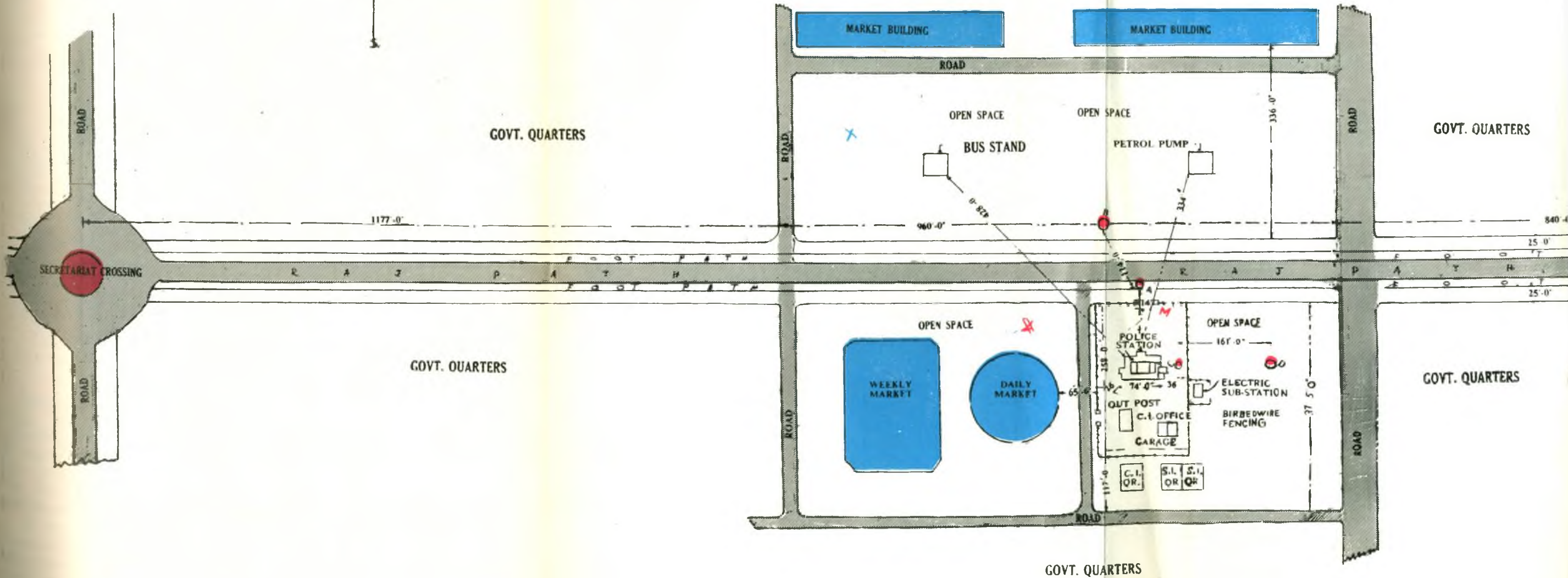
SPOT MAP OF POLICE FIRING AT BHUBANESWAR ON 28.10.64

EX-C/65

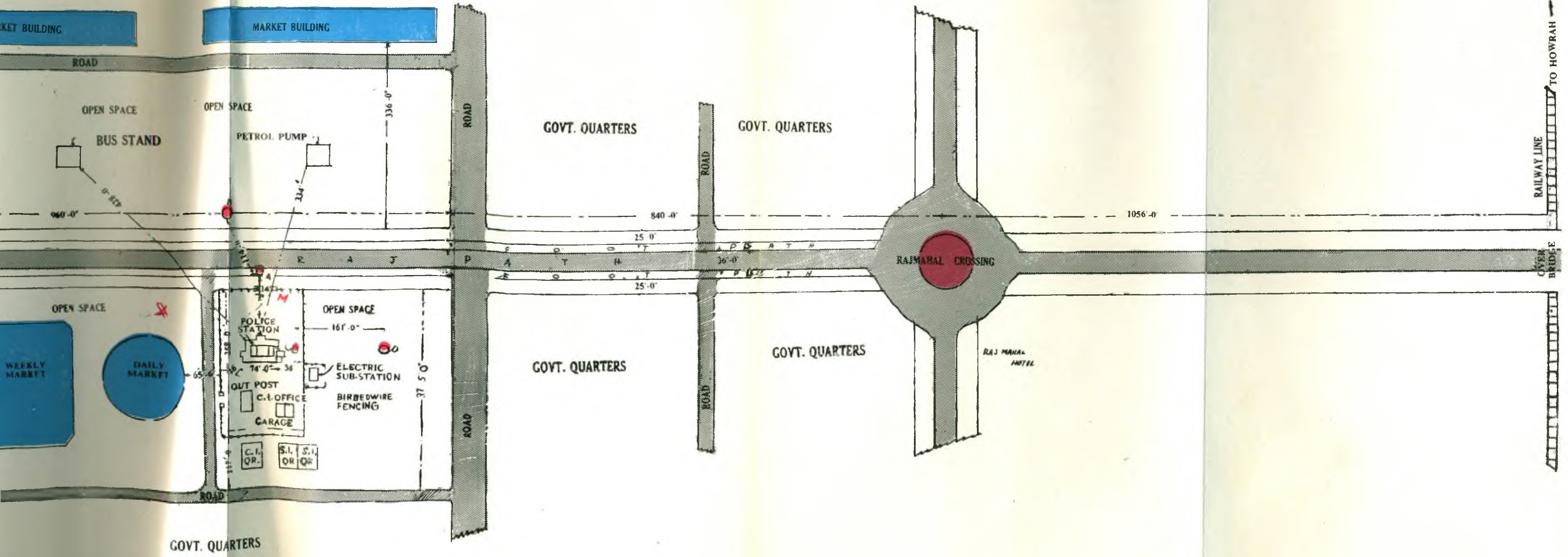
SCALE 192 FT

COLOUR INDEX

- | | |
|------------------------------------|-----|
| PLACE FROM WHERE BULLET WAS FIRED | ● A |
| PLACE WHERE BULLET HIT THE INJURED | ● B |
| PLACE FROM WHERE BULLET WAS FIRED | ○ C |
| PLACE WHERE BULLET HIT THE INJURED | ○ D |



28.10.64



CHAPTER XIX

BERHAMPUR (GANJAM) INCIDENT

	Paragraph		Paragraph
Introduction	1-8	I. Sixth phase: third firing : about 6 P. M. :	127-156
A. Charge against the police: defence of the administration	9-17	Case of the public	127-129
B. Background, cause, nature and extent of students' disquietude at Berhampur which ultimately had its outburst on October 29	18-36	Version of the administration	130-131
C. General picture of the fatal day October 29: time-table of the happenings from morning till night	37-41	What happened at Tata Mercedes Benz crossing leading to third firing	132-137
D. First phase: trouble brewing: 10-30 A. M. to about 12 noon	42-48	Attack on DSP's house: apprehensions came true	138-149
E. Second phase: assembly declared unlawful: first lathi charge: demands for immediate release of arrested persons: cordon around the court hajat: SDO's parleys with leaders failed: arrival of police reinforcement: 12-15 to about 2 P. M. :	49-70	Was third firing justified	150-156
Situation immediately before the first lathi charge	49-50	J. Seventh phase: fourth firing by constable :	157-170
First lathi charge: 12-30 P. M.	51-53	Was gun-firing by the constable justified	162-170
Was lathi charge justified	54-63	K. Discussion of evidence and argument from the side of students and public :	171-205
Was medical aid given after first lathi charge	64-68	How students' case varied from stage to stage regarding first lathi charge	171-176
Why there was no use of teargas before first lathi charge	69-70	Some telling circumstances from the evidence of P. W. 16 Mr. Gopal Chandra Satpathy; why he gave wrong timings of the events of the day	177-188
F. Third phase: SDO's parleys with leaders failed: tearsmoke and second lathi charge: 1-15 P. M. to 2-30 P. M.	71-80	Improbability of a meeting on the National Highway near the Taluk Office	189-191
G. Fourth phase: first firing: 3-45 P. M.	81-109	Allegation that police broke cycles left by the students after first lathi charge	192-194
Students' version of the first and second firings: case of the administration	81-84	Was it discreet action on the part of the local authorities to keep in detention the arrested injured students in the court hazat	195-198
Why use of tearsmoke and lathi charge before first firing was not effective	85-87	Allegation that no order under Section 144 was passed before police action on October 29; implications of some lawyers' telegram: authenticity of press news	199-20*
How situation developed necessitating opening of first firing at 3-45 P. M.	88-95	L. Findings on the facts	206
How the order for firing was executed	96-103		
Was firing justified	104-109		
H. Fifth phase: second firing: 4-45 P. M. :	110-126		
How was the order for second firing executed	119-120		
Was second firing justified	121-126		

INTRODUCTION

Berhampur is the second biggest town—next to Cuttack—in the State of Orissa. It is on the National Highway connecting Madras with Calcutta and lies at a distance of 128 miles from Cuttack. It has a mixed population of about one lakh—Oriyas and Telugus. Chatrapur, fourteen miles from Berhampur town towards Cuttack, is the headquarters of Ganjam district.

2. The early history of Ganjam is involved in the natural obscurity that might be expected of a country covered with mountains and jungle, and only accessible with any degree of ease from the sea-coast. The district originally

formed part of the ancient kingdom of Kalinga, which is supposed to have been founded in the ninth century before Christ. The administration of Ganjam had undergone many changes. For some time it was in the hands of the French and later on it became a British possession under the East India Company ; ultimately it became a part of the then State of Madras as one of the provincial units of what was known as British India before independence. Formerly Ganjam was the most northern district of the Madras Presidency called the Northern Circars. Since 1936 when Orissa became a separate State, Ganjam became a part of the new State as the southernmost district on Andhra border which is sixteen miles from Berhampur town.

3. Berhampur is the abode of ancient culture ; even common people are fairly educated ; general education of the people is fairly high. It is the centre of activity of all the political parties working in the field ; people in general are politically conscious. Berhampur has a strong Bar with eminent lawyers. Some of the political leaders of the country and many of the intelligentsia of the State hail from this district.

4. There are several educational institutions at Berhampur including Khallikote College, Medical College, Engineering School, the Women's College and Industrial Training Institute. There are also four High Schools including one for the girls. Berhampur students give a general impression of fullness of health, life and activity with progressive ideas—keeping in pace with the student-movement all over the world.

5. Although Chatrapur is the official headquarters of Ganjam district, the only principal district officers, stationed there, are the District Magistrate and the SP. The District Judge and the Civil Surgeon are posted and have their offices at Berhampur. Besides, the Divisional headquarters of the Revenue Divisional Commissioner, Southern Division and the DIG, Southern Range are at Berhampur.

6. Most of the Government offices are situated in what is known as Courtpetta (court area) which is at one end of Berhampur town. One coming from Cuttack side on the National Highway will first pass through Courtpetta before entering into the town. The offices of the District Judge, SDO, Judicial Magistrates, Settlement Office and P W D are

all in Courtpeta. The Court Hazat (for under-trial prisoners), which is very much in the picture in the present context, is a detached lonely building—a small room—within the Courtpeta area by the side of the National Highway; it is an ugly relic of the past; one can never be happy about its location; its very look is distressing; some day it must be dismantled. The residential quarters of the high officials mentioned above, the P W D colony and the police officers' family quarters are also in this area on each side of the National Highway.

7. The first junction of roads on the National Highway beyond Courtpeta towards the town is a crossing known as Komapalli crossing; the second crossing is at Mercedes Benz Service Station-*cum*-Workshop about two furlongs from the Komapalli crossing on the National Highway.

8. The main scenes of the occurrence are Courtpeta, Komapalli crossing and Tata Mercedes Benz crossing (hereinafter referred to as TMB Chhak) and the area right in the interior of the town known as Barracks. At a distance of a little less than one mile from TMB Chhak inside the town is the bus stand in Barracks area, which is the last scene of occurrence about 200 yards from TMB Chhak on the National Highway. Towards the south is the office-*cum*-residence of the DSP which is said to have been raided by the mob.

A. Charge against the police : defence of the administration :

9. The incidents, to which the present discussion is confined, took place on October 29, 1964. Admittedly there were lathi charge, use of tearsmoke and ultimately firing. There were several persons injured—policemen, magistrates and also some members of the public, and two persons died of firing.

10. In short, the charge is that the students were mercilessly beaten by the police with lathis; filthily abused and teargassed, two persons were aimed at and shot dead by the police; there was also blank firing by the police.

11. In support of these allegations, P. W 16 Mr. Gopal Chandra Satpathy, President of Khallikote College Union, Berhampur filed an affidavit and also deposed before the Commission. The material portions of his affidavit are these :

"2 On 29th October 1964 a batch of students went in a peaceful silent procession on the public road and when they were near the Sub-Collector's office, suddenly without any warning a large number of Orissa Military

Police along with the local Police Officers including Inspector Shri P. Tripathy, the Deputy Superintendent of Police Shri Samuel Mohapatra, the Thana incharge Shri Narasingha Patnaik and others fell upon the students and with a murderous zeal they began assaulting the students. Students while fleeing away in different directions were chased and mercilessly beaten. While chasing the students the police threw brickbats at them. The chasing continued for half-mile in all directions. Some of the students were chased even into and inside the houses including inside the house of a local judge and they were beaten there. Many students were arrested indiscriminately without telling them why they were arrested, without producing them before any Magistrate.

3. That some students even after they were arrested and kept inside police cordon were beaten by police particularly by the Police Inspector Shri Tripathy.
4. That the blood stained shirts were forcibly taken by the policemen. The injured students were given no medical aid. They were not even sent to the local hospital even though some of them had very serious injury on them.
5. That the police with lathis broke the cycles of the students which they were taking with them in the procession. Near about hundred bicycles were broken by lathi and boot.
6. That hearing about the police oppressions a large number of students came to hold a meeting in protest of the police oppressions and to demand at least minimum medical aid to the injured. The students assembled in a peaceful unarmed meeting and just when the meeting was going to begin to protest against the police action, some students told the Police Officers, including the Deputy Inspector-General and the Superintendent of Police that the students injured be given medical aid. This only brought filthy abuses from police people and suddenly when the students were so demanding teargas shells were thrown at them immediately.
7. That a student named Shri Basanta Kumar Acharya a young boy of 19 years was aimed and shot in the head. Shri Basanta Kumar immediately fell down. An O. R. T. Driver was nearby, got moved by the incident, he cried "Alas, what have you done" and ran to the boy to help him in his death agony probably with the intention to take him to the hospital. When he attempted to raise the boy, he was aimed at and was shot at. Before giving any help to the young boy, he fell a victim to the police bullet. The boy was by then dead. The Driver groaned and asked for water and instead of water being given to him, he was given kicks on the police boot and was dragged to the police van. In that condition inside the police van, he breathed his last.
8. That some more bullets were fired at and many others including the school students, one Rickshaw puller and publicmen sustained serious injury.

9. That a peaceful meeting was organised by the citizens of Berhampur in the same evening at Barracks to protest against Police firing, teargassing and lathi charge on the students. When the meeting was going on in a peaceful manner, after it had just begun, a large contingent of military police armed with rifles and lathis swooped on the unarmed and peaceful audience, lathi charged and teargassed them. Police also opened blank fire. The people in fear of life ran helter and skelter. There was shouts and screaming. The police chased the fleeting crowd and beat them and kicked them and trampled on the body who fell down.
10. That the reign of terror prevailed till the order of curfew in the town was withdrawn.
11. That during this period, the police harassed innocent people dragged students for no reason from their houses, hostels, entered private houses and hotels indulged in loot and robbery.
12. That there was no occasion to promulgate prohibitory orders under Section 144 and curfew and it was illegally done. The panic situation in the city was caused by the *agent provocators* of the Police.
13. That the arrest of students and public was done without any justification and the arrest of prominent citizens under the Defence of India Rules was done mala fide."

He is said to be an eye-witness to the incidents in front of the Sub-Collector's office during the first and second firing on the National Highway and the happenings at the Barracks, where there was a firing by a policeman in the circumstances hereinafter stated.

12. P. W. 17 Mr. Surendranath Acharya, the father of the deceased Basanta Kumar Acharya filed two affidavits and also deposed before the Commission stating the circumstances and praying that his case may be placed before the Commission for consideration for grant of adequate compensation to the poor and bereaved family.

13. P. W. 18 Mr. G. Devdas also filed an affidavit and deposed before the Commission stating the circumstances in which his younger brother G. Mathews Das is said to have suffered a gunshot injury from police firing at Tata Mercedes Benz crossing between 6 and 6-30 P. M. on October 29. The material portion of his affidavit is this:

"On 29th October 1964, just between 6 to 6-30 P.M. (Evening) my brother Shri G. Mathews Das along with my children and mother were standing on the front verandah of my house opening the door of the Jaffery which is rounding the front verandah, pausing at me about my non-arrival from the office till that time. Meanwhile, the Police who have

already occupied the Tata Mercedes Benz premises silently, without any sort of sign, inserted the bayonets in the decorated holes of the Tata compound wall and fired some shots, as such one struck the boy who was then standing on the road and who is a betel-vendor aged 12 to 14 years. Another shot struck the buttock of the right side of my brother, who was then standing on the verandah opening the Jaffery door as narrated by me above. Immediately he fell down on the cot on the verandah and became senseless and bleeding came out..... Then we all took my brother flatly on our arms to the Government hospital.....”

In his affidavit and in evidence he also stated in details about the treatment that had been given to the victim boy which involved incurring all expenses as stated by him. Apart from expenses, the victim also suffered mentally and physically.

14. One Narain Naik aged about 11 also filed a petition Ext. C/63 stating the circumstances in which he was hit with a bullet from police firing which entered the calf of his right leg and this made him invalid for life. He prayed for consideration of his grievances and claimed Rs. 3,000 as compensation for his future maintenance from the Government. This boy was produced before the Commission and it appeared he had suffered the injury in his leg as stated by the boy in his petition.

15. These broadly stated, are the allegations of alleged police excess on October 29 at Berhampur.

16. The case of the administration in substance is that such use of force—lathi charge, tearsmoke and ultimately firing at different places—was unavoidable. The circumstances in which such force was used by the administration when dealing with the situation at different stages are discussed hereunder.

17. In support of their case, several affidavits were filed on behalf of the administration including the SDO C. W. 25 Mr. A. C. Dehury, Magistrate, First Class C. W. 28 Mr. H. K. Pradhan, DSP C. W. 24 Mr. Samuel Mohapatra, C. W. 26 Inspector Tripathy, C. W. 27 Constable Dandapani Sahu and C. W. 29 Steno Sub-Inspector P. Senapati; they also gave evidence. Apart from them, the DIG, Southern Range Mr. B. K. Ray, the SP, Ganjam Mr. S. A. Majid and several others also filed affidavits, all about the incident as experienced by each on that date.

B. Background, cause, nature and extent of students' disquietude at Berhampur which ultimately had its outburst on October 29 :

18. It was noticed that since the students' disturbance on September 26 and 27 at Cuttack, it had its reaction, among other places, on Berhampur students in general. The evidence on record shows that this was encouraged by certain individual members belonging to different political parties. It is in evidence that inspiration came from some student-leaders who came from Cuttack to Berhampur

19. Immediately after the incidents at Cuttack--before this agitation made its headway among the students in Ganjam district--all the educational institutions except the Medical College, Engineering School, and the Industrial Training Institute at Berhampur were declared closed till October 21, 1964 for Puja vacation two days ahead of the schedule under orders of the Government. These educational institutions were closed as a measure for preventing further flare up among the students all over the State.

20. The students of the Medical College, Engineering School and Industrial Training Institute which were not closed became disgruntled and moved about in groups to organise a sympathetic strike said to be with the ultimate object of creating a situation which would compel the authorities to close these institutions also. It is said that on September 29, the President of the Madhusudan Law College Students' Union, Cuttack—who was reported to have been injured in course of the student-police clash at Cuttack—arrived at Berhampur and instigated the local students to organise protest meetings, processions, demonstrations and strikes against the alleged police excesses on the students of Cuttack. Thereupon, the Executive Committee of the Berhampur Medical College Students' Union met in camera on the same day and decided to launch a sympathetic strike and organise a procession on the next day to voice protest against the alleged police excesses on the students of Cuttack and Bhubaneswar. After the meeting, some medical students accompanied by the President of the Madhusudan Law College Students' Union who had come from Cuttack and Mr. Ramchandra Rath of Khallikote College, Berhampur contacted the Engineering school students and succeeded in mobilising their support to the proposed strike and procession.

21. On September 30, all the students of the Medical College and the Engineering School abstained from their classes and paraded the town in two separate processions

shouting various slogans condemning the alleged police excesses at Cuttack, demanding judicial enquiry and the release of the arrested students. After the procession, the Medical College students met in a camera meeting under the Presidentship of Mr. Fakira Charan Subudhi, the Secretary of the Medical College Students' Union, who, while condemning the alleged police excesses demanded immediate release of the arrested students. It is said that resolutions to this effect were also adopted in the meeting.

22. On October 1, the students of Medical College, Berhampur resumed their classes while the Engineering School was declared closed for the Puja vacation. Two days thereafter on October 3, about 200 students of Medical College as a protest against the detention of some students in Cuttack and Puri Jails abstained from their classes but on the intervention of the Principal, they joined their classes after the recess hour. The same day, they are said to have met in camera and decided to send a delegation consisting of Mr. Satyabrata Mohapatra, Mr. Fakira Charan Subudhi, and Mr. K. Krishna Rao to meet the Chief Minister and the Home Minister and press for the release of the arrested students. It was also reported that the students resented the role of the press in criticising the students' agitation. In fact, the students took exception to the publication of some criticism of their activities in general; some students of Berhampur Engineering School, particularly those residing in the hostel decided to burn the newspapers especially the Kalinga, the Statesman and the Amrita Bazar Patrika. In pursuance of their decision, they collected some copies of the Kalinga, dated October 1, but ultimately abandoned the idea.

23. On October 11, a public meeting of about 150, organised by Mr. Bhagaban Sahu, Mr. Santosh Kumar Mohapatra, Mr. Ramachandria Rath and a few others of Khallikote College, Berhampur, was held with Mr. Satyabrata Mohapatra, President of the Medical College Students' Union, Berhampur in the chair. Addressing the meeting, the student speakers Mr. Santosh Kumar Mohapatra, Mr. Bhagaban Sahu, Mr. Suryanarayan Patra and Mr. Pramod Kumar Panda condemned the alleged police excesses, demanded unconditional release of the arrested students and warned the Government that there would be a State-wide agitation if their demands were not met, resolutions demanding judicial probe into the alleged police excess, payment of compensation to the students who had sustained loss as a result of police action were adopted. After the meeting, Mr. Ramachandra

Rath, a leading student agitator criticised the President for not having taken up a concrete agitational programme of attacking Government officers, stoppage of train and bus communication and other such activities in order to paralyse the administration, if the students' demands were not met.

24. Prior to the said meeting a printed leaflet issued by the students of Berhampur is said to have been circulated in Berhampur town and some printed copies of the bulletin purporting to have been issued by the student community of Orissa were also circulated at Berhampur and other parts of the district. This bulletin which contained a detailed narration of the incidents that had taken place at Cuttack and Bhubaneswar had undoubtedly created a good deal of enthusiasm and adverse reactions among the students especially the college students.

25. On October 13, Mr L. Murty Patnaik, Secretary of the Madhusudan Law College Students' Union, Cuttack who is said to have been involved in the students' disturbances and was released on P.R. from Cuttack Jail arrived at Berhampur and fomented a sympathetic strike after reopening of the educational institutions. It is also said that the political leaders Mr. Jagannath Misra and Mr. L. Rama Gopal Rao instigated the local students of Berhampur to organise sympathetic strike and procession on the reopening day of the educational institutions on October 22.

26. On October 21, at the instigation of student leaders Mr. Radhakanta Misra, President of the Christ College Students' Union and Mr. Sarat Chandra Satpathi, M. A. student of Ravenshaw College, Cuttack who arrived at Berhampur, some of the leading students, namely, Mr. Gopal Chandra Satpathy, President, Mr. Prakash Chandra Mohanty, Vice-President, Mr. Promod Kumar Rana, Secretary, Mr. Gopinath Choudhury, Joint Secretary, Mr. Surjyanarayan Patra, Dramatic Secretary of the Khallikote College Students' Union and Mr. Satyabrata Mohapatra, President of the Medical College Students' Union, Berhampur met in camera and decided to launch a sympathetic strike from October 22 to 25; their object was to arouse public sympathy towards the cause of students of Cuttack and Bhubaneswar by organising processions and public meetings all over the district. In the said meeting, decisions were also taken to depute leading students to organise similar strikes at other places.

27. On October 22, in pursuance of the said decisions, the students of Khallikote College, Berhampur resorted to strike and successfully persuaded the students of

the Mission High School, Government Telegu Girls' High School, City High School, City U. P. Schools for boys and girls and local L. P. School to join the strike. At about 10 A. M., about 500 strikers headed by Mr. Gopal Chandra Satpathy paraded the town in a procession demanding judicial enquiry and immediate release of the arrested students. It is said in course of the procession, some of the strikers forced into the premises of the City High School and disturbed the students in the midst of their examinations. The Headmaster became apprehensive of their conduct and allowed the students to quit the classes and later closed the school. In the evening a public meeting of about 500 with Mr. Gopal Chandra Satpathy in the chair was held in front of the Old Post Office. At the said meeting, the speakers Mr. Gopal Chandra Satpathy, Mr. Ramachandra Rath, Mr. Prafulla Chandra Das, Mr. Kailash Chandra Acharya, Mr. K. Krishna Rao, Mr. Santosh Kumar Mohapatra and Mr. Nirod Panda, while depicting the alleged police excesses on the students of Cuttack and Bhubaneswar, exhorted the students to continue their agitation until achievement of demands already placed by the Students' Council of Action, Cuttack, which by then had come into existence there. Mr. Ramachandra Rath who was bitterly critical of the police and the Ministers of Orissa incited the students to mobilise mass opinion with a view to ensuring a defeat of Mr. Biren Mitra (the then Chief Minister) and Mr. Nilamani Routray (then Home Minister) in the next election. The meeting adopted resolutions demanding judicial probe into the students-police clash, withdrawal of cases against the students, payment of compensation and decided to wear black badges and continue the strike until the said demands were fulfilled.

28. On October 23, the strike for the second day continued in the educational institutions at Berhampur. The same day the students of Khallikote Town Branch High School, Municipal High School for boys and girls and a few Primary Schools also joined the strike. In pursuance of the decisions arrived at in the public meeting of October 22, as aforesaid, the student-strikers wore black badges and moved about in different parts of the town under the leadership of Mr. Gopal Chandra Satpathy, President of the Khallikote College Students' Union. In spite of their attempts, Mr. Satpathy and others could not, however, succeed in securing the participation of the Medical College students in the strike.

29. A cyclo-styled bulletin, dated October 22, 1964 issued by Mr. Bhagabat Behera and Mr. Bhabanath Misra, Joint Conveners of the Students' Council of Action, Cuttack was received at Berhampur address and circulated among the students. The bulletin depicted a graphic account of the alleged police excesses on the students and the resultant developments

30. On October 24, the strike still continued in Khallikote College and in other educational institutions in Berhampur town. The students of Medical college also joined the strike. A procession of about 150 medical students headed by Mr. Satyabrata Mohapatra and Mr. K. Krishna Rao paraded the town shouting the usual slogans. Another such procession of about 300 consisting of students of Khallikote College and the local High Schools of Berhampur similarly paraded the town shouting defamatory and abusive slogans against the Chief Minister. The procession was headed by Mr. Gopal Chandra Satpathy, Mr. Promod Kumar Rana, Mr. Bhagaban Sahu, Mr. Basanta Kumar Panda and Mr. Ashok Rao; in the evening about 15 medical students met in camera and decided to continue the strike.

31. On October 25, at the instance of Mr. Satyabrata Mohapatra, President of the Medical College Students' Union and Mr. Gopal Chandra Satpathy, President of the Khallikote College Students' Union, a meeting attended by the representatives of all the colleges of the district was held in the office of the Khallikote College Students' Union where important decisions were taken to continue the strike in all colleges until fulfilment of the students' demands; to observe October 26 as Demands Day by holding processions and Public meetings; to abide by the directives of the Students' Council of Action, Cuttack pertaining to the agitation; and to burn the effigies of the ministers. It was also resolved to depute student leaders from different colleges to organise similar strikes in all the educational institutions especially the High Schools of the district.

32. On October 26, the students of all the educational institutions of Berhampur—Engineering School, Khallikote Collegiate Higher Secondary School, Government Training and Secondary High Schools for women, Government Women's College which all reopened on that date—went on strike. What happened throughout the day on October 26—

only three days prior to the date of the incident—are in sequence stated hereunder :

- (a) In the morning, about 50 Engineering students moved in the town in a cyclists' procession shouting the usual slogans. Later at 10 A. M. another procession of about 200 college and High School students started from the college square under the leadership of Mr. Ramachandra Rath and Mr. Ashok Rao, and marched up to the bus stand shouting similar slogans. In the meantime, batches of college students moved about in the town and successfully persuaded the students of almost all the institutions to join the strike.
- (b) At about 11 A.M., a combined procession of about 600 students headed by Mr. Ramachandra Rath, Mr. Nabeen Sahu, Mr. Bhagaban Sahu, Mr. Santosh Kumar Mohapatra, Mr. Ashok Rao, Mr. Surendra Mohapatra and Mr. Prafulla Chandra Panda again started from the college square and paraded the town shouting defamatory and abusive slogans against the ministers.
- (c) The processionists also took with them a dog symbolising Mr. Brundaban Naik, Minister for Panchayati Raj & Community Development seated on a rickshaw; they also immersed the urns containing faked ashes of Mr. Biren Mitra, Mr. Biju Patnaik in Ramalingam tank. On their way to Ramalingam tank the processionists especially those named above exhibited highly indisciplined attitude and went to the extent of directing the police personnel on duty to pay homage to the urns and respect to the Dog by presenting guard of honour. While passing in front of Mr. Brundaban Naik's residence, they behaved in a most indisciplined manner, making irresponsible and insulting utterance aimed at Mr. Brundaban Naik. It is said that Mr. P. C. Patnaik, Mr. Narayan Sahu, Mr. Parsuram Sahu (SSP) and Dr. Raghunath Misra (Communist) were following the procession and watching the reactions.
- (d) In the evening a public meeting of about 2,000 with Mr. Satyabrata Mohapatra in the chair was addressed by M/s Gopal Chandra Satpathy, Kailash Chandra Acharya, Bhagaban Sahu,

Pramode Chandra Mohanti, Sashinarayan Das, Nirod Chandra Panda, Surjyanarayan Patra, Nirajan Tripathy, Prafulla Chandra Das, Ramachandra Rath, K. Krishna Rao and Mr. Narayan Sahu, ex-M.L.A. who all exhorted the students to carry on the agitation. It is said that Mr. Narayan Sahu regretted the lack of public support to the students' agitation and appealed to the citizens of Berhampur to rally behind their slogans ; resolutions were adopted demanding the Government to call meetings of the Presidents of all the College Unions and prominent citizens of the State for a peaceful settlement of the existing issue and urging upon the general public to take over the agitation with a view to affording a chance to the students to withdraw from the struggle and join their classes. The meeting further decided to continue the agitation until a peaceful settlement was arrived at, and to appeal to public for donations to meet the cost of defending the cases instituted against the students.

(e) The same evening a guardians' meeting was held at Berhampur under the presidentship of Dr. Feroz Ali to find out a solution of the existing problem, but on account of difference of opinion between some leading guardians the meeting could not come to any decision.

(f) In view of this situation, under orders of the Government, all the High Schools in Berhampur town were declared to remain closed till November 3, 1964.

33. On October 27, 1964, there was a complete strike in the colleges at Berhampur. About 150 students of Medical College paraded the town in a procession shouting usual slogans, urging fulfilment of their demands. The same evening at a meeting attended by the District Magistrate, the Principal, the Vice-Principal and the Vice-President of Khallikote College Managing Committee, Mr. Dibakar Patnaik of the Congress Party and a few others decided to strike off the names of students from rolls, if they would not attend the college by October 29 ; to close the college for indefinite period ; to issue compulsory certificates to the indisciplined students especially M/s. Ramachandra Pathi, Ashok Rao, Santosh Kumar Mohapatra, Surjya-

narayan Patra, Bhagaban Sahu, Nabeen Sahu and Prafulla Kumar Panda and to ask the students to vacate the hostel by October 30. Accordingly, the Principal issued a notice to Mr. Ramachandra Rath to show cause within three days as to why his name should not be removed from the rolls for his indisciplined behaviour, and also issued notice to other students through the President and the Secretary of the College Students' Union stating that their names would be struck off the rolls, if they failed to attend classes within three days from the receipt of the notice. On receipt of these notices, 20 members of the Khallikote College Students' Union met in camera and decided to continue the strike indefinitely and to observe complete hartal in the bazar on October 29, the date of the incident at Berhampur—by closing down the shops and hotels. It is said that Mr. Ramachandra Rath reported to be a member of the Students' Federation—on whom the show-cause notice was served—immediately contacted the political leaders like M/s. Narayan Sahu, Tarini Charan Patnaik and Mr. Narasingh Patnaik. They advised Mr. Ramachandra Rath to resort to hunger-strike and picketing in the front of the office of the SDO, Berhampur on October 29. Mr. Tarini Charan Patnaik and Mr. Ramachandra Rath are also said to have contacted the students of the Medical College and the Engineering School the same night to mobilise their support for the agitation.

34. On October 28, the students of Khallikote College, Medical College, Government Women's College and Engineering School at Berhampur continued the strike. In the morning about 200 medical students headed by Mr. Satyabrata Mohapatra, President, Medical College Students' Union moved in a procession carrying placards containing the students' demands and shouting the usual slogans. Another batch of students of Khallikote College also moved about in the town and carried on mike propaganda appealing to the local businessmen and the public to support the students' cause by observing complete hartal on October 29. The same day about 100 students headed by M/s. Ramachandra Rath, Ashok Kumar Rao, Santosh Kumar Mohapatra and Nabeen Chandra Sahu of Khallikote College picketed at the gate of the Government Women's College, Berhampur and intimidated the day-scholars not to attend their classes. The Principal is said to have informed the authorities about it; thereafter a police party in charge of the Subdivisional Police Officer and the Magistrate arrived at the spot. On their arrival, the picketers left the place after passing insulting

remarks at the police. Thereafter the Principal convened a meeting of the local guardians and representatives of Medical students. Mr. K. C. Panigrahi and Mr. Amiya Chatterjee both Advocates and two other leading members of the Bar suggested that the students should call off the strike in view of the reported assurance of the Government for an inquiry. The said suggestions were rejected by the students. The attempts of the Khallikote College Managing Committee to call off strike also proved unsuccessful. Mr. Ramachandra Rath emphatically declared before them that nothing could be decided unless the present ministry was unseated. In another meeting of local guardians held at the instance of the Principal of the Government Women's College the same evening, the guardians expressed concern over students' indiscipline and requested the Government to condone the absence of the willing girl students till normalcy was restored.

35. It is said that political leaders Mr. Narayan Sahu, Mr. Tarini Charan Patnaik, Dr. Raghunath Misra and Mr. Narsingh Patnaik all belonging to their respective parties were instigating the students of Berhampur to intensify the agitation.

36. The above gives an indication of the background, cause, nature and extent of students' disquietude at Berhampur, showing how since the students' disturbance at Cuttack on September 26, 27, the movement spread, among other places, to Berhampur town. Then follows what happened on October 29, throughout the day from morning till night.

C. General picture of the fatal day October 29 : time-table of the happenings from morning till night

37. In order to have a clear understanding of what happened on October 29, it is necessary to give a brief outline of the sequence in which the events in question—lathi charge, use of tearsmoke, successive firings—had taken place at different places as the situation developed from stage to stage until the end of the day till late at night.

38. For convenience of ready reference, a time-table is given below indicating at what point of time the incidents are stated to have taken place throughout the day :

- 10-30 A.M. Information was received that a mob of 500/600 students was marching towards the SDO's Office to raid it.
- 11-5/11 10 A.M. The Magistrate C. W. 28 Mr. H. K. Pradhan reached SDO's Office with police party. The SDO C.W. 25

Mr. A. C. Dehury at about the same time along with the DSP C.W. 24 Mr. Samuel Mohapatra reached the SDO's Office in a jeep. Apprehending trouble from the students, the SDO directed the DSP to throw a cordon in front of his office. The strength of the force at that point of time was that there were two sections of APR and 5 OR only with small lathis. In all, there were 23 policemen. There were also two Havildars and officers—DSP, Town Inspector and the Sub-Inspector. Sixteen APR constables were armed with rifles.

12 noon The SDO promulgated order under Section 144 Criminal Procedure Code Ext. C/53 prohibiting all manner of assembly of 5 or more persons within 100 yards of the office of the SDO and all around it.

12-15/12-20 noon The procession was found at a distance of 15 to 20 yards from the office of the SDO. They attempted to break the cordon. It was then that the SDO declared the assembly unlawful. They were advancing without fearing the police and the Magistrate. Thus the time lag between the promulgation of order under Section 144 and the declaration of the assembly as unlawful will be about 20 minutes.

12-30 P.M. First lathi charge : it was about this time that the SDO actually wanted, the police to go into action of lathi charge. The order for lathi charge is Ext. C/55 A. During the first lathi charge, four persons are said to have been injured. The four injured persons and five others were arrested and they were put in the court hajat very near by the side of the National Highway in a small lonely one-room building detached from the main court buildings in the area.

1/1-10 P. M. The mob was gradually swelling and brickbattling started from the National Highway

1-10/1-20 P. M. Police cordon was thrown around the court hajat because the arrested persons were in the hajat. The first demand was made by the advancing mob of students shouting for the release of those arrested persons kept in the court hajat within their sight.

Between

1-15 & 2-30 P. M. In the meantime, the DIG Mr. B. K. Roy arrived at the spot. Thereafter the SP Mr. B. A. Mazid came with reinforcement of about two sections armed with lathis only—not guns; there was tearsquad with them.

Soon thereafter Soon thereafter, one Mr. Jagannath Misra came out from the mob for parleying with the SDO demanding release of the arrested students; it however failed. After some time, two student-leaders Mr. Santosh Kumar Mohapatra and Mr. Ashok Rao came out with the same object of demanding release of the arrested students. This parley also failed.

2-30 P. M. Order for teargas and second lathi charge : After the two student-leaders Mr. Santosh Kumar Mohapatra and Mr. Ashok Rao returned disappointed and shouted to the mob that the arrested students would not be released, the mob started heavy brickbattling. It was then that the teargas shells were fired and simultaneously there was lathi charge. The order for use of teargas and lathi charge is Ext. C/55(B-1).

3-45 P. M. First firing : 4 rounds : The order for firing is Ext. C/55(B-2). Four rounds were fired one after the other: Basanta Acharya was hit and died by the fourth round. The SDO, the Magistrate, the DIG, the SP and other Officers were

present. It is said that the mob was not afraid—attitude, mood aggressive : They demanded immediate release of the prisoners in the court hayat; mob frenzy was worked up. It is said to have been like a pitched battle between the student and the police.

4-45 P. M. Second firing : 3 rounds : The order for firing is Ext. C/55(6) : Somanath Jena, a driver was hit and died at the spot. It is said that after the first firing, the mob was found congregated near Komapalli crossing before the police quarters; they went towards the fourth police quarter with burning torches; smoke was found coming out; danger to life of the inmates and the persons in the colony was apprehended; in spite of warnings the mob became more and more violent. All warnings failed. It is said that the situation necessitated second firing.

5-30 to 6 P. M. Attack on DSP Mr. Samuel Mohapatra's residence; it is said that the mob had burnt the wooden gates, furniture, cycles, the car and other things which were completely burnt as hereinafter fully discussed.

6 P. M. Order under Section 144 Criminal Procedure Code : the order is Ext.C/53 (order no. 2 of 29-10-1964/6 P. M.). It is said that there was a public meeting in front of the old Post Office at about 6 P. M. where there was a huge gathering of about 3000/4000 people; it was an explosive situation prevailing in the town; the speakers of the meeting were among others Mr. Jagannath Misra, Mr. Abhir Chandra Padhi, Mr. Narayan Sahu and Mr. Gopal Chandra Satpathy who are said to have delivered provocative speeches inciting people to resort to lawlessness and to keep the agitation alive; thereupon a large section of the gathering turned into a riotous mob.

About the same time
6 P. M. Third firing at Mercedes Benz crossing; one round : the mob there was 2000/3000 strong; it did not disperse : the Magistrate C.W. 28 Mr. H. K Pradhan ordered Town Inspector to fire one round ; one boy Narayan Naik aged about 14 or 15 was hit; the mob is said to have obstructed the movement of the police party who were going towards the DSP's house on the information that his house had been attacked by the mob; it is said that a section of the mob was moving towards the direction of the DSP's house : in view of the gravity of the situation, firing is said to have been resorted to.

7/7-5 P. M Attack on Police Information Bureau (hereinafter referred to as the PIB) and the traffic out post , one round fired by constable C. W. 27 Dandapani Sahu; it is said that the traffic out post was attacked by the mob and the life of his fellow policemen was in the danger; in this situation, the constable is said to have gone out and fired one round to scare away the mob which had attacked the traffic out post.

This timing of each of the different phases of incidents is however not wholly accepted by P. W. 16 Mr. Gopal Chandra Satpathy as hereinafter discussed.

39. The persons injured on the side of the administration—Magistrates and police during the disturbance that day—were these : SDO Mr. A. C Dehury, DIG Mr. B. K. Roy, SP Mr. S. A. Mazid, DSP Mr. Samuel Mohapatra, Inspector Tripathy, Havildars and constables—total number 45—were injured (C W. 25 A. C. Dehury Qq. 89, 97). Besides, the DSP Mr. Samuel Mohapatra had head injuries and he fell unconscious.

40. Then, as regards injuries on students and members of the public, Messrs Ramchandra Rath, Gopal Chandra Satpathy, Basanta Kumar Panda, Chittaranjan Sahu and M. Venkata Ramana were injured ; it is said that 19 members of the public including students were injured. The injury reports in respect of them are Exts. C/50 (1) to C/50 (19). Besides, one

person (presumably Narayan Naik, a boy hereinbefore mentioned) is said to have been injured from gunshot as a result of the third firing at Mercedes Benz crossing; it is also said that G. Mathews Das, brother of P. W. 18 Mr. G. Debdas was also injured. There might have been other persons among the public who were injured; four injured persons were arrested; so they could be known to have been injured.

41. With this grip on the general picture and the particular timing of the different phases of what happened on October 29, it will be convenient, to judge whether or not the use of force in the manner it was resorted to during different phases was warranted by the situation as developed from stage to stage.

**D. First phase : trouble brewing : 10-30 a. m.
to about 12 noon**

42. At 10-30 A. M. in the control room at Berhampur, information was received by the SDO that a mob of about 500/600 students were marching towards his office to rail the same. On receipt of this information, the SDO directed the DSP to send force under the Magistrate C. W. 28 Mr. H. K. Pradhan.

43. After the departure of the Magistrate Mr. Pradhan with the force from the control room, the SDO followed the force with the DSP within 5 minutes. When they came as far as the Workshop of Tata Mercedes Benz where the police van with force was coming, the processionists were found spreading over the road and proceeding towards the SDO's office shouting slogans of the nature--"BIJU BIREN MURDABAD, NILAMANI ROUTRA MURDABAD, BRUNDABAN NAIK MURDABAD, CONGRESS SARKAR DHWANSAN HEU, AMARA DABI PURAN HEU, RAKTA DEBU CHHADIBU NAHIN" (Let Biju Biren die. Let Nilamani Routra die. Let Brundaban Naik die. Let the Congress Government go down; Let our demands be fulfilled. We will give blood we shall not give up.) They also shouted "SUBCOLLECTOR OFFICE CHALO" (Let us march to Sub-Collector's office).

44. Somehow the SDO and his party passed the procession. While the SDO and the DSP were passing in the jeep, some of the processionists thumped against the police van and some also pelted stones. No notice was taken of this behaviour of the students then; the SDO and the DSP proceeded and turned to right at Komapalli crossing taking a route

between the District Judge's Court building and the SDO's office; they arrived at SDO's office. Then the SDO rushed to his office and alerted the members of his office staff.

45. It was apprehended that something untoward might happen. It was evident from the slogans that they were marching to the SDO's office. Thus the earlier information which the SDO had received was confirmed. That apart, apprehending trouble, the SDO asked the DSP to go and stop the procession on the approach road.

46. In the meantime, the SDO had drawn up order under Section 144 Criminal Procedure Code. It was then that Inspector Tripathy came hurriedly to the SDO's chamber and reported that some students were advancing. Immediately the SDO gave instructions to get a copy of the order under Section 144 Criminal Procedure Code pasted on the Notice Board. One copy of the order was also delivered to the Inspector. Then the SDO announced by shouting to the mob in Oriya the contents of the order. It was then about 12 noon.

47. A question arose as to why the processionists who started at 10-30 A. M. took more than one hour to reach the SDO's office at 12 noon. C. W. 22 Inspector Tripathy explained that was the day on which there was Hartal in the town; the processionists while coming were moving from shop to shop at Komapalli crossing and urging upon the shop-keepers to close the shops. P. W. 16 Mr. Gopal Chandra Satpathy also admitted that on the 29th there was a Hartal throughout the town; they had taken out the procession and decided to put forth their grievances to the SDO.

48. In the meantime, the mob was advancing and at first the shouting could be heard and after a few minutes the crowd was visible. As the mob was advancing gradually, the SDO's announcement was going on the mike; the order was repeated by the DSP, the Magistrate Mr. Pradhan and Inspector Tripathy. The SDO and his party were all along shouting to the mob not to advance but to disperse. There was no response from the side of the students to these appeals, requests and warnings by the SDO and others.

**E. Second phase : assembly declared unlawful :
 first lathi charge : demands for immediate
 release of arrested persons : cordon around the
 court hajat : SDO's parleys with leaders
 failed : arrival of police reinforce-
 ment : 12-15 to about 2 p. m.**

49. *Situation immediately before the first lathi charge :* The SDO tried to persuade the mob to disperse; he invited some of them to speak about their demands and talked on the mike to the student-mob who were within 100 yards from him; he asked the students to disperse and if they had anything to speak, they could come and speak to him. In the meantime, some brickbattering started from the mob. The SDO then gave direction to Inspector Tripathy to put a line of demarcation at a point 100 yards from his office which nobody was to cross and it was marked accordingly. In the meantime, the mob crossed the line and heavy brickbattering started. The DSP, Inspector, Sub-Inspector and other police men were injured. It was in this situation that between about 12-15 and 12-20 P. M. the SDO declared the assembly unlawful under Section 127 Criminal Procedure Code. It was about 20 minutes after the promulgation of order under Section 144 Criminal Procedure Code that the assembly was declared unlawful. The mob was then at a distance of about 15 to 20 yards from the SDO where he was standing.

50. The strength of the police force then consisted of two sections of APR force and 5 OR, the total number of policemen being 23 persons as aforesaid. The officers present were the DSP, Inspector and the Officer-in-charge. At that point of time the strength of the mob was 600/700 in a compact area. They came on the approach road itself to a point about 60 yards from the SDO's office.

51. *First lathi charge : 12-30 p. m. :* In spite of all announcements and warnings to the mob over the police loud-speaker, they did not produce any effect on the mob which on the other hand came closer to the police cordon and pressed forward towards the office of the SDO. Thus a tense and frightful situation prevailed; the mob aimed at a huge stack of brickbats which was lying a few yards behind the police cordon for the purpose of construction of houses. By that time, the Magistrate Mr. Pradhan and several police personnel had already been injured. If the mob had been allowed to reach the stack of brickbats

which they were anxious to reach, the Magistrates and the policemen would have all been severely assaulted and the consequence would have been disastrous.

52. In this situation, the SDO gave warning to the mob to disperse failing which he further warned that the unlawful assembly would be dispersed by means of lathi charge. The mob had by that time come in contact with the police force and there was no space between the mob and the police; in such a position use of teargas was not possible. As the mob insisted on pressing forward without paying any heed to the repeated warnings given to them, the SDO at about 12-30 P. M. gave orders to the DSP to disperse the mob by lathi charge. The order which was passed by the SDO is Ext. C/55 (A) "Disperse mob by lathi-charge." Thereupon the DSP gave orders to the force present there to lathi charge and disperse the mob. Accordingly, the order was executed and lathi charge was made as a result of which the members of unlawful assembly ran away in different directions. Inspector Tripathy said in his affidavit that six of them were arrested at the spot by the police party and three others were subsequently arrested by chasing the rioters.

53. Amongst the arrested persons there were the student leaders Mr. Rama Chandra Rath and Mr. Basanta Kumar Panda. The evidence is that the police action of lathi charge under orders of the SDO at the time the procession reached the cordon lasted for about a minute or so. (C. W. 26 Tripathy Q. 196).

54. *Was lathi charge justified:* It was argued on behalf of the students that the policemen were aggressors in that the injuries suffered by the students were grievous whereas the injuries suffered by the policemen were minor injuries and that lathi charge was in excess. It was submitted that the students were taken inside the cordon and beaten.

55. In support of this contention reliance was placed on the injury reports as discussed hereunder.

- (a) Mr. Ramchandra Rath had one lacerated wound $1\frac{1}{2}'' \times \frac{1}{4}'' \times \frac{1}{4}''$ on left posterior parietal away; one contusion (ante-posterior) $2'' \times \frac{1}{4}'' \times \frac{1}{2}''$ away from the mid-line on right lateral shoulder $2''$ below the shoulder joint; one contusion (ante-posterior) $2'' \times \frac{1}{4}''$; one contusion (ante-posterior) $2\frac{1}{2}'' \times \frac{1}{4}''$; another contusion and a swelling as mentioned in

the injury report Ext. C/50(1); it shows injury on the head and other injuries all said to have been inflicted by blunt and round substance.

- (b) Mr. Gopal Chandra Satpathy had two bruises—one $3\frac{1}{2}'' \times 1''$ on the upper and outer part of the right arm above placed obliquely and the other bruise $4'' \times 1''$ on the upper and middle part of the left side back placed obliquely as appears from injury report Ext. C/50(9).
- (c) Mr. Basanta Kumar Panda had one hematoma $1\frac{1}{4}'' \times \frac{3}{4}''$ on back parietal region at middle line as appears from the injury report Ext. C/50(3).
- (d) Mr. Chittaranjan Sahu had one lacerated wound $1'' \times \frac{1}{4}'' \times 1/6''$ on the left side scalp $3''$ above the upper border of the left ear and one bruise $4'' \times 1''$ in the middle of the upper part of the back shoulder blade placed obliquely showing face and head injuries bleeding within one hour; the time of the examination was at 1 P. M. on October 29 as appears from the injury report Ext. C/50(5).
- (e) Mr. M Venkata Raman had one lacerated wound $1\frac{1}{2}'' \times 1/3'' \times \frac{1}{4}''$ on the right parietal $3\frac{1}{2}''$ above the ear; one abrasion $1\frac{3}{4}'' \times \frac{3}{4}''$ on right posterior fore arm $\frac{1}{2}''$ below the elbow and another abrasion $1\frac{1}{4}'' \times 1''$ on right lateral hip $3''$ below the chest, as appears from the injury report Ext. C/50(2).

56. P. W. 16 Mr. Gopal Chandra Satpathy in his evidence said that 4 to 5 students first of all went to the SIDO to represent their grievances; on the way they found that there was police cordon standing in a line with gun and lathi; the students were obstructed from going to the SIDO; while there was conversation between them and the policemen, suddenly there was lathi charge and four students who had gone were assaulted; he also mentioned the names of students--M/s. Ramchandra Rath, Basanta Kumar Panda, Chittaranjan Sahu and himself Gopal Chandra Satpathy (P. W. 16 Gopal Chandra Satpathy Qq. 42, 43, 47).

57. On the other hand, the Magistrate and the police personnel were also injured at the same time when the said students were injured.

- (a) The Magistrate C. W. 28 Mr. H. K. Pradhan had an abrasion $2'' \times 2''$ on the forehead to the right of the right eye-brow inflicted by some blunt weapon as appears from Ext. C/50(21).

- (b) The DSP, C. W. 24 Mr. Samuel Mohapatra had four injuries, namely, one stitched lacerated wound $2\frac{1}{2}'' \times 1'' \times$ muscle deep on his right cheek adjacent to the nose; two right lateral incisors shaky; one abrasion $\frac{3}{4}'' \times \frac{1}{4}''$ right middle finger and another abrasion $\frac{1}{2}'' \times \frac{1}{4}''$ of right ring finger as fully described in the injury report Ext. C/50(24).
- (c) C. W. 26 Inspector Tripathy had three injuries, namely, hematoma $2\frac{1}{2}'' \times 1\frac{1}{2}''$ on the right deltoid region; another hematoma $2\frac{3}{4}'' \times 2''$ on the back of right hand and the other is an abrasion $2'' \times 2''$ on the front lower part of the right leg—all said to have been caused by blunt weapon as mentioned in the injury report Ext. C/50(25).
- (d) Apart from the Magistrate, DSP and the Inspector, several police constables were also injured as appears from the Magistrate Mr. Pradhan's F.I.R. Ext. C/57 and the respective injury reports of the police-constables Ext. C/50 series showing the details of the injuries they received.

58. The Magistrate C W, 28 Mr. H. K. Pradhan in his F.I.R. Ext. C/57 filed the same day at 1 P. M. at the spot reported that the warning of the SDO produced no effect and the crowd started throwing stones and pressed forward to break through the police cordon; the DSP, the Town Inspector and a number of constables and Mr. Pradhan were injured. The Magistrate Mr. H. K. Pradhan and Inspector Tripathy in their joint report Ext. C/59 sent on the same day also mentioned that the DSP, Inspector, Magistrate and some of the police constables were injured. In his evidence, the Magistrate C. W. 28 Mr. Pradhan also said that he was injured when he was standing near the police cordon.

59 It is thus clear from the evidence that there were injuries on both sides—students, policemen and magistrate. The position was this: That four or five students had gone near the cordon to meet the SDO while there were 50 to 60 other student demonstrators near about the approach road in front of the cordon; there were 18 APR and 5 OR policemen totalling 23 policemen in the cordon; while the students wanted to cross the cordon to meet the SDO, they were obstructed by the policemen; so naturally a stampede followed in which the students and policemen with lathis got mixed up; at the same time brickbatting was also there from the side of the students. It was in this stampede in which there were the policemen with lathis and the students brickbatting that 4 or

5 students who had gone in advance to meet the SDO got into close contact with the obstructing policemen with lathis and got injuries which were grievous. The Magistrate and the policemen also got injuries from brickbats thrown by the students; this is the reason why the Magistrate and the policemen appear to have received minor injuries.

60. The explanation of the SDO who ordered lathi-charge was that all warnings and announcements produced no effect on the mob; the students had come as close as the cordon; there was almost physical contact with the mob; there was some pressure on the right side of the SDO and the police party as they stood facing the National Highway from the SDO's office; there was also brickbatting by the mob. The SDO, DSP and other members of the police force were injured by them; all were on the point of being overpowered by the mob which wanted to press forward to reach the stack of brickbats which the mob was anxious to reach. Initially, while posting the police cordon, the stack of brickbats was taken into consideration and kept behind the cordon, so that the mob might not reach it. If the mob was allowed to advance further towards the SDO's office by crossing the police cordon, the mob would have reached the stack of brickbats and more mischief could have been done by the mob with brickbats from the said stack; the SDO's office building itself could have been attacked and damage done.

61. There is no basis for the charge that the students were roped in behind the cordon and mercilessly beaten by the police. The allegation of P. W. 16 Mr. Gopal Chandra Satpathy was that he came to know afterwards that the students were beaten mercilessly by the police inside the cordon. In answer to Q. 57 he said that he was not present when this occurred. Therefore, he was not an eye-witness to what he heard. The SDO Mr. A. C. Dehury denied the suggestion made in cross-examination by the learned counsel for the students that he and the DSP permitted a batch of students to get into the cordon and after getting them in, the SDO and the policemen surrounded them and mercilessly assaulted them with lathis (C. W. 25 A. C. Dehury Q. 245).

62. In fact, the mob had come closer to the police cordon and pressed forward towards the office of the SDO; at that point of time the mob aimed at the huge stack of brickbats which was lying inside the cordon for construction of

houses; the four or five students had crossed the cordon and the main crowd behind them was almost in personal contact.

63. So in this grave situation lathi-charge was unavoidable. The order of lathi-charge had the desired effect; the mob receded and went up to the National Highway but continued throwing brickbats from the National Highway towards the Magistrate and the policemen.

64. *Was medical aid given after first lathi-charge :* A serious allegation was made against the administration that no medical aid was given to the arrested injured students while they were kept at the court hajat after the first lathi charge. The student leader Mr. Ramchandra Rath had a head injury and admittedly there was some blood (C. W. 25 A. C. Dehury Qq. 254, 255); there were also others injured among the arrested students including Mr. M. Venkata Raman who had also one lacerated wound and abrasions--all as hereinbefore discussed.

65. It was argued on behalf of the students that no arrangement was made for giving these injured persons first-aid; it was suggested to the Magistrate C W. 28 Mr. H. K. Pradhan that the Civil Surgeon Dr. D. Mohapatra was out of station on October 29 and returned from a camp the next day. The Magistrate replied that he did not know and said that he did not see the Civil Surgeon at any time on October 29 (C. W. 28 H. K. Pradhan Qq 55, 56). In support of this allegation, reliance was placed on some of the injury reports which are said to have been signed by the Civil Surgeon Mr. D. Mohapatra on October 30, 31 and November 1.

66. There is no basis for the allegation that the Civil Surgeon was not present at Berhampur on October 29. In fact, some of the injury reports appear to have been signed by the Civil Surgeon Dr. D. Mohapatra on the very date of the incident October 29. Ext. C/50 (20) was signed by him on October 29 at 5 P. M.; Ext. C/50 (44) was signed by him on October 29 at 5-30 P. M.; Ext. C/50 (58) was signed by him on October 29 at 5-10 P. M.; Ext. C/50 (64) was signed by him on the same day at 5-25 P. M. These exhibits show that the Civil Surgeon Dr. D. Mohapatra was present at Berhampur on October 29.

67. The evidence of the SDO is that as a result of the first lathi-charge about four students were injured. Then he went to his office to give intimation to the Civil Surgeon but

the SDO could not get him immediately. It took him about ten minutes to get the Civil Surgeon and then he (Civil Surgeon) responded that he was sending a first-aid party in an ambulance. As to why the SDO did not take steps for sending these students who were severely injured to the Medical College Hospital for treatment, the SDO said that he had called for the first-aid party and it was left to the Medical Officer to treat the injured persons there ; the Medical Officer had not sought the SDO's orders to send them to hospital. So the SDO felt that it would be enough to give treatment there and take them into jail custody where they would be treated medically better.

68. It is in evidence that the arrested persons were lodged in the court hajat and were given first-aid by the Medical Officer whose services were requisitioned after the first lathi-charge. In this context, the evidence of the DSP C. W. 24 Mr. Samuel Mohapatra is that some Government Medical Officer had come as sent on the requisition by the SDO. The SP Mr. Mazid in his affidavit mentioned that some of the arrested persons who were in the hajat had received injuries on their person for which they were receiving first-aid from the Medical Officer and were subsequently removed to the Jail in an ambulance car. Inspector Tripathy also in his affidavit mentioned that immediately after the first lathi charge, the SDO summoned for the Medical Officer who attended the injured persons ; the Medical Officer gave first-aid to the injured students and also to the injured Magistrate Mr. Pradhan and the injured police personnel.

69. *Why there was no use of teargas before first lathi-charge* ; It was seriously commented on behalf of the students that no teargas shell was used before the initial lathi-charge at 12-30 P. M.; their point is that if steps had been taken to disperse the procession of the students by use of tears smoke when it was at a distance, it could have been very effective and they could have been dispersed. The admitted case is that the first lathi-charge was resorted to without having prior thereto the use of tears smoke.

70. The explanation of the administration is that at the point of time use of force became necessary, there was a melee—in fact a stampede—in which policemen and members of the mob were mixed up. In such a situation use of tears smoke was not possible ; there was almost physical contact between the mob and the policemen. The explanation of the SDO for not using tears smoke in substance was this : When he

was watching the movement of the procession from the Highway towards his office through the approach road, he wanted to avoid use of any force unless he was forced to do so. But when he found the use of force was unavoidable, it was too late for the SDO to resort to use of tearsmoke ; by that time, there was no gap between the policemen and the mob ; they were in close contact and in fact mixed up. In such a situation use of tearsmoke was not possible ; it was then that it became necessary to order lathi-charge to disperse the mob which was pressing forward.

**F. Third phase : SDO's parleys with leaders failed :
tearsmoke and lathi charge : 1-15 p. m. to 2-30 p. m. :**

71. Some time after about 1-5/1-10 p.m., the mob swelled, again surged forward and began brickbatting demanding release of persons in the Court hajat nearby. It was an angry mob shouting slogans and abusing in filthy language and threatening violence in case their demand for the release of the arrested persons was rejected. By this time, the DIG arrived and after him, the SP came with police reinforcement. The SDO repeatedly declared the mob as unlawful assembly, warned and appealed to them to disperse. The announcements were made both by the SDO, DSP and the Inspector through loudspeaker. The announcements however were not producing any effect on the mob; brickbatting was getting heavier. At that stage the mob was at a distance of about 150 yards or a little more from the police cordon where the SDO and the police party were standing. In the meantime, at about 1-10 or 1-20 p.m., as the mob was throughout pelting stones and demanding release of the arrested persons under the orders of the SDO, a police cordon was thrown near about the Court hajat where the arrested persons were kept.

72. At this time, Mr. Jagannath Misra, a political leader came out from the mob; asked the mob to stop brickbatting and to keep quiet. He walked straight up to the SDO who was standing near the police cordon. When Mr. Jagannath Misra was walking alone towards the SDO there was a pause in brickbatting. During the time he was parleying with the SDO, there was no serious brickbatting from the mob. Mr. Jagannath Misra demanded release of the persons and return of the cycles seized during the earlier lathi-charge. The SDO tried to explain to Mr. Jagannath Misra that the accused persons had committed offence as members of an unlawful assembly which had violated order under section 144 Criminal

Procedure Code and had attacked his office; they had brickbatted and attacked the police personnel with the object of getting into his office; they had been arrested according to law; therefore it was not possible to release the arrested persons immediately nor could the cycles be returned without observing the necessary formalities of law. The SDO also appealed to him to persuade the mob to desist from brickbating and to disperse. The SDO told him that unless the mob dispersed, the consequences might be serious as otherwise force had to be used. Then Mr. Jagannath Misra said that unless the arrested persons were released he could not do anything to pacify the mob and that he (SDO) would be faced with consequences. Thereafter Mr. Jagannath Misra walked back to the mob; his mission failed.

73. Soon after Mr. Jagannath Misra joined the mob, heavy brickbating again started. Again there were warnings and appeals by the SDO through loudspeaker to disperse. Although the mission of Mr. Jagannath Misra failed, the student leaders however pursued their demand for release of the arrested persons.

74. After 10/15 minutes, two student leaders Mr. Santosh Kumar Mohapatra and Mr. Ashok Rao again came to the SDO for parley; both the students were in a very agitated and angry mood when they approached the SDO; they were very aggressive in their attitude. These two student leaders demanded the explanation of the SDO as to why he had made order for lathi-charge and why he got the students arrested. The SDO explained to them that there was no alternative but to declare the assembly unlawful and to disperse them by lathi-charge. The SDO also tried to pacify them and requested them that they should go back and ask the mob to disperse. The SDO further assured that if the mob dispersed then he would consider if the arrested persons could be released and that he would do whatever was within his power according to law. The SDO also expressed that they were in an agitated and angry mood; they had fallen into the hands of some unruly elements as a result of which they took this attitude and were not listening to him; the SDO advised the student leaders that it would be better for them to persuade the mob to go back and to disperse. The SDO further told the student leaders that it was thereafter that they could come back and take steps to get release of the arrested students on bail. The SDO also warned the student leaders that the mob which had congregated had been declared unlawful; if they did not disperse, they

would be teargassed, lathi-charged and if necessary firing might be resorted to. These warnings did not produce any effect on the student leaders—they gave the SDO a threatening that —

“Alright, if you do not release the students and release the seized property you will feel the consequence.”

75. Then the student leaders returned and shouted to the mob as they approached the mob that the arrested persons would not be released. At this, the mob became very violent; pelting of stones became very intensive. It was apprehended that the mob would attack and rescue the arrested persons from the court hayat near about. It is also in evidence that the mood of the mob was aggressive and shouting of the slogans was in such abusive words that it indicated that they were bent on release of the arrested students by force if they were not released by the authorities. The position was such at that moment that even if the SDO had released the arrested persons on bail, it might have still aggravated the situation as was apparent from the attitude of the mob.

76. As hereinbefore stated., the SDO had made all efforts to pacify the mob by appeals and warnings. He did not order use of force in spite of the fact that the police party was being subjected to shower of granite pieces on them.

77. When the situation became tense and further waiting would have resulted in the police being overpowered, it would not have been safe to wait further. If the SDO had waited further the mob might have overpowered the police and attacked the SDO's office, Record-room and the Treasury which were within 200 yards from the position where the SDO and the police party were standing. It was then that the SDO issued final warning to the mob to disperse. The mob was warned that if they did not disperse immediately, there would be use of teargas, lathi-charge or firing. During the entire period from 1-15 P. M. when the assembly was declared unlawful up to 2-30 P. M. the SDO and other officers were throughout warning and shouting that the crowd should disperse but the warnings produced no effect.

78. Thereafter, under the orders of the SDO teargas was used and the mob was also lathi-charged by the police. The SDO's order in writing Ext. C/55(B-1) was: "Use teargas and charge lathi". Two sections of police were utilized for lathi-charge to chase the mob to disperse; they were chased about 70 yards but the mob was receding and again advancing from time to time, so there was no fixed place up to which they were chased and stopped. They came as far as the P. W. D. colony.

79. The stock of tear-smoke shells with the police party at the time was not large. There were only two boxes containing about 24 shells and 8 grenades; out of that about 22 shells were fired and six hand-grenades were used.

80. The use of force—use of tear-smoke and lathi-charge—was not, however, effective. The reason why use of tear-smoke and lathi-charge was not effective and the circumstances which necessitated firing are hereinafter discussed.

G. Fourth phase : First firing : 3-45 p. m. :

81. *Students' version of the first and second firings : case of the administration :* The case of the students as suggested to the DSP C. W. 24 Mr. Samuel Mohapatra in Q.463 in cross-examination is that the firing resorted to by the police on October 29 was not in the way he stated to have taken place but that the police fired at random hitting anybody who came across in mad frenzy as a result of which Basanta Kumar Acharya was hit while fleeing and fell down, and immediately after him Somanath Jena who attempted to rescue him and was in the process of bending over the first victim (Basanta) was shot dead at the spot. This suggestion was, however, denied by the DSP. The students' case in substance was that the first and second firings were in quick succession almost simultaneous; the time lag between Basanta's falling and Somanath being hit was very short—within 2/3 minutes.

82. In support of the students' case P. W. 16 Mr. Gopal Chandra Satpathy in his affidavit and evidence said this: After hearing about the police oppression—initial lathi-charge in front of the SDO's office, arrest of the student leaders and breaking by policemen of about 100 cycles belonging to the students—a large number of students came to hold a meeting in the open space on the National Highway near the Taluk Office; the students assembled in a peaceful meeting; when the meeting was going to begin to protest against police action, some students are said to have requested the D/G, SP and others that the arrested injured students should be given medical aid; while students were demanding such medical aid, tear-gas shells were thrown at them immediately followed by successive gunshot firings as a result of which Basanta Kumar Acharya was hit on the head and died; it was alleged that one Somanath Jena ran to Basanta Kumar Acharya and attempted to raise him (Basanta) when Somanath Jena was shot dead, kicked with boots and dragged to the police van, some more bullets were fired and many others injured.

83. According to P. W. 16 Mr. Gopal Chandra Satpathy, the first firing, by which Basanta Kumar Acharya was shot, was by about 1-10 p. m. His evidence is that at about 12-30 or 12-40 p. m., he returned from the hospital and met the students again by the side of the Taluk office on the National Highway; then they had a meeting for about half an hour just near the Taluk office; it was while the meeting was thus being held, the policemen all at once fired teargas and bullets, the meeting was held only for 15 to 20 minutes, (Qq.53, 59, 327, 331) He also said that almost immediately after Basanta was shot, Somanath was also shot dead by police firing. In answer to a question put to him as to what was the time lag between the first firing by which Basanta Kumar Acharya was killed and the second firing which caused the death of Somanath Jena, he replied that it would probably be half an hour (Q.69). According to him, therefore, by 1-10 p. m. Basanta Kumar Acharya was hit and by 1-45 p. m. Somanath Jena was shot dead; therefore according to his version, the first and second firings were over by 1-45 p. m. at the outside.

84. While denying the version of the students, as stated above, the case of the administration was this: The first firing as a result of which Basanta Kumar Acharya fell was at about 3-45 p. m., and the second firing as a result of which Somanath fell was at about 4-45 p. m. The sequence of events after the parleys with the political leader Mr. Jagannath Misra and the two student leaders had failed was this: Immediately thereafter heavy brickbatting had started; the assembly had to be declared unlawful; ultimately at 2-30 p. m., under orders of the SDO the police used teargas and lathi-charged the mob; there were intermittent attacks on the mob with teargas and lathi but they had no effect; the mob continued to be violent; the situation gradually so deteriorated that firing had to be resorted to at 3-45 p. m.

85. *Why use of tearsnoke and lathi-charge before first firing was not effective:* The situation after use of tearsnoke and second lathi-charge at 2-30 p. m. and before first firing was this: When repeated warnings to the mob produced no effect, under the orders of the SDO teargas was used by the police and the mob was also lathi-charged. The mob was receding and again surging forward: police party was receding on account of heavy shower of brickbatting which never stopped.

86. The use of tearsmoke could not be effective because of the heavy wind at that time. It was an open place with breeze blowing from south to north; though the mob was somewhat concentrated at the front it was spread over a long distance, more or less up to the Komapalli crossing.

87. So also lathi-charge was not effective; policemen could not make lathi-charge successfully due to heavy showering of brickbats by the mob from the right and left sides of the road; after teargassing, policemen with lathis charged the centre of the mob on the road and the mob receded to some distance and spread to the right and left of the road; a number of persons got inside the PWD colony and took cover behind the walls and from there started brickbatting on the police force; the policemen with lathis chased the mob but had to fall back on account of heavy showering of brickbats by the mob; then again there was teargassing by the police followed by lathi-charge; throughout the process there was heavy brickbatting with intermittent short spells of the same of reduced intensity; from the time brickbatting by the mob started and during the operation a large number of police personnel including the DIG were injured; the SDO and the Magistrate Mr. Pradhan were also hit by brickbats. The police force could not get close to the mob because they were sustaining injuries due to heavy brickbatting by the mob. Thus a stage came when further lathi-charge was becoming impossible on account of heavy shower of brickbats by the mob causing injuries to the charging policemen.

88. *How situation developed necessitating opening of first firing at 3-45 p. m.* : In this context, the sequence in which the use of force was being made continuously or in quick succession must be kept in view. At 12-30 P. M. there was lathi-charge as a result of which four students were injured and they were seen bleeding; the mob receded but did not disperse; at 1-10 P. M. again brickbatting started; at 1-30 P. M. the mob had swelled from 500 to 3,000. In the meantime, the DIG followed by the SP with reinforcement arrived. During the entire situation between 1-15 P. M. and 2-30 P. M. there were repeated warnings, persuasions and appeals to the mob to disperse.

89. During the second lathi-charge at 2.30. P. M. two student leaders Mr. Ashok Rao and Mr. Santosh Kumar Mohapatra were arrested. Therefore, there were angry shouts and slogans demanding release of these two arrested student leaders. The mob was determined to overpower the

police force. The persistent demand first by Mr. Jagannath Misra and later on by the two student leaders for release of the arrested persons show the determination of the mob to get them released.

90. From 1 p. m. brickbatting continued till 3.45 p. m. though with short spells of reduced intensity particularly at the time of parleys with the leaders. The use of tear smoke and lathi-charge from 2-30 p. m. was not effective for reasons aforesaid. This aggravated the mob frenzy. The mob of not less than 3,000 continued brickbatting till 3.45 p. m. The intensity of brickbatting had increased. The Magistrate, the Deputy Inspector-General of Police and other police personnel received brickbat injuries. Further lathi-charge was impossible due to heavy brickbatting by the mob.

91. In the meantime the mob was getting determined and strong armed with bamboos pulled down from the thatches at Komapalli crossing and thus armed they were surging forward. The warnings, persuasions and appeals by the SDO and other officers failed; surging forward and brickbatting by the mob continued. It was then that under orders of the SDO four rounds were fired, even the sound of first three rounds did not produce appreciable effect on the mob—first three rounds did not deter the mob from surging forward. Thus though there was necessity for use of force since 1.15 p. m. the authorities did not act in haste nor did they get panicky. In this context, the consistent evidence of the State officials both in their affidavits and evidence is discussed hereunder.

92. The mob was in a frenzy; the SDO gave warnings continuously. It was seen that at the back of the mob a large number of persons pulled down bamboos from the thatched roofs; they rushed from behind holding those bamboos to come to the front and attack the police; there was great commotion; the mob in frenzy and with determination was trying to surge forward. All the while--every now and then--warnings were being repeatedly given to the mob to disperse repeated warnings were given that if it did not disperse forthwith police would open fire; these warnings had no effect; the armed section of the mob was rushing forward from behind; brickbatting became intense and heavy.

93. It was at this stage that the SDO felt that if further time was allowed, the crowd might overpower the Magistrates and the policemen and might damage SDO's office, Record room and the Treasury and the policemen then would not be able to control the mob: there was risk to the life of the

Magistrate, police and public who were there. The SDO then gave warning to the mob that unless they receded he would have to disperse them by firing. The SDO asked the DSP to be in readiness and again gave warning to the mob to recede and disperse otherwise there would be firing. Even then there was no response from the mob; then the SDO asked the DSP to open fire. At that time, brick-battling by the mob became intense and heavy; stones were being thrown from behind the wall of the P.W.D. quarters which gave cover to the rioters; the mob by then had swelled to more than 5,000. The SDO again warned the mob through amplifier to disperse at once. The DSP in charge of the police party came and also repeated the warnings. The mob, however, without paying any heed to the warnings, rushed forward and continued heavy brickbattling.

94. It may be remembered that just before this at 2-30 P.M. the two student leaders Mr. Santosh Kumar Mohapatra and Mr. Asok Rao were arrested and taken to custody. The arrest of the two student leaders made the mob more angry; the mob shouted slogans and demanded the release of their leaders. By this time, the mob was determined to overpower the police and to snatch away the arrested persons from police custody.

95. It was in this grave situation that there was no other alternative but to order firing.

96. *How the order for firing was executed* : The SDO had asked the DSP that four rounds be fired—one after the other—and to watch the reaction. The order of the SDO in writing is Ext. C/55(B-2). The DSP described in details the manner in which firing order was executed. The SDO himself was near the firing squad very close to the DSP. Besides, the DIG and the SP were also at the spot standing a little apart. The DSP was asked by the SDO to control the firing. The DSP lined eight men in two rows—the back row four men and the front row four men. The back row men were kept standing. The front row four men only knelt down in firing position and kept waiting for the orders of the SDO to open fire

97. Then under the orders of the SDO the policemen were directed to fire below the knees: the first round was fired with no effect; then the second round was fired within 30 seconds with no effect; then the third round was fired after 20 seconds still with no effect; then the fourth round was fired within about 15 seconds of the firing of the third round. It

was the fourth round which hit Basanta Kumar Acharya; the first three rounds were not effective; so the fourth round had to be fired.

98. The evidence of the SDO C.W. 25 Mr. Dehury is that in course of firing of the four rounds, the firing was controlled from one round to another thus : the DSP was touching the constables one after the other to indicate that it was his turn to fire. The SDO was satisfied that the firing was being controlled by the DSP. Each time after one round of firing, it took some time—about 30 seconds or so. The SDO himself was watching the reaction. It was not a case of firing at random as alleged. Even after the first three rounds the mob did not disperse; they were still surging forward; there was no sign of dispersal. The crowd had come up to about 50 yards from the firing squad when the first round was fired; the mob still kept advancing; when the second round was fired, the crowd had advanced about a yard, when the third round was fired, the crowd advanced further about a yard. The evidence is that in between the time when the first round was fired and the time when the fourth round was fired, it might be 2 to 3 yards that the mob had advanced; the distance between the policemen who fired and the victim Basanta Kumar Acharya who fell would be about 40 to 45 yards. The fourth round had to be fired because the rushing of the mob had not been stopped by firing of the first three rounds.

99. The DSP C.W. 24 Mr. Samuel Mohapatra denied the suggestion in Q.454 in cross-examination that the crowd were running away after the first round of firing but even then the police continued to fire; he also denied that the bullet hit Basanta Kumar Acharya in the process of his turning and running away from the road. The post-mortem report Ext. C/51 also shows bleeding injury to the right ear and other external injuries in the region of the right ear; there is no indication of any back injury as suggested.

100. It was argued on behalf of the students that the firing was aimed high towards the mob as a result of which Basanta Kumar Acharya was hit on the head as appears from the post-mortem report; that even assuming that firing order was necessary, its implementation was defective. In support of this contention, reliance was placed on Rule 621(k)(ii) of the Police Manual which requires that the policeman shall be instructed to aim low and, as far as possible, firing shall be directed at the ringleaders or the more violent members or portion of the assembly.

101. The evidence of the SDO is that the officer in command followed the instructions in the Police Manual; the constables were in a kneeling position. In answer to a question put to the SDO as to how could the bullet hit the victim on his head who was 5 feet high from the ground, if the bullet was fired at a level of 2 feet parallel to the ground, the SDO's explanation was that by that time pelting of stones was there; if it would have struck on the musket it might have changed the angle; or the constable aimed high at any particular moment; he could not describe that position. The DSP who was controlling firing also said to the effect that the mob was heavily brickbattling the police force when the policemen aimed low and fired below the knees. The kneeling down position of the policemen while firing would indicate that they were instructed to fire low. The situation was tense; brickbats were falling. The DSP also said if the brickbat hit the musket it might change the direction of the bullet (C.W.25 A. C. Dehury Q. 423). There is no evidence that the firing was aimed high. That apart, it is in evidence that in course of both the first and second firings, the victims were found brickbattling; it is said that at the time of the firing of the fourth round Basanta Kumar Acharya in front of the mob was picking up a stone balast when he was hit and fell down on the ground

102. As regards the distance from which the firing was opened at the advancing mob, the evidence is that when the first round was fired, the distance was about 45/50 yards. Rule 621(k) (i) of the Police Manual provides that firing shall not commence before it can be effective nor be deferred until the rioters are so close that there is risk of the police party being overwhelmed; the effective range for ball is 100 yards in the case of the .410 musket and 600 yards for the .303 rifle ;

103. In the present case, the distance from which the firing was opened was much within the limits permissible under the rules of the Police Manual;

104. *Was firing justified:* The case of the students is that they gathered on the National Highway by the side of the Taluk Office and they demanded medical aid, they were abused, lathi-charged, teargassed and ultimately they were fired upon with bullets by the police. They denied that there was any brickbattling from their side, or they used bamboo sticks or burnt any houses as alleged, the crowd was about 150/200 in number, there was no order under section 144 Criminal Procedure Code declared before the firing, it was shot in a volley at a time, so the firing was unjustified.

105. It may be noted that by the time the first firing was opened and some time prior to that, the mob had swelled to not less several thousands; the mob was heavily brickbatting; the mob was rushing towards the police force with bamboo lathis which the mob had brought from the huts near the Komapalli crossing; the SDO warned the mob that there would be firing, if it made attempts to rush towards the police force. It was apprehended that the police might be overpowered; there was danger to life of Magistrates and the policemen there at that point of time; the situation was very tense. In this grave situation neither use of teargas nor lathi-charge would have served the purpose as the mood of the mob was so aggressive that there was risk to life of the officers and policemen at the spot.

106. In the ultimate analysis, the cumulative effect of all the circumstances considered together was this: The methods by which the huge violent brickbatting mob could be dispersed were use of tearsmoke, lathi-charge or firing. In the circumstances as then developed, lathi-charge was not effective because of heavy showering of brickbats by the mob; the police lathi party could not reach the brickbatting mob; teargas also not effective because of vast open space and the breeze blowing from north to south. The dispersal by lathi-charge and teargas was attempted but failed. If the authorities waited any longer they would have been overpowered by the mob.

107. The wholesome principle of firing from a distance is embodied in Rule 621 (e) (ii) of the Orissa Police Manual, Volume I which is this:

“Every precaution should be taken to ensure that an armed force is not brought so close to a dangerous mob as to risk either its being rushed and overwhelmed or being forced to retire before achieving its objective or to inflict heavy casualties. If the use of fire arms is considered necessary, firing should be carried out from a distance sufficient to obviate the risk of being rushed and to enable strict fire control to be maintained, e.g., between 70 and 100 yards. Firing must on no account be deferred until the mob has approached within 70 yards.”

(Orissa Police Manual, Volume I, p 309)

108. It is obvious that the authorities tried to avoid opening of fire for about three hours, they tried to tackle the mob by the use of minimum force in the manner they did till firing, the situation was such that even as early as 2 P. M. firing to disperse the mob after warning would not have been unjustified. The local authorities avoided firing up to the last

possible moment. The senior officers—the SDO, DIG and the SP—were all present; it is hardly possible that with all these officers present at the spot there could be any error of judgment in tackling the situation like this in the manner they did nor was it possible that there was any hasty or hot-headed decision taken by the local authorities while dealing with the situation. The very fact that this trouble which started since early morning at 10-30 A. M. was allowed to continue till late in the afternoon 3-45 P. M. when firing had to be resorted to shows that the officers used utmost patience in handling the situation. It was only when there was no other alternative that as a last resort firing was opened at 3-45 P. M.

109. Having regard to the circumstances, the Commission finds that the firing in those circumstances at that time in that situation was unavoidable.

II. Fifth phase : second firing : 4-45 p. m.:

110. The case of P. W. 16 Mr. Gopal Chandra Satpathy, as stated in paragraph 7 of his affidavit, was to the effect that immediately after Basanta Kumar Acharya fell down, an O. R. T. driver (Somanath Jena) who was nearby got moved by the incident and cried "Alas, what have you done" and ran to the boy to help him in his death agony probably with the intention to take him to the hospital; when he attempted to raise the boy (Basanta), Somanath was aimed at and was shot dead; before giving any help to the boy, Somanath fell victim to the police bullet; the boy (Basanta) was by then dead; Somanath groaned and asked for water and instead of water being given to him, he was given kicks by the police boot and was dragged to the police van; in that condition inside the police van Somanath died. From what Mr. Gopal Chandra Satpathy said Somanath must have been hit almost immediately thereafter within a few minutes after Basanta fell down but in evidence in answer to Q. 69 he said that the time gap, between the first firing by which Basanta Kumar Acharya was killed and the second firing which caused the death of Somanath Jena, was probably half an hour. -

111. The case of the administration is that the second firing was at 4-45 P. M. i. e., one hour after the first firing at 3-45 P. M. The circumstances in which the second firing had to be resorted to are as hereinafter stated.

112. After Basanta Kumar Acharya fell as a result of the first firing, the mob did not disperse but remained congregated at a distance and began to surge forward. Some time after

the dead body of Basanta Kumar Acharya was removed by the police force under orders of the SDO, one Mr. Abhir Padhi said to be a correspondent of Matrubhumi came out of the mob towards the Magistrate and police party; he approached the SDO, the Magistrate Mr Pradhan and the SP and demanded return of the dead body of Basanta Kumar Acharya, but he was told that the dead body could not be returned. Thereupon Mr. Abhir Padhi went back to the mob and immediately thereafter, there was resumption of heavy shower of brickbats from the side of the mob. The mob gradually grew violent and at once surged forward on the main road as well as to their right and left; a considerable section rushed towards their left and began throwing brickbats on the staff quarters. While all these were going on there was heavy showering of brickbats from the front side as well as from inside the PWD compound wall by the members of the mob. The situation was getting very tense.

113. A section of the mob had concentrated in front of the police quarters on the southern side of the National Highway near Komapalli crossing. It was found that a burning torch (Mashal) was being taken towards one of the houses; soon after smoke came out of the house of the Head Assistant of the office of the DIG; the house from which smoke was coming had been set on fire by the mob. The DIG in his affidavit said that he could see the inmates of the house were in danger; that there were women and children in the police quarters.

114. It was then that the DSP Mr. Samuel Mohapatra, the Magistrate Mr. Pradhan, the SDO and the SP with a section of the armed police reserve and the amplifier rushed towards the police quarters to save the inmates of the police quarters from the attack of the violent mob under heavy shower of brickbatting from the front, left and right flanks. While the Magistrates and the police party were rushing forward, a flying granite stone came from behind the compound wall of the PWD colony and hit the DSP Mr. Samuel Mohapatra on the face; he fell down on the ground bleeding profusely; he was immediately carried towards the court hayat; he appeared to be senseless. The falling down of the DSP on the National Highway and his being carried was visible to the mob from all sides; at this sight the riotous mob got excited, raised victorious cries; with great noise, shouting and evident jubilation at the fall of the officer who had executed the opening of fire, the mob surged forward towards the Magistrates and the police party who were coming towards

the police quarters. The mob advanced with menacing attitude, heavily showering brickbats and carrying the bamboos pulled from the thatched roofs near Komapalli crossing as hereinbefore stated.

115. Immediately the SDO directed Inspector Tripathy to ask the force to take position and to be ready to fire. The SDO announced through the loudspeaker that the mob which was unlawful should disperse forthwith and warned that unless the mob did not disperse immediately, police would be directed to open fire. The warnings had no effect; the mob who had attacked the staff quarters were continuing their attack; more smoke was coming from inside the staff quarters.

116. It was then felt that there was no other way of dispersing the mob and saving the life and properties of the inmates of the staff quarters but to order firing. Accordingly, the SDO directed a volley of three rounds to be fired to disperse the mob. Immediately, three rounds were fired in a volley and a person in the mob (Somanath Jena) fell at a distance of about 40 yards and was found dead.

117. The second firing had the desired effect; the mob began to run back. The police force with lathis chased; very soon the road up to Komapalli crossing was cleared; a section of the mob was seen running towards the crossing in front of the Tata Mercedes Benz garage.

118. This version on behalf of the administration about the circumstances in which the second firing had to be resorted to is supported *inter alia* by evidence of the SDO C. W. 25 Mr. Dehury, Magistrate C. W. 28 Mr. Pradhan, C. W. 26 Inspector Tripathy and also by the affidavits of the DIG and the SP.

119. *How was the order for second firing executed* : The written order passed by the SDO is Ext. C/55(C) "Situation uncontrolled fire". At the point of time he gave the order for firing of three rounds, the SDO himself was on the National Highway in front of the Taluk Office. The position where the second firing was resorted to was in front of the first police quarter while going towards Komapalli crossing. In the absence of the DSP who had in the meantime been injured, Inspector Tripathy was asked to take command and to execute the firing order. The distance between the position of the police party who fired for the second time and the place where Somanath Jena fell dead would be about 45 to 50 yards.

Three policemen in kneeling position fired aiming low below the waist in a volley from the middle of the road- little to the right- facing the Komapalli crossing. The reason why the SDO ordered for firing in a volley was that the situation was very tense; the mob would have overpowered them; smoke was coming out from the fourth police quarter, the situation would have been very serious if they waited further. That is why the SDO ordered for firing in a volley. He himself was standing by the side of the firing squad.

120. It was commented on behalf of the students and the public that the second firing was also aimed high as a result of which Somanath was hit on the head as appears from the Post Mortem report Ext. C/101. The explanation for injury on the head is that the deceased was seen picking up brickbats at the moment he was fired at. The nature of the injury shows that he had an injury in the eye which was a frontal injury and there was no back injury. This shows that the deceased was facing towards the police party while he was hit. The possibility of the deceased as a member of the mob picking up brickbats from road while he was hit by the firing cannot be ruled out. In any event, there is nothing to show that the firing was aimed high; although in the absence of the DSP, Inspector Tripathy was executing the order for firing, the SDO himself was standing at the spot. Other senior officers including the DIG and the SP were also there. There is no evidence to show that the firing was at random as alleged. The explanation for the head injury that the deceased was seen picking up brickbats from the road at the moment the mob was fired at cannot be rejected.

121. *Was Second Firing justified* : The immediate situation in which the second firing was resorted to was this : The mob with burning torches (Mashals) had attacked the police quarters with women and children inside. In fact, smoke was found coming out from one of the police quarters. How the house was set on fire has been described by the SDO, C. W. 25 Mr. Dehury as an eye-witness to what he actually saw.

122. The evidence of the SDO was this: He found the mob congregated near Komapalli crossing in front of the police quarters as well as near the PWD colony and they were gaining in strength. The mob was hurling abusive words such as "POLICE KU MARA; MAGISTRATE KU MARA"; at that time some persons were seen carrying burning torches (Mashals); the mob advanced towards the fourth quarter of the police colony, that is, the quarter of the Head Assistant of the

office of the DIG Mr. Bhikari Charan Pradhan; it was apprehended that the life of the inmates and properties in the colony were in danger. At that point of time the SDO was in front of the Taluk Office on the National Highway very near the police quarters; he found persons carrying burning torches (Mashals) advanced towards one of the police quarters; the DSP rushed with some force towards the section of the mob which had attacked the police quarters. While in this process, the DSP was hit by a stone and fell unconscious.

123. C. W. 26 Inspector Tripathy was also at the spot. In fact, after the DSP fell, Inspector Tripathy took over charge and was kept in command of the police force under the orders of the SDO and executed the order for firing in the manner as aforesaid. Inspector Tripathy also said about the circumstances in which the second firing was resorted to. His evidence was this : At the time he took command the situation was uncontrollable; the mob attack was violent on the police family quarters; the mob had rushed in, set fire, broke open the windows, glass panes of the quarters; heavy smoke was coming from the windows; he apprehended great risk to the life and properties of the inmates of the police quarters. It was later on found that the house of Mr. Bhikari Charan Pradhan, Head Assistant of the office of the DIG was ransacked, the mosquito-net, clothes, sarees and other articles were burning; his family members were crying; Mr. Pradhan was not then in his quarter; his wife, a grown up daughter and minor children were there.

124. The DIG Mr. B. K. Roy was also present. In his affidavit he said that he found a menacing crowd was surging forward with angry shouts towards the police party; a section of the mob was attacking police quarters on the National Highway with brickbats; there was a concentration of the crowd in front of the quarters of the Head Assistant of his office; the house was being attacked and smoke was coming out through windows. The SP Mr. S. A. Mazid was also at the spot; in his affidavit he also said to the same effect about the mob attack on the police quarters at that time.

125. The manner in which the mob had attacked the police quarters, had set fire and caused damage inside the police quarters was described by Sm. Shantilata Pradhan, wife of Mr. Bhikari Charan Pradhan, Head Assistant of the office of the DIG in her affidavit. She said this :

“ People in thousands surrounded our house. They broke the window glass and threw stones into the house. I out of fear was praying God and was standing behind a pillar of the inside

verandah with an adult daughter and four little children. By this time smoke came out of our bed room. Constable Bhaskar Swain shouted that they burnt the house. When I went into the house I saw the people broke the window on the western side of our bed room and put fire to the mosquito-nets on the cot. The Sarees, shawl and other clothes put on the net frame and the carpet, bedsheet, etc., put on the cot were burning. When I went there, the people were shouting "drag the lady and put her into the fire" and also they were rebuking in slang language. Thereafter people in hundreds entered into the courtyard jumping over the compound wall on the back side at which I in fear, requested them with folded hands to go out. But they did not listen. They entered into the house, breaking the back door. By this time I heard the firing sound. Then the people ran away leaving the house. Then I went to the bed room and found that the mosquito-net frame on the cot has been broken. The window glasses have been broken. The clothes have been burnt to ashes. The mosquito-net has also been burnt....."

126. It is thus evident that the mob was in a frenzy; the mob was infuriated; they were out to take revenge after the first firing in which Basanta Kumar Acharya was killed. It was in this grave situation that the second firing became necessary; it was unavoidable; it cannot be said that it was unjustified.

1. Sixth phase : third firing: about 6 p. m.:

127. *Case of the public:* The case of the public about the third firing is as stated in the affidavit and evidence of P. W. 18 Mr. G. Devadas, Typist in the office of the ADM (Judl.), brother of Mr. G. Mathews Das, who is said to have been injured as a result of firing from Tata Mercedes Benz garage, and in the petition, dated October 27, 1965 of a by aged eleven years, named Narayan Naik, Ext.C/63 stating that he was injured as a result of the third firing.

128. The relevant portion of the affidavit of Mr. G. Devadas has been quoted in paragraph 13 hereof; he also deposed before the Commission. As regards the injury on Mr. G. Mathews Das, his brother P. W. 18 Mr. G. Devadas was admittedly not an eye witness as to how his brother Mathews was injured. In fact, he (G. Devadas) returned home at 6-30 P. M. when he reached home he found his brother lying on the verandah of his house with a bullet shot; Mathews had been hit on the right buttock; he was senseless and profusely bleeding. P. W. 18 Mr. G. Devadas ascertained that his brother was standing at the verandah of his house and the gun shot which had hit his brother came through the decorated hole of the Tata Mercedes Benz Garage Compound wall.

129. With regard to the injury on Narayan Naik, his case as stated in his petition Ext. C/63 was that there was a clash between the police and students; unfortunately he was at the spot; a bullet from the gun of the police entered into the calf of his right leg and this made him invalid for life; he claims Rs. 3,000 as compensation for future maintenance.

130. *Version of the administration* : The case of the administration however with regard to injury on G. Mathews Das as suggested in questions 21 and 22 put to P. W. 18 Mr. G. Devadas is that Mathews was injured by bullet earlier some time during the firing near about the office of the SDO; that day he was on the National Highway; he was not injured at the place or at the time or in the circumstances he is stated to have been injured; the time of the bullet injury and the place where the bullet injury was sustained have been stated by P. W. 18 Mr. G. Devadas with the object of getting compensation for expenses incurred. In substance, the case of the administration is that Mathews was not hit as a result of third firing at Tata Mercedes Benz garage crossing but somewhere else in course of the day; there was no firing from the Tata Mercedes Benz garage compound as alleged; police force had not entered into the garage.

131. As regards injury on Narayan Naik, the State officials in their affidavits and evidence stated that a boy of about the same age had been injured on the leg by the one round fired at Tata Mercedes Benz garage crossing; it is said that he fell on the road under a banyan tree at the crossing as shown in the spot map Ext. C/49. According to the administration, he was the only person who was injured as a result of one round of firing there (C. W. 28 H. K. Pradhan Qq. 126, 127).

132. *What happened at Tata Mercedes Benz crossing leading to third firing* : After Somanath Jena dropped dead as a result of the second firing and was carried away, the police force under the command of Inspector Tripathy began to run towards the island at Komapalli crossing; chased the mob which dispersed in different directions; police pickets were placed at Komapalli crossing and other strategic points; a substantial section of the mob ran on the main road towards the Tata Mercedes Benz garage. By this time the Magistrate Mr. H. K. Pradhan, Inspector Tripathy and others were all at the Komapalli crossing.

133. After some time information was received by the DIG that the house of the DSP Mr. Samuel Mohapatra had been attacked by the mob (The mob was then running on the

road towards Tata Mercedes Benz garage crossing from which place the house of the DSP would be within about 100 yards. At this news the officers including the SDO and the DIG became apprehensive because it was the DSI Mr. Samuel Mohapatra who had directed the first firing on the mob which had killed Basanta Kumar Acharya. In view of this context and the movement of the mob in the direction of the DSI's house near Tata Mercedes Benz garage, the information that his house had been attacked was believed to be true.

134. Immediately the DIG with armed police reserve, Inspector Tripathy, and the Magistrate Mr. Pradhan began to run on the road leading to the DSP's house passing by the side of the Tata Mercedes Benz garage. Before the police party and the Magistrate could reach Tata Mercedes Benz garage crossing, a section of the mob was found congregated on the road there. From there a flame with smoke was seen over the house of the DSP; the advancing armed police force, lead by the officers while on the way towards the DSP's house for rescue, was obstructed by the mob then about 2000 to 3000 in the front who showed no signs of dispersing.

135. Then the Magistrate Mr. Pradhan declared the assembly unlawful and directed the unlawful assembly to disperse. The Magistrate and the Inspector, from a hearing distance, gave warning to the mob that unless they dispersed immediately, firing would be opened. In return, the mob started heavy brickbattling at the officers and the police force. As a result several police personnel were injured.

136. The position at that moment was such that there was no time to wait; in a situation when the DSI's house under attack by the mob was already in flames, it was necessary that the police force should reach the DSP's house immediately to save the DSP's family. The mob was still brickbattling and obstructing the police force from further proceeding towards the DSP's house. The situation then was that without opening fire, the police force could not have dispersed the obstructing mob and could not have proceeded towards the DSP's house for rescue.

137. It was then that the Magistrate Mr. Pradhan after another warning ordered Inspector Tripathy to open one round of fire. Accordingly Inspector Tripathy directed a constable to fire one round, so one round was fired from 410 musket and the mob dispersed, one person (said to be Narayan Naik) was injured and was taken charge of by the police.

138. *Attack on DSP's house : apprehensions came true:* After the firing of one round at Tata Mercedes Benz crossing the mob dispersed and there was no obstruction. The Magistrate C. W. 28 Mr. Pradhan asked the DIG to take charge of the boy Narayan Naik who had been injured as a result of one round firing at Mercedes Benz crossing and to send him to the hospital for treatment. Then the Magistrate with the police force proceeded to the DSP's house. Later on the DIG, SP, SDO and other officers also followed and came to the DSP's house.

139. The evidence of the Magistrate C. W. 28 Mr. Pradhan is that while he and the police party with him were running towards the DSP's residence, they found a section of the rioters rushing out of the premises of the DSP and running away in the opposite direction. They also observed that a section of the mob which had dispersed from Mercedes Benz crossing came running in front of the DSP's residence. The Magistrate found that the wooden gates of the DSP's compound, some furniture, cycles put on the top of the car along with the car thus placed were all in flames; the telephone line had also been cut off. The Magistrate and his party, who had in the meantime arrived, extinguished the fire by throwing water. When search was made for the telephone line to ring up the Fire Station, it was found that the line was cut off and the phone did not work. The evidence of the Magistrate Mr. Pradhan is also supported by the affidavit of the SDO, C. W. 25 Mr. Dehury, C. W. 26 Inspector Tripathy who both also deposed before the Commission and also by the affidavit of the DIG Mr. B. K. Roy and the SP Mr. Mazid. They arrived after the Magistrate Mr. Pradhan and found the damages done to the DSP's house.

140. The eye-witnesses to what had happened at the DSP's residence before the Magistrate Mr. Pradhan and others had arrived were C. W. 29 Mr. P. Senapati, Steno Police Sub-Inspector attached to the DSP, who filed affidavit and also gave evidence, ASI Patra, Orderly Peon Bisoi and the wife of the DSP Srimati Kuntalakumari Mohapatra who all filed affidavits. The gist of the evidence about what they each experienced is as hereinafter follows.

141. On October 29 between 5-30 and 6 p. m. when P. W. 29 Steno SI to DSP Mr. Senapati was working at the DSP's residence, he heard the shouts of a mob approaching from the

Tata Mercedes Benz road crossing on the National Highway towards their office saying--

“SALA POLICE BAI ANKU MARA. TANKAR GHARA JALIDIA. TANKA PILAMATPANKU JHINKIANA, AIYACHARA KARA, TANKA JINISHA PODI DIA”

(Beat Sala Policewalas, burn their house, drag out their family members, oppress them, burn their belongings)

So shouting the mob advanced on the road up to the gate of the office-*cum*-residence of the DSP. All on a sudden two persons shouted pointing to the DSP's house that that was the house of the DSP who shot their men to death and asked the mob to attack the house and burn the house and furniture, to molest female members of the DSP.

142. Immediately thereafter a man was seen getting on the compound wall and cutting the telephone lines connected with the telephone at the DSP's house. Almost simultaneously the mob which had gathered in front of the gate forced open the closed gate leaves and rushed inside the compound wall of the DSP's house heavily brickbating and shouting abuses. By this time, the DSP's wife, their three sons and two daughters, ASI Patra and the office orderly Bisoi were standing on the front verandah. Since the mob menacingly came forward towards the house to attack the family members in the house and to damage the car and other properties, the inmates of the house all out of fear got inside the rooms and bolted the doors in panic.

143. Thereafter a large number out of the mob were engaged in setting fire to the DSP's car, breaking his furniture and cycles, and throwing them on the burning car. The mob also brought the gate-leaves and threw them on the fire. During this operation the mob was engaged in heavily showering stones on the house, making wild cries to force into the house and molest the family members of the DSP. The wife of the DSP and their children were terribly shocked and unnerved at this action and attitude of the violent and riotous mob. They were greatly apprehensive of their lives in the hands of the rioters.

144. While the mob was thus engaged in arson and causing damage at the DSP's house a sound of gun-firing was heard from the side of the Tata Mercedes Benz Garage crossing. On hearing report of the gun-fire the mob shouted --

“SALA POLICE ASIGALENI PALEHIA”

(Sala Police have come, run away)

And so saying the mob ran away from the DSP's compound through the open gate. Within five minutes the Magistrate

Mr. Pradhan and other officers arrived with police force at the spot. It was almost dark by this time.

145. At the point of time when the Magistrate Mr. Pradhan and others arrived, the family members of the DSP and his Steno SI Mr. Senapati were still inside the room. They were so shocked and terrified that they could not dare to open the doors although the SP from outside asked them to open the doors. After sometime when they recognised the voice of the police officers, the DSP's wife opened the door and they all came out to see that their car, cycles and furniture had all been broken and burnt.

146. In this context the gravity of the situation will be clear from the description given by the DSP's wife in her affidavit about what she and her children had experienced when the mob attacked their house. The relevant portion of her affidavit as translated into English is this:

"That evening at about 5½ P M. I was in that house with my 3 sons and 2 daughters We came to the outside verandah hearing these shouts and saw that about 2,000 people were shouting "beat the police people, drag their wife and children, oppress them, burn their houses and their articles". These people were much agitated. Some of them shouted "Sala D S P killed our people by firing, let us burn his house, articles and wife and children". At once a person got over the compound wall and cut the telephone wire attached to our house. At once many people opened our gate, came into the compound and rebuked us in slang language and threw stones at our house. I remained in the house with my children, shutting door inside out of fear. The irritated people were telling 'burn the car of Sala D S P' and they were throwing some articles. They burnt the car with petrol and threw the cot frame and shoes of the children which were on the verandah, the gate and office cycle on the fire. I and my children were seeing all these things through the opening of the window joints. We were terrified at this. I and my children cried out. I with my children ran towards the courtyard of the house through fear when they 'shouted oppress on the wife and children of Sala D S P'. We hid ourselves in the kitchen and store room. After sometime of this incident, S P, Town Inspector, Magistrate with force reached there and I opened the door. I and my children cried out seeing the SP. "

147. There was no rejoinder from the side of the public to any of these affidavits in support of what the eye-witnesses themselves saw and experienced as victims. There was no denial of the happenings at the DSP's house. In the evidence of the public witnesses also there was no denial about these things; nothing was said about them on behalf of the public

148. The case of the public with regard to what had happened at the DSP's house as suggested, in cross-examination, to the State officials was that the arson incident at the DSP's house was got up to give a colour to the agitation as having gone out of control; their case was that outsiders got into the compound, set fire to the DSP's car, and furniture were put on the car along with the gates; all these were manipulated in order to justify the firing resorted to by the police earlier in the day.

149. The Commission is of opinion that in view of the direct testimony of the eye-witnesses, there is no foundation for the allegation that the administration manipulated anything at the DSP's house. The real situation was as described by the eye-witnesses which is accepted as true.

150. *Was third firing justified :* It was argued on behalf of the public that there was no such situation which warranted firing at Tata Mercedes Benz garage crossing; it was commented that neither the use of tearsmoke nor lathi-charge was tried before resorting to firing; so the firing was not justified.

151. The explanation of the State officials in charge of law and order at the spot was that there was no time to lose when they found from a distance that the house of the DSP was in flames and smoke coming out of it; they could not wait; if there was further loss of time, it would have been impossible to save the family of the DSP and the other inmates at his house including police personnel in his staff the force had to clear the way which was being obstructed by the mob of 2,000 to 3,000 at the time; the shortest way to reach the DSP's house was straight through the Tata Mercedes Benz garage crossing where the mob had congregated in huge number obstructing the road.

152. The Magistrate C. W. 28 Mr. Pradhan stated that a mob of about 2,000 to 3,000 had collected in front of the Tata Mercedes Benz garage; information had already been received that a section of the mob which had collected near the Tata Mercedes Benz garage had attacked the DSP's house and burnt his car; the Magistrate along with the DIG and police party ran on foot to disperse the riotous mob on the road in order to save the DSP's family; the Magistrate with police force proceeded towards the Tata Mercedes Benz crossing, while proceeding a number of brickbats were thrown at them by the mob; DIG and other police personnel were injured.

153. The Magistrate further said that while on the National Highway, he and the police party were getting close to the crowd which had congregated on the way obviously to obstruct their way to the DSP's house; the Magistrate warned the mob at the top of his voice that firing would be opened unless they dispersed and made way for the police force to pass. This warning was responded by further showering of stone ballasts by the mob. The Magistrate then gave a second warning but the mob did not pay any heed to the warnings; showering of stone ballasts continued.

154. On behalf of the public it was suggested to the Magistrate Mr. Pradhan in cross-examination that he could have taken the by-path by the side of the PWD bungalow and reached the DSP's house without crossing the mob. The Magistrate explained that the said road was not the shortest one; the road by the National Highway in front of Tata Mercedes Benz garage was the shortest one through which one could reach the DSP's house earlier; the road which was suggested to the Magistrate was a circuitous one. It was further suggested to the Magistrate if he could go by what is known as zanana hospital road. The Magistrate explained that he did not know if there was a road to the DSP's house through the zanana hospital road. Thus the only shortest route by which the Magistrate and the police party could reach the DSP's house was by the National Highway in front of the Tata Mercedes Benz garage.

155. Inspector Tripathy also said to the same effect. He said that while the police party and the officers were going towards the DSP's house they found it in flames; their way was barred by a heavy section of the mob at the Tata Mercedes Benz garage crossing.

156. In these circumstances, it cannot be said that the firing near Tata Mercedes Benz garage crossing was not justified.

J. Seventh phase : fourth firing by constable : 7 p. m. :

157. The case of the students, as stated by P. W 16 Mr. Gopal Chandra Satpathy in his affidavit quoted in paragraph 11 hereof and in his evidence, was that there was a peaceful meeting of Berhampur citizens in the evening at Old Post Office near the Barracks; with a view to disperse that meeting the police opened blank fire. It was also suggested

on behalf of the public in Q. 1148 and 1149 in cross-examination of C. W. 26 Inspector Tripathy that it was only to disperse the mob that the constable fired a blank fire; that the Information Bureau or the Outpost had never been attacked; that it was just a plea of the police to disperse the meeting which was condemning the police action. It was also suggested in Q. 108 in cross-examination of C. W. 27 Constable Dandapani Sahu that he fired at the meeting that was going on in front of the Old Post Office to disperse the meeting and see that no resolutions were passed. Admittedly, as stated by Inspector Tripathy in his affidavit, the constable came out with his 410 musket and fired one round to scare away the mob. The case of the public was that such firing in order to frighten the mob is not permitted by the rules. Their point was that the purpose of firing was to disorganise the meeting; that although apparently it did not cause any injury to anybody, still it should not have been done.

158 The explanation of the constable C. W. 27 Dandapani Sahu in support of his action as stated in his affidavit and evidence was in substance this : On October 29 at about 7 p. m. he and three other APR constables were at Berhampur Fire Station Control Room. Since morning of that day the other constables and the Havildar had gone with the Magistrate towards the Court area on duty. At about 7 p. m. Constable Ramchandra Patra came running from the Traffic Outpost and informed constable Dandapani Sahu at the Fire Station that a huge mob had attacked the Traffic Outpost and were shouting to beat the Havildar and the constables who were at the Outpost; the mob were hurling brickbats at the door of the Traffic Outpost. Thereupon C.W. 27 constable Dandapani Sahu went outside and saw from the road that thousands of people surrounded the Police Information Bureau and Traffic Outpost; the mob were shouting "MARA SALA POLICE BALANKU MARA" (beat Sala police people) and were throwing stones on the door. The constable also found that the mob had set fire to the Police Information Bureau and the records were burning; the excited mob were coming towards the Fire Station with hulla; the situation was serious.

159 The position was that there was no sufficient police force in that locality at that time. The lives of the constables and the Havildar were in danger. Constable Dandapani Sahu said that he could not bear the situation; he took up the gun, went outside the Control Room and asked the mob to disperse. He also gave warning saying that they were unlawful mob, if they did not leave the place at once he would drive them by

firing. Yet nobody listened to him. Instead the mob rushed towards him; he thought his life was in danger. He further said that he could not think what would have been the condition of the police people who were in the Traffic Outpost.

160. It was in these circumstances that the constable fired one round with the object of dispersing the mob as a result of which the mob ran here and there. At the point of time he fired, the strength of the mob was 2,000 to 3,000 with brickbats; the Police Information Bureau which was set on fire by the mob was 250 cubits and the Police Traffic Outpost where the life of the policemen is said to have been in danger was 100 cubits from the place where the constable was standing when he fired. The constable returned to the Control Room after firing one round blank.

161. In substance, therefore the defence of the constable is that he fired to save life and property. In reply to the question as to why he did not wait for his superiors before he resorted to firing, he said that the situation was tense and life of the constables who were in the Police Traffic Outpost was in danger because a huge mob had attacked the door of the Traffic Outpost; the mob were also hurling brickbats; so he did not wait for the officers' order.

162. *Was gun-firing by the constable justified :* After the firing incidents on the National Highway near the Court area, Tata Mercedes Benz garage crossing, there was a huge public meeting addressed by the leaders in front of the Old Post-Office near the Police Information Bureau. There was a huge gathering of about 3,000 to 4,000 people. By that time it was an explosive situation in the town due to students' unrest. At the said meeting the leaders who spoke included Mr. Jagannath Misra, Mr. Abhir Chandra Padhi, Mr. Narayan Sahu and Mr. Gopal Chandra Satpathy who all are said to have delivered provocative speeches. It is said that they instigated the gathering to resort to lawlessness, violence and to keep the agitation alive. Thereupon a large section of the gathering turned into a riotous mob; at about 7 P.M. the mob attacked the Police Information Bureau and the Police Traffic Outpost; the rioters caused various mischief by causing damages to the furniture, telephone and records, set fire to the records of the Police Information Bureau and damaged the doors and records of the Police Traffic Outpost; they also damaged cycles near the Police Information Bureau and threw them into a well.

163. As to what exactly happened inside the Police Information Bureau, the evidence is that suddenly a mob of nearly 1,000 people advanced towards and entered into the Police Information Bureau and dragged constable Hadu Pradhan by shouting to beat the police and set fire to their office (MARA SALA POLICENKU TANKA OFFICE JALIDIYA). They also shouted to throw the constable into the well. In the meantime when he was struggling he was rescued by the Manager of the Taratarini Motor garage which is adjacent to the Police Information Bureau and the constable was taken to his garage. After having entered the Police Information Bureau the agitated mob broke the telephone to pieces; then they brought two chairs, one table, one stool and one bench outside the office and broke them; they threw the broken parts into the well which is on the back side of the Police Information Bureau. they broke the sign board, they set fire to the papers and records; police uniform including strap, belt, patti and turban and papers of the Information Bureau were burnt by fire set by the mob; they threw four cycles belonging to policemen into the well. After sometime a firing of gun was heard from the side of the Fire Station; thereafter the mob dispersed.

164. Then as regards what happened inside the Police Traffic Outpost which was only 40 yards from the place of the meeting, the evidence on affidavit is that after sometime more than one thousand people rushed out of the place of the meeting towards the Police Traffic Outpost throwing stones. The mob were shouting "Beat the police and burn the houses" and were throwing stones. In the meantime a constable was sent by the Havildar to the Fire Station Control Room to inform about the situation by phone to the police station and the SP. The Havildar and six other constables remained at the Traffic Outpost. The evidence is that the mob rushed towards them, threw stones at them and shouted to beat police. The Havildar and the six constables remained inside the Traffic Outpost room and shut the door in fear but the mob by throwing big stones broke the door to beat the Havildar and the constables who were inside the room; the mob took away papers from the room, tore them and threw them outside. They also broke the sign board of the Police Traffic Outpost. It was at the time when the mob was attacking the Havildar and the constables inside the room that they heard the sound of one round of firing from the side of the Fire Station; immediately the mob ran away from the place.

165. The eye-witnesses to all these incidents include ASI Jena, Havildar Ranga Rao, constables Pradhan, Patra, Swain and Tripathi who all filed affidavits in support of what they each had seen about how the Police Information Bureau and the Traffic Outpost had been attacked by the mob and caused damage in the manner stated by each of them. They could see and hear all that was happening at the meeting as they were all posted either at the Police Information Bureau or at the Police Traffic Outpost which both were very near Old Post Office near the Barracks. They could also see the mob setting fire to the papers, records and damaging the articles as stated by them.

166. The evidence on affidavit of the Havildar and the constables about the attack on the Police Information Bureau and the Traffic Outpost is also corroborated by the SDO C. W. 22 Mr. Dehury and also by C. W. 26 Inspector Tripathy who arrived at the spot soon thereafter. Mr. Dehury said that when he came to the Barracks he found the records burning near the Police Information Bureau; he learnt that there was an attack on the Traffic Outpost; the constable opened one round of fire from the side of Fire Station to disperse the rioters. Inspector Tripathy also said that he found the things were burning in the Information Bureau; the door-leaves of the Traffic Outpost were broken.

167. The DIG Mr. B. K. Roy while at Komapalli Crossing got information that the mob which had collected in front of Old Post Office where a public meeting was going on had attacked the Police Information Bureau and the Traffic Outpost. On hearing this he with a force in a truck rushed to the Bus Stand inside the Barracks area. When they reached the Bus Stand he found the records of the Information Bureau burning, the door open, some papers burning in front of the door; at this time the Fire Brigade vehicle reached the spot and extinguished the fire. By the time he reached he found the SP, SDO and the police party were already there at the spot. The DIG also found the doors of the Traffic Outpost broken and heavy boulders lying in front of the door.

168. It is quite clear from the evidence that— it was while the lives of the Havildar and the constables inside the Police Traffic Outpost room were in danger as attacked by the mob, further when the mob also rushed towards the constable Dandapani Sahu while he had come outside the Control Room with his gun on the road in front of the Fire Station and the

mob did not listen to his warning to disperse- he fired one round in defence of life and property which were in danger in the circumstances hereinbefore stated.

169. The position from where constable Dandapani Sahu fired was not challenged. It is quite a good distance from Old Post Office. So the question of firing from that position in front of the Fire Station in order to disperse the public meeting which was taking place as far as Old Post Office does not arise. In this background the suggestion on behalf of the public made to C.W. 27 constable Dandapani Sahu that he fired at the meeting that was going on in front of Old Post Office to disperse the meeting and see that no resolutions were passed is not acceptable.

170. In the ultimate analysis, therefore, it is quite clear that constable Dandapani Sahu fired one round in defence of life and property then in danger in the circumstances hereinbefore stated.

K. Discussion of evidence and argument from the side of students and public :

171. *How students' case varied from stage to stage regarding first lathi-charge :* According to the affidavit of Mr. Gopal Chandra Satpathy students who were going in a peaceful silent procession were suddenly attacked by the police; there was no warning; they were mercilessly beaten. In his affidavit there was no mention of any parley, no discussion, no mention about any order under section 144, no mention about declaration of the assembly as unlawful.

172. The case of the students as suggested to the State officials in cross-examination however varies from the case which was initially made in the affidavit.

173. In Q. 245 put to the SDO C.W. 25 Mr. Dehury in cross-examination it was suggested that the SDO and the DSP permitted a batch of students to get into the police cordon and after the students got in, the police surrounded them and mercilessly assaulted them with lathis. This suggestion of having roped in a batch of students behind the police cordon, having surrounded and beaten them there as in a trap is different from the case made in the affidavit that the students were suddenly assaulted while going in a peaceful silent procession.

174. Then in Qq. 250, 251 and 277 put to the DSP C.W. 24 Mr. Samuel Mohapatra in cross-examination it was suggested on behalf of the students that some of the students

were permitted to enter the police cordon on an impression being given to them that they could talk to the SDO and express their views as representatives of the public who had taken out the procession that day, and that having permitted the students to enter the cordon the police surrounded them and mercilessly assaulted them, made some of the students bleed profusely from head injuries and put them under arrest; that six students from the processionists asked to be taken to the SDO for making representations and for placing their demands and they were permitted to enter the police cordon and immediately after their entry the police closed in and they were mercilessly beaten. Similar suggestions were also made to C.W. 26 Inspector Tripathy in cross-examination. These suggestions made on behalf of the students show that the students shifted from their original stand as made in the affidavit.

175. The case of Mr. Gopal Chandra Satpathy in evidence was also not consistent with this affidavit. In his answer to Qq. 42 to 46 in examination-in-chief he said that there were 4 to 5 student leaders who first went to the SDO to represent their grievances: on the way they found that there was police cordon standing in a line with gun and lathi; the students were obstructed from going to the SDO; there was conversation between police people and the students and suddenly there was lathi-charge without any warning; at the time lathi-charge was started there were near about 50 to 60 students who had followed the student leaders; others were near about and on the National Highway itself. In his evidence he did not mention about any trapping; it was a police cordon standing in a line which obstructed the advancing student leaders from proceeding further towards the SDO's Office; there was a parley between the students and the police; then suddenly there was lathi-charge. In affidavit there was no mention of any cordon nor parley. The students' case on affidavit in substance was that a peaceful silent procession was suddenly attacked by the police.

176. It is thus apparent that the students did not quite know what exact case they were to make about the first lathi-charge- in fact their case varied from stage to stage as hereinbefore stated: the students' version that they were beaten mercilessly by the police inside the cordon cannot be accepted as correct.

177. *Some telling circumstances from the evidence of P. W. 16 Mr. Gopal Chandra Satpathy : Why he gave wrong timing of the events of the day .* It is common case that the time os

first lathi-charge was about 12/12-30 P.M.— the starting point of what followed thereafter leading to firings. In answer to Q. 41, P.W. 16 Mr. Gopal Chandra Satpathy said that the procession came to the SDO's Office near about 12 noon. Then what took place in front of the SDO's Office resulting in the first lathi-charge was described by him in answer to Qq. 42 to 46 as discussed above. Taking into consideration all that had happened it would be about 12-30 P.M. or near about that time that the first lathi-charge had taken place. According to the State officials also the time of first lathi-charge was more or less the same, namely 12-30 P.M. as stated by SDO C. W. 25 Mr. Dehury (Qq. 194 and 378).

178. The evidence of Mr. Gopal Chandra Satpathy is that after the first lathi-charge as a result of which he is said to have received some lathi blows, one of his friends took him to the hospital and after some time at 12-30 or 12-40 he returned to the National Highway near the Taluk Office where students gathered for a meeting. The Injury Report of Mr. Gopal Chandra Satpathy Ext.C/50(9), however, shows that the time and date of examination was 1-45 P.M. that day. It is clear from this that he was at the hospital at 1-45 P.M. He could not have returned from the hospital to the National Highway before 1-45 P.M. at which time he was examined at the hospital as the Injury Report shows. Therefore, his answer to Qq. 52 and 53 that he returned from the hospital at 12-30 or 12-40 P.M. cannot be accepted; even a margin of one hour cannot help him.

179. Then again according to the evidence of Mr. Gopal Chandra Satpathy by 1-45 P.M. Basanta Kumar Acharya and Somanath Jena were shot dead; in any event Basanta was shot by then. According to his evidence, Basanta was shot by 1-10 P.M. How he fixed this timing was this: he returned from the hospital to the National Highway just near the Taluk Office at 12-30 or 12-40 P.M.; the students were standing by the side of the Taluk Office; they assembled there to have a meeting to demand some first-aid to the students who had been beaten by the police in the meanwhile while he was not present for some time. They held the meeting for about half an hour just near the Taluk Office; then there was firing by the police and actually the police aimed towards the mob and one of their friends Basanta Kumar Acharya fell a victim to the police bullet. In fact he said that while the meeting was being held policemen all at once fired teargas and bullets. This meeting was held for only 15 to 29 minutes. It is clear from his evidence that according to him it was in course of the

meeting which had taken place for about half an hour after he returned from the hospital at 12-30 or 12-45 P.M. that the policemen had fired at the meeting while it was still going on. So according to his evidence Basanta Kumar Acharya was shot by 1-10 P.M. as aforesaid.

180. According to his evidence in answer to Q. 69 the gap of time between the first firing by which Basanta Kumar Acharya was killed and the second firing which caused the death of Somanath Jena was probably half an hour; in answer to Qq. 395 and 396 he however said that the interval was 10 to 15 minutes. But according to his narrative of the sequence of events between the time Basanta fell and Somanath was shot as stated in paragraph 7 of his affidavit and in his answer to Q. 406 in his evidence, the time lag will not be even $\frac{4}{5}$ minutes—it was almost immediately. In his affidavit he said that after Basanta fell down Somanath cried “Alas, what have you done” and ran to Basanta to help him in his death agony, probably with the intention to take him to the hospital; when Somanath attempted to raise Basanta, Somanath was aimed and shot at; before giving any help to Basanta, Somanath fell a victim to the police bullet. In answer to Q. 406 Mr. Gopal Chandra Satpathy said to the same effect, namely that when Basanta fell dead, immediately Somanath cried “what happened” and that Somanath had been there to take him to the hospital; when he was taking Basanta, he (Somanath) was shot dead. So according to his evidence there was hardly any time-gap between the time Basanta fell and Somanath was shot dead.

181. In fact, the case suggested on behalf of the students to the State officials in cross-examination was that the gap of time when Basanta fell and Somanath was shot would be $\frac{2}{3}$ minutes. In Q 541 put to the SDO C. W 25 Mr. Dehury it was suggested that after the first victim (Basanta) fell on the road, another person (Somanath) came to assist him and he was shot dead in the process of his (Somanath's) bending over the first victim (Basanta). Then in Q 463 put to the DSP C. W. 24 Mr. Samuel Mohapatra it was suggested that the firing resorted to by the police on October 29 was not in the way he had stated to have taken place but the police fired at random hitting anybody who came across; as a result Basanta Kumar Acharya was hit and immediately after him Somanath Jena who attempted to rescue Basanta in the process of bending over him (Basanta) was shot dead at the same spot.

182. Then according to Mr. Gopal Chandra Satpathy he came to Komapalli Crossing at 2-30 P. M. or 3 P. M. after both the firings were over. He said that they fled away to Komapalli Crossing after Somanath was hit and fell down; the approximate time when he was at Komapalli Crossing would be 2-30 or 3 P. M. (Qq. 407, 408 and 412). According to his evidence he left the place of the meeting near the Taluk Officer on the National Highway at 3 or 3-30 P. M. after the second firing. His evidence is that they decided to leave the place as two people had been killed; by 3 or 3-30 P. M. they left the place towards Old Post Office to have a meeting there (Qq. 70, 85). This shows that there was a gathering on the National Highway at Komapalli Crossing until 3 or 3-30 P. M.

183. This is nearest approach to the State case of the mob having been there at that time. This portion of the evidence of Mr. Gopal Chandra Satpathy amounts to an admission that there was a gathering about the time of first firing at 3-45 P. M. The presence of the mob at 3 or 3-30 P. M. on the National Highway near Komapalli Crossing is consistent with and supports the case of the administration.

184. There is a further telling circumstance that he was in fact present at Komapalli Crossing till 4/4-30 P. M. His evidence is that after Somanath was hit and fell he (Gopal Chandra Satpathy) fled away to Komapalli Crossing at about 2-30 or 3 P. M. Then in answer to Q. 413 he said that he remained at Komapalli Crossing for one hour or one and a half hours, that is to say 4/4-30 P. M. This fixed the presence of Mr. Gopal Chandra Satpathy at Komapalli Crossing at about the time when according to the case of the administration the mob with *Mashal* (burning torch) were advancing towards the police quarters to burn them as hereinbefore described. His further evidence in answer to Q. 416 is that there was a crowd of about more than one thousand at 4 or 4-30 P. M. at Komapalli Crossing on the National Highway although according to his own story there were already two killings (Basanta and Somanath) by gunshot firing by police by about 1-45 P. M. before 2 P. M. This shows that the mob was still continuing near Komapalli Crossing at the time in spite of the first firing which killed Basanta.

185. His further evidence is that he reached Old Post Office near about 5 or 5-30 P. M. This supports the case of the State officials that the mob was dispersed after the second firing at 4-45 P. M. In this context the DIG Mr. B. K. Roy in his affidavit stated that when three rounds were fired at

4-45 P. M. with one (Somanath Jena) dropping dead the mob fell back and a section of the mob was found to have halted behind the island at Komapalli Crossing.

186. If, therefore, according to Mr. Gopal Chandra Satpathy the first and second firings were over by 1-10/1-30 P.M. as stated by him then the question is : What was he doing till 5/5-30 P. M. (as he said in his answer to Q. 72) for 4/4½ hours — what was the mob doing there ? The only explanation for the presence of the mob for all this time is that there was some situation there which Mr. Gopal Chandra Satpathy was apparently not disclosing for obvious reasons.

187. The question naturally arises: Why Mr. Gopal Chandra Satpathy gave such wrong timings? It is clear from his evidence that his attempt was to take away the mob from the National Highway long before the police quarters were found on fire at 4-15 P.M. In his evidence he showed his anxiety to take away the mob from the National Highway at about 2 P.M. to Komapalli Crossing, and to take the mob away from Komapalli Crossing towards Old Post Office at 3-30 P.M. because otherwise the continuance of the mob on the National Highway for 4/5 hours after the first lathi-charge at 12-30 P.M. or for four hours after the two firings were over by 1-10/1-40 P.M. as stated by him could not be otherwise explained; the continuance of the mob on the National Highway on the road crossing even after the firings during the whole afternoon in the context of the events of the day, leads to the irresistible inference of mob violence at that place at that time. It has to be kept in view that the National Highway was not the place nor 12-30 P.M. to 4-45 P.M. the time for a normal meeting or for a congregation; it was not a meeting but a mob in frenzy.

188. The above are the reasons for which Mr. Gopal Chandra Satpathy gave wrong timings in his evidence. His Injury Report Ext.C/50(9) showing that he was examined at the hospital at 1 45 P.M. by itself makes all that he said about the timings highly improbable

189. *Improbability of a meeting on the National Highway near the Taluk Office :* The version of the students holding a meeting or gathering between 12-40 and 1-40 P.M. by the side of the Taluk Office after alleged merciless beating and chasing by the police up to 2/3 furlongs on the east and west on the National Highway is inherently improbable. It is improbable because the alleged merciless beating was at 12-40 P.M. In any event if according to his Injury Report Mr. Gopal Chandra

Satpathy was at the hospital at 1-45 P.M. he could not have himself seen or been at the meeting which according to him took place between 12-30 and 1-10 P.M. as stated by him (Qq. 53, 59, 331).

190. In this context the evidence of Mr. Gopal Chandra Satpathy is not consistent with what he said in his affidavit. In his evidence he said that while a meeting was being held policemen all at once fired teargas and bullets (Q.331). According to paragraphs 6 and 7 of his affidavit when the meeting was going to begin and some students were demanding medical aid for the injured students that suddenly teargas shells were thrown, Basant Kumar Acharya was aimed and shot dead.

191. The case that there was a peaceful meeting and gathering of students on the National Highway near the Faluk Office is not acceptable. It is clear that it was a violent mob which behaved in the manner they did.

192. *Allegation that police broke cycles left by the students after first lathi-charge:* The charge against the police as stated in paragraph 5 of the affidavit of Mr. Gopal Chandra Satpathy was that police with lathis broke the cycles of the students which they were taking with them in the procession; that near about 100 cycles were broken by lathis and boots. In his evidence he said that he had not counted the number of cycles which were broken by policemen. In answer to Q. 356 he said that he entered into the PWD compound from where he saw the students fled away leaving the cycles; after that they could see that the cycles were broken by the police. But later on he said that he got information about his allegation in paragraph 5 of his affidavit; ultimately in answer to Q. 371 he admitted that he had not seen those things; that there was information that 100 cycles were taken.

193. That apart, as to the place from where he could see the cycles broken by the police, his evidence is not consistent. His evidence is that he along with others were pursued and chased by the police 2/3 furlongs from the police cordon up to a point on the National Highway as stated by him in answer to Qq. 48, 49. Then in cross-examination in answer to Q. 337 he said that he stood inside the PWD colony at a position marked 'G' by him on the spot map. Apart from the fact that from point 'G' inside the PWD colony he could not have seen anything as stated by him, his further evidence is that after he was given 2 or 3 lathi blows within a few seconds he ran away as fast as he could towards

the gate into the PWD colony and came away out of the PWD colony through the gate on the jail road and went straight to the hospital. His subsequent explanation that after he fled away, he stood inside the colony, marked what was going on and that he had not gone at a stretch was not convincing in view of his previous answers.

194. In this view of the evidence the allegation of the police having broken about 100 cycles with lathis and boots cannot be said to have been established.

195. *Was it discreet action on the part of the local authorities to keep in detention the arrested injured students in the court hazat?* A question was raised as to whether detention of the arrested injured students in the court hazat very near within the sight of the mob was the source of trouble. The evidence of the SDO C.W. 25 Mr. Dehury is that a second cordon had to be put on the western side of the hazat because stones were being thrown at them by the mob from the PWD colony side and from the National Highway. So according to the SDO it was necessary to put the cordon there as otherwise the crowd might forcibly take away the arrested persons who were in the court hazat and might overpower the policemen. It is said that the arrested injured students were not removed from the court hazat until late in the afternoon at about 3 P.M. before the first firing.

196. The question is: Was there any justification for keeping the arrested injured students inside the court hazat? There appeared to be some force in the view that the very presence of the arrested injured students kept in detention inside a lonely detached room with the dignified name of court hazat within the sight of the excited student mob aggravated the situation. In answer to Q. 322 put to the SDO C.W. 25 Mr. Dehury whether it struck him that the presence of the the arrested students in the court hazat in that area was really aggravating the situation, he replied that it did not strike him; his explanation for keeping the arrested students in the court hazat all that time was this: There was no other hazat; besides, in order to give the arrested injured persons first aid they were kept there in the court hazat; that apart, at that particular moment the arrested students could not have been sent to the other places as the policemen, who were to escort, were engaged in controlling the mob.

197. It was submitted on behalf of the administration with reference to the surrounding circumstances that it was not possible to remove the arrested injured students from the court

hazat. The reasons are stated to be these: The alternative places where they could have been removed were jail, hospital and police lock-up, in the explosive atmosphere which then prevailed it would not have been safe to send the arrested students anywhere as there was apprehension of trouble on the way. In fact until 2 P. M. the reinforcement had not arrived; it was at about 2 P. M. that the SP arrived with reinforcement; until reinforcement the then existing force available could not be spared for escort purpose for removal of the arrested students somewhere else. The question of sending them to the police lock-up was completely ruled out because it was in the town, it would not have been possible to cross through the mob which spread up to and beyond Komapali Crossing. As regards sending them to the jail it was for the Magistrate who would remand them to jail custody; certain formalities had to be complied with as required by law; the police were then busy in mob control; the arrested students had to be produced before the Magistrate for consideration whether there was a *prima facie* case against them before remanding them to jail custody, all these could not be attended to in that grave situation at that time. Then lastly as regards sending the arrested injured students to the hospital it was still more unsafe as that would have naturally attracted the mob who would gather there in the hospital which was exposed all around. Evidently, the local authorities were waiting for the situation to calm down so that the arrested persons could be released after the mob dispersed.

198. In this context, the Commission does not approve of the location of the court hazat in its present position; this should be dismantled. Court hazat should be made more respectable as part of the court premises.

199. *Allegation that no order under Section 144 was passed before police action on October 29: implications of some lawyers' telegram: authenticity of Press news:* It was suggested on behalf of the students to the SDO C. W. 25 Mr. Dehury that there was no order under Section 144 before the police went into action on October 29; that there was no order reduced to writing directing the police to open fire; that he manipulated Ext. C/55 series to suit the State for justifying firing and police action on October 29 (Qq 580, 581). In support of the students' case on this point reliance was placed by them on a telegram Ext. 35 sent by nine advocates of Berhampur on October 29, 1964 at 1-45 P. M. to Mr. G. L. Nanda, Home Minister, New Delhi purporting to show,

among other things, that no orders under Section 144 had been promulgated. For ready reference the telegram is set out below:

'A. Mage No. A.6

X 1340 TELEGRAM A.6.29/10 EXPRESS
Time 1345

G. L. Nanda
Home Minister
New Delhi

Police behaving in a frenzy lathi charge on unarmed students only crying slogans at different places of Berhampur No 144 orders promulgated No Sec. 30 Police Act promulgated. No warnings given. Police are evidently provoking. Pray immediate stoppage police holiganism. Pray immediate transfer of officers. Firing taking place.

Berhampur Advocates, Ganjam.

Not to be telegraphed :—

Rai Saheb B. C. Das
B. L. N. Swamy
Kalicharan Das
S. K. C. Das

G. L. Narasimham
T. N. Sahu
J. Ch. Patro
J. R. Gorti
Rama Rao Gorti

Certified true copy of X A mage No. A.6, Dt. 29-10-64
booked at Court-peta (Gm.) at 1345 Hrs.

Sd. Illegible
Sub-Postmaster
Court-peta. "

200. In this context reliance was also placed on behalf of the students on a letter to the editor of Eastern Times by two advocates and another—all of Berhampur—under the heading "Section 144 was not clamped in Berhampur" published in their issue of November 1, 1964 at page 2, column 8 to the effect, *inter alia*, that lathi charge began in a frenzy at 12-00 noon without using teargas and without giving any warnings; at about 1 P.M. after the lathi charge the writers of the letter are said to have verified from one student Rath and police officers with the Magistrate standing in front of the Sub-Collector's court that no order under Section 144 Criminal Procedure Code was promulgated; it was also mentioned that the writers of the letter and others sent two telegrams to both the Home Ministers of the State and Union. This letter to the editor was put to the SDO C. W. 25 Mr. Dehury in cross-examination. The SDO replied that nobody brought this to his notice. In answer to a question put to him as to

whether to his knowledge any contradiction had been sent, he replied that generally from their level (SDO's level) no contradictions are sent.

201. The relevant record of the court of the SDO Ext. C/53 shows that in fact an order under Section 144 had been passed on October 29 at 12 noon prohibiting all manner of any assembly of five or more persons within 100 yards of the office of the SDO, Berhampur and all round it. This order was to remain in force for a period of one week with immediate effect from 12 noon of 29-10-64. The evidence is also that after C.W. 26 Inspector Tripathy informed the SDO that the processionists were advancing forward to the SDO's office, the order under Section 144 was promulgated.

202. As regards the telegram sent by some advocates of Berhampur Ext. 35, it is to be noticed that it was not sent by the Bar Association as such; it purports to have been sent by certain individuals who are advocates. It was submitted on behalf of the administration that there was a general bias against the Government at that time; it was a political agitation inspired by public men. It was also commented on behalf of the administration that apart from the fact that the statement that no order under Section 144 had been promulgated by the time the telegram was sent at 1-45 P. M. was not correct, the telegram also contained certain exaggeration, namely, that the police had lathi charged at different places of Berhampur and that firing was taking place at the point of time the telegram was sent at 1-45 P. M. In fact there was no such alleged lathi charge in any other place of Berhampur except in the court area; further it was not until 3-45 P. M. that there was the first firing; there was no gunshot firing at the point of time the telegram was sent at 1-45 P. M. There was no affidavit from any of the persons whose names appear on the telegram who are said to have sent it.

203. The case of the administration is supported by contemporaneous publication of the news in Samaj, Prajatantra and Matrubbhumi which generally speaking are admitted to have given correct, true and adequate accounts of all that was happening during the students' agitation (P. W. 16 Gopal Chandra Satpathy Q. 164). The relevant portion of the news item published by Prajatantra in their issue, dated October 31, 1964 about the Berhampur incident on October 29 as translated into English is this :

“A students' procession of about 1,000 reached near the Sub-Collector's office at about noon. A large number of policemen

who were present there obstructed them to proceed further. 40 students demanded to meet the Sub-Collector. But the police did not allow them.

This happened 200 yards from the Sub-Collector's office. Soon after 141 (144) order was promulgated from the side of the police and the students' crowd was declared as an unlawful assembly and to repel the students, police started lathi charge. Shri Ramchandra Rath, Basanta Kumar Panda, Santosh Kumar Mohapatra and Abdhuta Rao and other students were injured and they were immediately arrested. This was being witnessed by people who were present in the office and the lawyers outside. As the news of the police lathi charge spread about 2½ thousand people gathered from all sides. Four square-mile area became crowded and a pitched-battle (Khanda-Judha) ensued between the crowd and the police. Till 4 p. m. lathi charge from the side of the police and brickbattling from the side of the crowd continued. Just at 4 p. m. to disperse the mob, police opened fire. On the spot one Basant Kumar Acharya, a student of the Engineering School fell dead and another was removed to the hospital in a seriously injured condition."

The attention of P. W. 16 Gopal Chandra Satpathy was drawn to this news item. He admitted that there was no contradiction of any fact in the first news item relating to the occurrence of Berhampur on October 29 which had been published in the Press.

204. The Eastern Times also published the news of the Berhampur incident on October 29 in their issue of October 31, 1964 substantially to the same effect as published in Prajatantra; they also published the news that soon after a procession of 1,000 students came to the Sub-Collector's office at noon and prevented the police the order under Section 144, Criminal Procedure Code was announced and the procession was declared as an unlawful assembly and was lathi charged and further at 4 o' clock police opened fire.

205. These contemporaneous news items published in the local newspapers immediately after the incident make the story in the telegram Lxt. 35—that no orders under Section 144 had been promulgated, that there was lathi charge at different places of Berhampur and that firing was taking place by 1-45 p. m.—improbable.

L. Findings on the facts

206. In the ultimate analysis of the evidence, with reference to different stages of the incidents throughout the day October 29 as fully discussed above, the Commission finds—

(i) *Re : Background, cause, nature and extent of the movement*

(a) that since the students' disturbance on September 26 and 27 at Cuttack, it had its reaction, among other places, on Berhampur students in general; this was encouraged by certain individual members belonging to different political parties; evidently, inspiration came from some student leaders who came from Cuttack to Berhampur;

(b) that the students of the Medical College, Engineering School and Industrial Training Institute which were not closed became disgruntled and moved about in groups to organise a sympathetic strike with the ultimate object of creating a situation which would compel the authorities to close these institutions also;

(c) that apart from the initiative taken by the local students in the movement, they were also instigated by outsiders to organise protest meetings, processions, demonstrations and strikes against the police excesses on the students of Cuttack;

(d) that the students resented the role of the Press in criticising the students' agitation; they took exception to the publication of some criticism of their activities in general; some students of Berhampur Engineering School, particularly those residing in the hostel, decided to burn the newspapers especially the Kalinga, the Statesman and the Amritbazar Patrika;

(e) that on October 11, at a public meeting organised by student leaders they condemned the alleged police excesses, demanded unconditional release of the arrested students, warned the Government that there would be a Statewide agitation if their demands were not met, resolutions demanding judicial probe into the alleged police excess, payment of compensation to the students who had sustained loss as a result of police action were adopted;

(f) that on October 13, the student leaders involved in the disturbances at Cuttack and released on P. R. arrived at Berhampur and fomented the sympathetic strike after the reopening of the educational

institutions; the local political leaders also instigated the students of Berhampur in the same direction;

- (g) that on October 21, the student leaders arrived from Cuttack and the local student leaders met in camera; they decided to launch a sympathetic strike from October 22 to October 25; at the said meeting, decisions were also taken to depute leading students to organise similar strikes at other places;
- (h) that on October 22, in pursuance of the said decisions, the students of Khallikote College, Berhampur resorted to strike and successfully persuaded the students of the local schools who joined the strike; in the morning about 500 strikers headed by the student leader Mr. Gopal Chandra Satpathy paraded the town in a procession demanding judicial enquiry and immediate release of the arrested students;
- (i) that the student leaders who were bitterly critical of the police and the Ministers of Orissa, incited the students to mobilise mass feeling with a view to ensuring a defeat of Mr. Biren Mitra (the then Chief Minister) and Mr. Nilamani Rautrai (the then Home Minister) in the next elections;
- (j) that on October 23, the strike for the second day continued in the educational institutions; the same day the students of other High Schools and a few primary schools also joined the strike;
- (k) that a cyclostyled bulletin dated October 22, 1964 issued by joint conveners of Students' Council of Action, Cuttack, was received at Berhampur and circulated among the students;
- (l) that on October 24, the strike still continued in the educational institutions; the students of Medical College also joined the strike; a procession of about 150 medical students headed by the student leaders paraded the town shouting the usual slogans; another procession of about 300 consisting of students of Khallikote College and the local High Schools of Berhampur similarly paraded the town shouting defamatory and abusive slogans

against the Chief Minister; the procession was headed by among others the student leader Mr. Gopal Chandra Satpathy;

- (m) that on October 25, at a meeting attended by the representatives of all the colleges in the office of the Khallikote College Students' Union, important decisions were taken to continue the strike in all colleges until fulfilment of the student' demands, to observe October 26 as "Demands Day" by holding processions and public meetings, to abide by the directives of the Students' Council of Action, Cuttack and to burn the effigies of the Ministers;
- (n) that on October 26, on the reopening of all the educational institutions, they all went on strike; the engineering students moved in the town in a cyclists' procession shouting the usual slogans; at about 11 A. M. in a combined procession of about 600 students, the processionists took with them a dog symbolising Mr. Brundaban Naik, Minister for Panchayati Raj and Community Development seated on a rickshaw; they also immersed urns containing faked ashes of Mr. Biren Mitra, Mr. Biju Patnaik in Ramalingam tank; on their way to Ramalingam tank the processionists exhibited highly indisciplined attitude and went to the extent of directing the police personnel on duty to pay homage to the urns and respect to the dog by presenting guard of honour; while passing in front of Mr. Brundaban Naik's residence they behaved in a most indisciplined manner, making irresponsible and insulting utterances aimed at Mr. Brundaban Naik; some well-known political leaders followed the procession and watched the reactions.
- (o) that on October 27, there was a complete strike in the colleges; the same evening at a meeting attended by the District Magistrate, the Principal, the college authorities and others it was decided to strike off the names of students from the rolls if they would not attend the college by October 29, to close the college for indefinite period, to issue compulsory certificates to the indisciplined students and to ask them to vacate the hostel by October 30;

- (p) that on receipt of such notices issued to the students in pursuance of the said decision by the college authorities, 20 members of the Khallikote College Students' Union met in camera and decided to continue the strike indefinitely and to observe complete Hartal in the bazar on October 29—the date of the incident at Berhampur—by closing down the shops and hotels;
- (q) that Mr. Ramchandra Rath reported to have been a member of the Students' Federation—on whom the show-cause notice was served—contacted the political leaders who advised him to resort to hunger-strike and picketing in front of the office of the SDO on October 29; the students of the Medical College and the Engineering College were also contacted the same night to mobilise their support for the agitation;
- (r) that the efforts of the Principal, the local guardian and leading members of the Bar suggesting that the students should call off the strike in view of the assurance of the Government for an enquiry as also the attempts of the Khallikote College Managing Committee to call off the strike all failed; it was declared before them that nothing could be decided unless the present ministry was unseated;
- (s) that certain political leaders all belonging to their respective parties instigated the students of Berhampur to intensify the agitation.
- (ii) *Re : First phase : trouble brewing : 10-30 a. m. to 12 noon :*
- (a) that on October 29, at 10-30 a. m. in the Control Room at Berhampur information was received by the SDO that a mob of about 500/600 students were marching towards his office to raid the same;
- (b) that at Tata Mercedes Benz Crossing the processionists were found spreading over the road and proceeding towards the SDO's office shouting slogans of the nature "BIJU BIREN MURDABAD; NILAMANI RAUTRAI MURDABAD; BRUN-DABAN NAIK MURDABAD; CONGRESS SARKAR DHWANGSA HEU; AMARA DABI PURANA HEU; RAKTA DEBU CHHADIBU NAHIN" (Let Biju Biren die. Let Nilamani

Rautrai die. Let Brundaban Naik die. Let the Congress Government go down. Let our demands be fulfilled. We will give blood, we shall not give up). They also shouted "Sub-Collector's office CHALO" (Let us march to Sub-Collector's office);

- (c) that while the SDO and the DSP in a jeep were passing by the side of the procession, some of the processionists thumped against the police van and some also pelted stones; no notice was taken of this behaviour of the students then;
 - (d) that the processionists, while coming by the National Highway towards the SDO's office, moved from shop to shop at Komapalli crossing and urged upon the shop-keepers to close the shops; there was a Hartal throughout the day; the students had taken out the procession and decided to put forth their grievances to the SDO;
 - (e) that apprehending trouble the SDO after coming to his office asked the DSP to go and stop the procession on the approach road; in the meantime the SDO had drawn up the order under Section 144 Criminal Procedure Code at about 12 noon; after it was reported to the SDO that the students were advancing towards his office the SDO announced the contents of the order under Section 144 by shouting to the mob in Oriya; as the mob was gradually advancing the SDO's announcement was continuing on the mike, the order was repeated by the DSP, the Magistrate Mr. Pradhan and Inspector Tripathy; the SDO and his party were all along shouting to the mob not to advance and to disperse;
 - (f) that there was no response from the side of the students to these appeals, requests and warnings by the SDO and others.
- (iii) *Re : Second phase : assembly declared unlawful : first lathi charge : 12.15 to about 2 p. m.*
- (a) that the situation immediately before the first lathi charge was that the SDO tried to persuade the mob to disperse; he talked to the students on the mike who were within 100 yards from him and told them that if they had anything to speak they could come and speak to him; in the meantime the mob

started brickbating; thereupon a line of demarcation was put at a point 100 yards from the SDO's office which nobody was to cross and it was marked accordingly; the mob however crossed the line while brickbating heavily; the police personnel including DSP, Inspector and others were injured; it was in this situation that between 12.15 and 12.20 P.M. the SDO declared the assembly unlawful under Section 127 Criminal Procedure Code; the strength of the police force at the time was meagre in that there were only 2 sections of APR and 5 OR, the total number being only 23 policemen—the officers present were the DSP, Inspector and Officer-in-charge; this force was not sufficient to tackle a mob—in a compact area—600/700 in number who came to the approach road itself to a point of about 60 yards from the SDO's office;

- (b) that repeated announcements and warnings to the mob over loudspeaker did not produce any effect on the mob which on the other hand came closer to the police cordon and pressed forward towards the office of the SDO; it was a tense and frightful situation in that the mob aimed at a huge stack of brickbats which for construction of houses were lying a few yards behind the police cordon; if the mob had been allowed to reach the stack of brickbats which they were anxious to reach, the magistrates and the policemen would have been further assaulted and the consequence would have been disastrous;
- (c) that in this situation the SDO gave warning to the mob to disperse failing which he warned that the unlawful assembly would be dispersed by means of lathi charge; the mob had by that time come in contact with the police force and there was no space between the mob and the police; in such a mixed up position—stampede of students and policemen—use of teargas was not possible;
- (d) that as the mob insisted on pressing forward without paying any heed to the repeated warnings, the SDO at about 12.30 P. M. gave orders to the DSP to disperse the mob by lathi charge which was carried out;

- (e) that the lathi charge at the point of time the procession reached the police cordon lasted for about a minute or so; six members of the unlawful assembly including student leaders Mr. Ramchandra Rath and Mr. Basant Kumar Panda were arrested.
- (f) that there were injuries on both sides—students, policemen and magistrate: the position was that 4 or 5 students had pushed against the police cordon to meet the SDO while there were behind them, 50/60 other demonstrators near about the approach road in front of the police cordon; while the students wanted to cross the police cordon to meet the SDO they were obstructed by the few policemen just in front of them; so naturally a stampede followed in which the students and policemen with lathis got mixed up; at the same time students were also brickbating; it was in this stampede of the policemen with lathis and the students with brickbats that 4 or 5 students who dashed forward to meet the SDO clashed with the obstructing policemen with lathis; in that process the said few students got injuries which were grievous; this was unfortunate but unavoidable in the situation as then developed at the time; the magistrate and the policemen also got minor injuries from the brickbats thrown by the students;
- (g) that in such grave situation lathi charge was justified; there is no basis for the charge that the policemen were the aggressors or that the lathi charge by the police in that situation was in excess as alleged; the lathi charge had the desired effect; the mob receded and went up to the National Highway but still continued throwing brickbats;
- (h) that there is no foundation for the charge that the students were roped in behind the police cordon and mercilessly beaten by the police as alleged;
- (i) that immediately after the first lathi charge the SDO summoned for the medical officer who attended the injured persons and gave them first-aid; the arrested injured students who were in the hazat received first-aid from the medical officer and were subsequently removed to the jail in an ambulance car.

- (j) that there is no basis for the allegation that no medical aid was given to the arrested injured students while they were kept in the court hazat after the first lathi charge.
- (iv) *Re : third phase : tears smoke and second lathi charge : 1-15 p. m. to 2-30 p. m. :*
- (a) that shortly after 1 P. M. the mob swelled, again surged forward, began brickbating demanding release of the persons detained in the court hazat ; it was an angry mob shouting slogans, abusing in filthy language and threatening violence in case their demand for release of the arrested persons was rejected ;
- (b) that soon thereafter the DIG arrived and after him the SP came with reinforcement ;
- (c) that in the meantime, at about 1-10 P. M. or 1-20 P. M.—while the mob was throughout pelting stones and demanding release of the arrested persons—under the orders of the SDO a police cordon was put near the court hazat where the arrested persons were detained ;
- (d) that at this time Mr. Jagannath Misra a political leader came out from the mob, walked straight to the SDO standing near the police cordon ; he demanded release of the persons and return of the cycles seized during the earlier lathi charge ; the SDO tried to explain the formalities of the law and appealed to him to persuade the mob to desist from brickbating and to disperse ; Mr. Jagannath Misra said that unless the arrested persons were released he could not do anything to pacify the mob and also said that he (SDO) would be faced with the consequences ; the mission of Mr. Jagannath Misra failed and he walked back to the mob ;
- (e) that soon after Mr. Jagannath Misra joined the mob, they again started heavy brickbating ; the student leaders pursued their demand for release of the arrested persons ;
- (f) that after 10/15 minutes two student leaders Mr. Santosh Mohapatra and Mr. Asok Rao, in a very aggressive mood, came and demanded the explanation of the SDO as to why he gave order

for lathi-charge and why he got the students arrested : the SDO tried to pacify the student leaders in the manner as discussed in the report ; he also warned the student leaders that if the mob which had been declared unlawful did not disperse, they would be teargassed, lathi-charged and if necessary firing would be resorted to ;

- (g) that these warnings by the SDO did not produce any effect on the student leaders ; they gave the SDO a threatening that—

“ Alright, if you do not release the students and release the seized property you will feel the consequence.”

Thereafter, the student leaders returned and shouted to the mob as they approached the mob that the arrested persons would not be released :

- (h) that the mission of the two student leaders for release of the arrested students detained in the court hazat having failed, the mob became very violent : the pelting of stones by the mob became very intensive : it was apprehended that the mob would attack and rescue the arrested persons from the court hazat ;
- (i) that the aggressive mob shouting the slogans and abusive words and throwing brickbats were bent on release of the arrested students by force if they were not released by the authorities ; the situation was such that even if the SDO had released the arrested students on bail, it might have still aggravated the situation as was apparent from the violent attitude of the mob ;
- (j) that the SDO had made all efforts to pacify the mob by appeals and warnings ; he did not order use of force in spite of the fact that the police party was being subjected to shower of granite pieces on them ;
- (k) that if the SDO had waited further the mob might have overpowered the police and attacked the SDO's Office, Record-room and the Treasury which were all within 200 yards ; it was then that the SDO gave final warning to the mob that if they did not disperse immediately there would be use of teargas, lathi-charge and firing ;

- (l) that during the entire period from 1-15 P. M. when the assembly was declared unlawful up to 2-30 P. M., the SDO and other officers were throughout warning and shouting to the mob to disperse but the warnings produced no effect;
- (m) that thereafter under the orders of the SDO teargas was used and the mob was also lathi-charged by the police; two sections of police were utilised in the lathi charge to chase the mob to disperse; they were chased about 70 yards; the mob was receding but again advancing from time to time; so there was no fixed place up to which the mob were chased and stopped;
- (n) that the available stock of teargas shells with the police party at the time was not large in that there were only two boxes containing about 24 shells and 8 grenades; out of that about 22 shells were fired and 6 hand grenades were used; so the available stock was almost exhausted.
- (v) *Re : Fourth phase: why use of tearsmoke and lathi-charge were not effective : the first firing : Basant Kumar Acharya hit : 3-45 p. m. :*
- (a) that the use of the available tearsmoke could not also be effective because of the heavy wind at that time; it was an open place with breeze blowing in the opposite direction; though the mob was somewhat concentrating at the front it was spread over a long distance, more or less up to Komapalli Crossing;
- (b) that lathi charge was also not effective because policemen could not make lathi-charge successfully due to heavy showering of brickbats by the mob from the right and left sides of the road; after teargassing policemen with lathis charged the centre of the mob on the road; the mob receded to some distance and spread to the right and left sides of the road; a number of persons got inside the PWD colony and took cover behind the wall and from there started brickbating on the police force;
- (c) that during this operation a large number of police personnel including the DIG, SDO and the magistrate were injured as hit by brickbats; the police force could not get close to the mob because

they were sustaining injuries due to heavy brick-battling by the mob; thus a stage came when further lathi-charge became impossible on account of heavy showering of brickbats by the mob causing injuries to the charging policemen;

- (d) that at the back of the mob a large number of persons were seen pulling down bamboos from the thatched roofs at the Komapalli Crossing; the mob rushed from behind holding those bamboos to come to the front and attack the police; there was great commotion; the mob in frenzy and with determination was trying to surge forward;
- (e) that all the while repeated warnings were being given that if the mob did not disperse forthwith police would open fire; these warnings had no effect; the armed section of the mob was still rushing forward from behind; brickbattling became intense and heavy;
- (f) that at this stage if further time was allowed, the mob might have overpowered the magistrates and the policemen and might have damaged the SDO's Office, the Record-room and the Treasury and the policemen then could not have controlled the mob; there was risk to the lives of the magistrates, policemen and public who were there;
- (g) that the SDO then gave warning to the mob that unless they immediately receded he would have to disperse them by firing; the SDO asked the DSP to be in readiness and again gave warning to the mob to recede and disperse otherwise there would be firing; even then there was no response from the mob;
- (h) that it was then that the SDO asked the DSP to open fire: at that time brickbattling by the mob became intense and heavy; stones were being thrown from behind the walls of the PWD quarters which gave cover to the rioters; the mob by then had swelled to more than 5,000; the SDO again warned the mob through the amplifier to disperse at once; the DSP in charge of the police party also repeated the warnings; the mob however without paying any heed to warnings rushed forward and continued heavy brickbattling;

- (i) that it was in this grave situation that there was no other alternative but to order firing; though there was necessity for use of such force since 1-15 p.m. the authorities did not act in haste nor did they get panicky;
- (j) that under the orders of the SDO the policemen were directed to fire below the knees; the first round was fired with no effect; then the second round was fired within 30 seconds with no effect; then the third round was fired after 20 seconds still it had no effect; then the fourth round was fired within about 15 seconds of the firing of the third round; it was the fourth round which hit Basanta Kumar Acharya; the first three rounds were not effective; so the fourth round had to be fired;
- (k) that the firing was controlled from one round to another thus: the DSP was touching the constables one after the other to indicate that it was his turn to fire; evidently the firing was being controlled by the DSP; each time after one round of firing, it took some time—about 30 seconds or so; the SDO himself was watching the reaction; the other senior police officials including the DIG and SP were also standing nearby;
- (l) that it was not a case of firing at random as alleged; even after the first three rounds the mob did not disperse; they were still surging forward; there was no sign of dispersal; the crowd had come up to about 50 yards from the firing squad when the first round was fired; the mob still kept advancing; when the second round was fired the crowd had advanced about a yard; when the third round was fired, the crowd advanced further about a yard; in between the time when the first round was fired and the time when the fourth round was fired it might be 2-3 yards that the mob had advanced; the distance between the policemen who fired and the victim Basant Kumar Acharya who fell will be about 40 -45 yards; the fourth round had to be fired because the rushing of the mob had not been stopped by the firing of the first three rounds;

- (m) that the officers in command followed the instructions in the Police Manual; the constables were in a kneeling position,
 - (n) that the firing was not aimed high, evidently at the time of the firing of the fourth round Basanta Kumar Acharya in front of the mob was picking up a stone ballast when he was hit and fell down on the ground, that was how he was hit on the head;
 - (o) that the distance from which the firing was opened at the advancing mob was well within the limits permissible under the rules of the Police Manual;
 - (p) that the authorities tried to avoid opening of fire for about three hours, they tried to tackle the mob by the use of minimum force in the manner they did till the firing; the situation was such that even as early as 2 P. M. firing to disperse the mob after warning would not have been unjustified; the local authorities waited, watched the situation and avoided firing up to the last possible moment;
 - (q) that the senior officers—the SDO, magistrate, DIG and the SP—were all present; it is hardly possible that with all these officers present at the spot there could be any error of judgment in tackling the situation like this in the manner they did nor was it possible that there was any hasty or hot-headed decision taken by the local authorities while dealing with the situation as at the time developed;
 - (r) that the very fact that the trouble which started since early morning at 10-30 A. M. was allowed to continue till late in the afternoon 3-45 P. M. when firing had to be resorted to shows that the officers used utmost patience in handling the situation; it was only when there was no other alternative that as a last resort firing was opened at 3-45 P. M. ;
 - (s) that having regard to the circumstances the firing at that time in that situation was justified as unavoidable.
- (vi) *Re. Fifth phase: second firing: Somanath Jena hit: 4-45 p.m.:*
- (a) that after Basant Kumar Acharya fell as a result of the first firing the mob did not disperse, remained congregated at a distance and began to surge forward;

- (b) that sometime after the dead body of Basant Kumar Acharya was removed by the police force under the orders of the SDO, one Mr. Abhir Padhi, a correspondent of *Matrubhumi*, came out of the mob and approached the SDO, the magistrate and the SP and demanded return of the dead body of Basant Kumar Acharya; but he was told that the dead body could not be returned; thereupon Mr. Abhir Padhi went back to the mob; immediately thereafter there was resumption of heavy showering of brickbats by the mob;
- (c) that a section of the mob concentrated in front of the police quarters on the National Highway near the Komapalli crossing; the mob with burning torches (*Masals*) had attacked the police quarters with women and children inside; in fact, smoke was found coming out from one of the police quarters, the mob rushed inside, set fire, broke the windows, glass panes of the quarters; heavy smoke was coming from the windows; great risk was apprehended to the lives of the inmates of the police quarters;
- (d) that it was then that the DSP, magistrate, SDO and SP with a section of the armed police reserve and the amplifier rushed towards the police quarters to save the inmates from the attack of the violent mob;
- (e) that while the magistrates and the police party were rushing for the rescue of the inmates of the police quarters, a flying granite stone came from behind the compound wall of the PWD colony and hit the DSP on the face; he fell down on the ground bleeding profusely; he in a senseless condition was immediately carried towards the court hazat for first-aid;
- (f) that evidently at the sight of the fall of the DSP, the riotous mob got excited and surged forward towards the magistrates and the police party who were coming towards the police quarters for rescue; the mob advanced in a menacing attitude heavily showering brickbats and carrying the bamboos pulled from the thatched roofs near the Komapalli crossing as aforesaid;

- (g) that in this situation, when the lives of the magistrates and the police party were in danger, the SDO directed Inspector Tripathy who, then in charge of the force in the absence of the DSP, asked the force to take position and to be ready to fire; the SDO then announced through the loudspeaker that the mob which was unlawful should disperse forthwith and warned that unless the mob did not disperse immediately, police would be directed to open fire, the warnings had no effect, the mob who had attacked the staff quarters were still continuing their attack; smoke was coming from inside the police staff quarters;
- (h) that there was no other way of dispersing the mob and saving the lives and properties of the inmates of the staff quarters but to order firing; accordingly the SDO directed a volley of three rounds to be fired to disperse the mob; immediately three rounds were fired in a volley and a member of the unlawful assembly Somanath Jena fell at a distance of 40 yards and was found dead;
- (i) that the distance between the position of the police party who fired for the second time and the place where Somanath Jena fell dead would be 45--50 yards; three policemen in a kneeling position fired aiming low below the waist in a volley from the middle of the road facing Komapally crossing;
- (j) that the necessity for firing in a volley was that the situation was very tense; the mob would have overpowered the police force; the smoke was coming out of the fourth police quarters; the situation would have been very serious if they waited further;
- (k) that the second victim Somanath Jena was picking up brickbats at the moment he was hit by the second firing in a volley; the frontal injury in the eye— and no back injury —shows that the deceased was facing towards the police force while he was hit; the explanation that the deceased got the head injury while picking up brickbats from the road at the moment the police fired cannot be rejected;
- (l) that the second firing was also controlled in that the SDO himself was standing by the side of the firing squad; the senior police officers including the DIG

showed no signs of dispersing; from there the DSP's premises was seen in flames with smoke coming out;

- (c) that when the magistrate and the police party were obstructed by the mob from proceeding further towards the DSP's residence for rescue, the magistrate declared the mob unlawful and directed them to disperse; the magistrate and the police officers from a hearing distance gave warning to the mob that unless they dispersed immediately, firing would be opened; in response, the mob started heavy brick-battling at the officers and the police force as a result of which several police personnel were injured at the spot;
- (d) that there was no time to wait in the situation when the DSP's house under attack by the mob was already in flames; it was urgent that the police force should reach the DSP's house immediately to save the inmates including the DSP's wife and children; the mob was still brickbattling and obstructing the police force from further proceeding towards the DSP's house;
- (e) that in such a situation, without opening fire, the police force could not have dispersed the obstructing mob and could not have proceeded towards the DSP's house for rescue; it was then that the magistrate after another warning ordered the Inspector to open one round of fire; accordingly a constable was directed to fire one round; so one round was fired from 410 musket; the mob dispersed; one person (said to be Narayan Naik) was injured and taken charge of by police;
- (f) that after the firing of one round at the Mercedes Benz crossing the mob dispersed and there was no obstruction; then the magistrate with the police force proceeded to the DSP's house;
- (g) that while from the Mercedes Benz crossing the magistrate and the police party were on their way towards the DSP's house, they found a section of the rioters rushing out of the premises of the DSP and running away in the opposite direction;

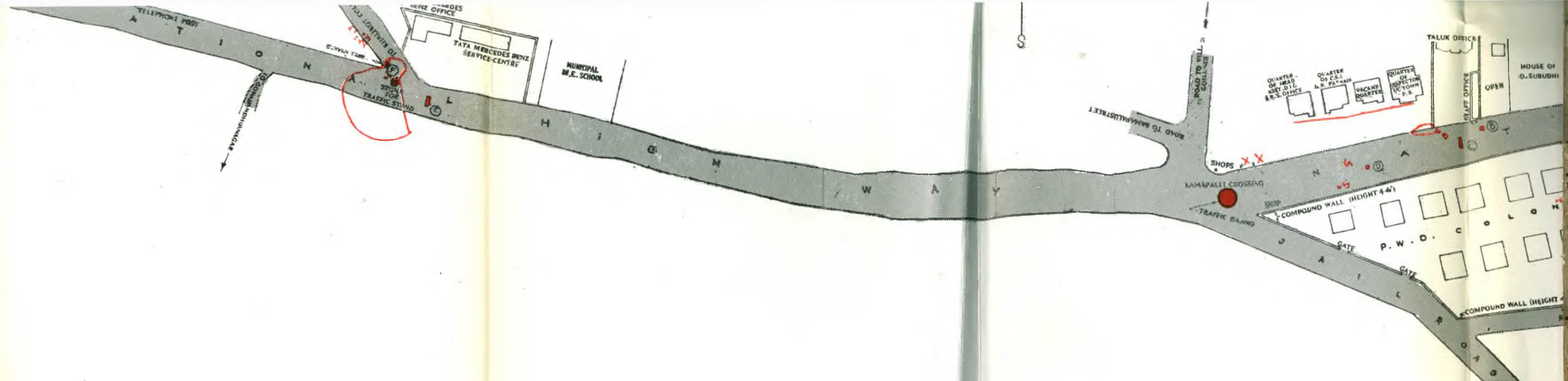
- (h) that evidently before the magistrate with the rescue party arrived, the telephone lines connected at the DSP's house were cut off; simultaneously the mob forced open the closed gate-leaves and rushed inside the compound of the DSP's house heavily brickbating and shouting abuses; by that time the DSP's wife, their three sons, two daughters, ASI Patra, office orderly Bisoi and other inmates of the house out of fear got inside the rooms, and bolted the doors in panic; thereafter a large number out of the mob set fire to the DSP's car, broke his furniture and cycles and threw them on the burning car; the mob also brought the gate-leaves and threw them on the fire;
- (i) that in view of the direct testimony of the eye-witnesses discussed above there is no foundation for the charge against the administration that the arson incident at the DSP's house was got up to give a colour to the agitation as having gone out of control, nor is there any basis for the charge that all that had happened inside the DSP's house were manipulated in order to justify the firings resorted to by the police earlier in the day; the real position was as described by the eye-witnesses which is accepted as true;
- (j) that in the context of what was happening at the DSP's house, the magistrate with the advancing police party could not lose time when they found from a distance that the house of the DSP was in flames and smoke coming out of it; they could not wait; if there was further loss of time it would have been impossible to save the family of the DSP and other inmates in his house including police personnel in his staff; the police force had to clear the way which was obstructed by the mob of 2,000 to 3,000 at the time; the shortest way to reach the DSP's house straight was by the Tata Mercedes Benz garage crossing where the mob had congregated in huge number obstructing the road;
- (k) that in these circumstances it cannot be said that the firing near Mercedes Benz garage crossing was not justified.

(viii) *Re : Seventh phase: fourth firing by constable Dandapani Sahu in front of the Fire Station near Police Traffic Outpost and Information Bureau: 7 p. m. :*

- (a) that after the firing incident on the National Highway near the Court area and at Tata Mercedes Benz crossing there was a huge public meeting addressed by the leaders in front of Old Post Office near the Police Information Bureau and the Traffic Outpost; there was a huge gathering of about 3,000-4,000 people at the meeting;
- (b) that by that time it was an explosive situation in the town due to the student unrest throughout the day; at the said meeting the leaders including student and political leaders delivered provocative speeches; they instigated the gathering to resort to lawlessness, violence and to keep the agitation alive;
- (c) that thereupon a large section of the gathering turned into a riotous mob;
- (d) that at about 7 P. M. the mob attacked the Police Information Bureau and the Police Traffic Outpost; the rioters caused various mischief, caused damage to the furniture, telephone and records, set fire to the records of the Police Information Bureau; they damaged the doors and records of the Police Traffic Outpost; they also damaged the cycles near the Police Information Bureau and threw the same into the well;
- (e) that suddenly a mob of about 1,000 people advanced and entered the Police Information Bureau and dragged a constable Hadu Pradhan by shouting to beat the police and set fire to their office (MARA SALA POLICENKU; TANKA OFFICE JALIDIYA); they also shouted to throw the constable into the well; he was however rescued by a neighbour;
- (f) that after having entered the Police Information Bureau the agitated mob broke the telephone to pieces; then they brought the chairs, one table and one stool, one bench outside the office and broke them; they threw the broken parts into the well which is on the back side of the Police Information Bureau; they broke the signboard; they set fire to the papers and records; police uniforms including

strap, belt, patti, turban and papers of the Information Bureau were all burnt by the mob by setting fire; they threw four cycles belonging to the policemen into the well;

- (g) that after sometime more than one thousand people rushed out of the place of the meeting towards the Police Traffic Outpost throwing stones; the mob was shouting "Beat the police and burn the houses" and they were throwing stones; the Havildar and six constables remained confined inside the Traffic Outpost room and shut the door out of fear but the mob broke the door by throwing big stones to beat the Havildar and the constables who were inside the room; the mob took away the papers from the room, tore them and threw them outside; they also broke the signboard of the Traffic Outpost;
- (h) that it was about this time 7 P. M. one constable Ramchandra Patra came running from the Traffic Outpost and informed constable Dandapani Sahu at the Fire Station that a huge mob had attacked the Traffic Outpost and was shouting to beat the Havildar and the constables who were at the Outpost; the mob were hurling brickbats at the door of the Outpost;
- (i) that thereupon constable Dandapani Sahu went outside and saw from the road thousands of people surrounded the Police Information Bureau and Traffic Outpost; the mob were shouting "MARASALA POLICEBALANKU MARA" (beat Sala police people beat) and were throwing stones at the door; the constable Dandapani Sahu also found that the mob set fire to the Police Information Bureau and the records were burning; the excited mob were coming towards the Fire Station with hulla; the situation was serious;
- (j) that there was not sufficient police force in that locality of the town at that time; the lives of the constables and the Havildar were in danger;
- (k) that the constable Dandapani Sahu could not bear such a grave situation; he went outside the Control Room at the Fire Station, stood on the road and asked the mob to disperse; he gave warning saying that they were an unlawful mob, if they did not

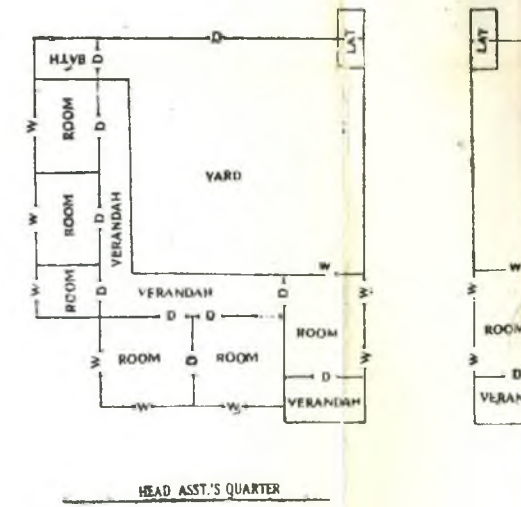


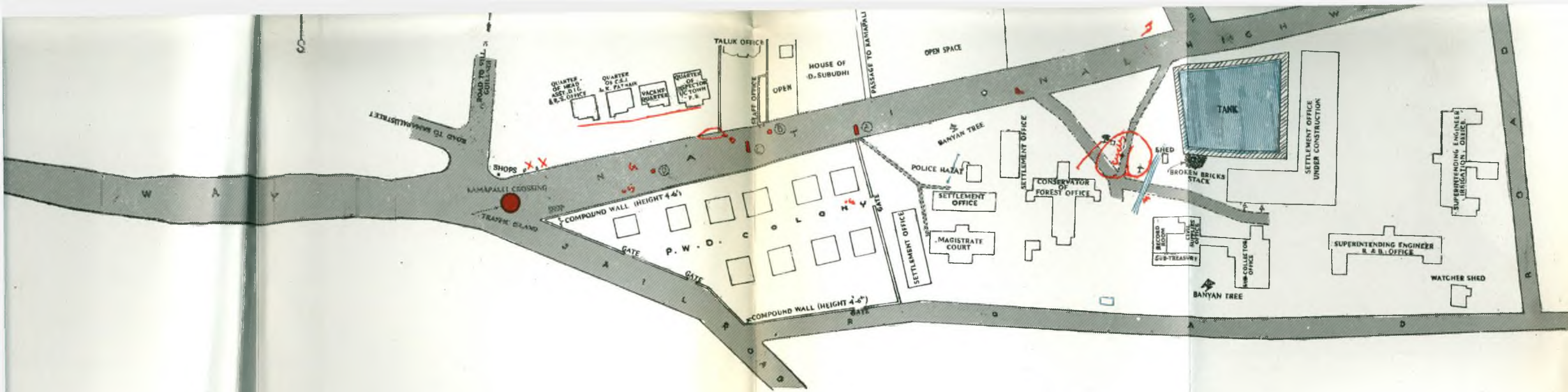
DETAILED PLAN OF D. S. P.'S RESIDENCE & COMPOUND






INDEX

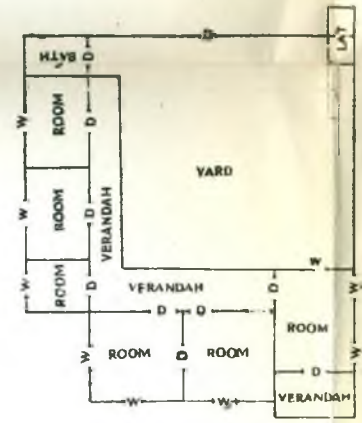
POSITION OF 1ST FIRING SQUAD	(A)
PLACE FROM WHERE THE DEAD BODY OF B. K. ACHARYA WAS PICKED UP	(B)
POSITION OF 2ND FIRING SQUAD	(C)
PLACE FROM WHERE THE DEAD BODY OF SOMNATH JENA WAS PICKED UP	(D)
POSITION OF 3RD FIRING SQUAD	(E)
PLACE FROM WHERE THE INJURED WAS PICKED UP	(F)
BURNT CAR	
DAMAGED TELEPHONE LINES	
ROADS	



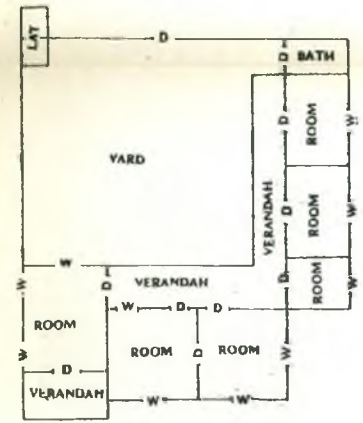


INDEX

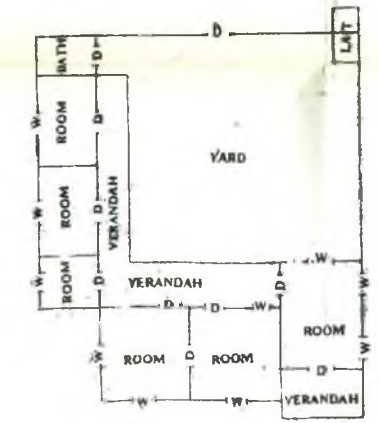
POSITION OF 1ST FIRING SQUAD (A)
 PLACE FROM WHERE THE DEAD BODY OF B. K. ACHARYA WAS PICKED UP (B)
 POSITION OF 2ND FIRING SQUAD (C)
 PLACE FROM WHERE THE DEAD BODY OF SOMONATH JENA WAS PICKED UP (D)
 POSITION OF 3RD FIRING SQUAD (E)
 PLACE FROM WHERE THE INJURED WAS PICKED UP (F)
 BURNT CAR 
 DAMAGED TELEPHONE LINES 
 ROADS 



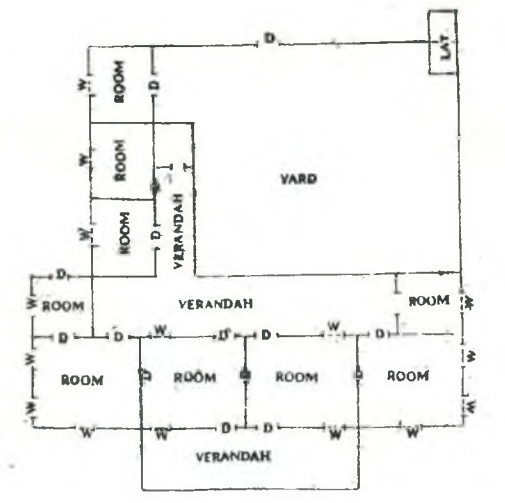
HEAD ASST.'S QUARTER



C.S. L'S QUARTER



VACANT QUARTER



INSPECTOR'S QUARTER

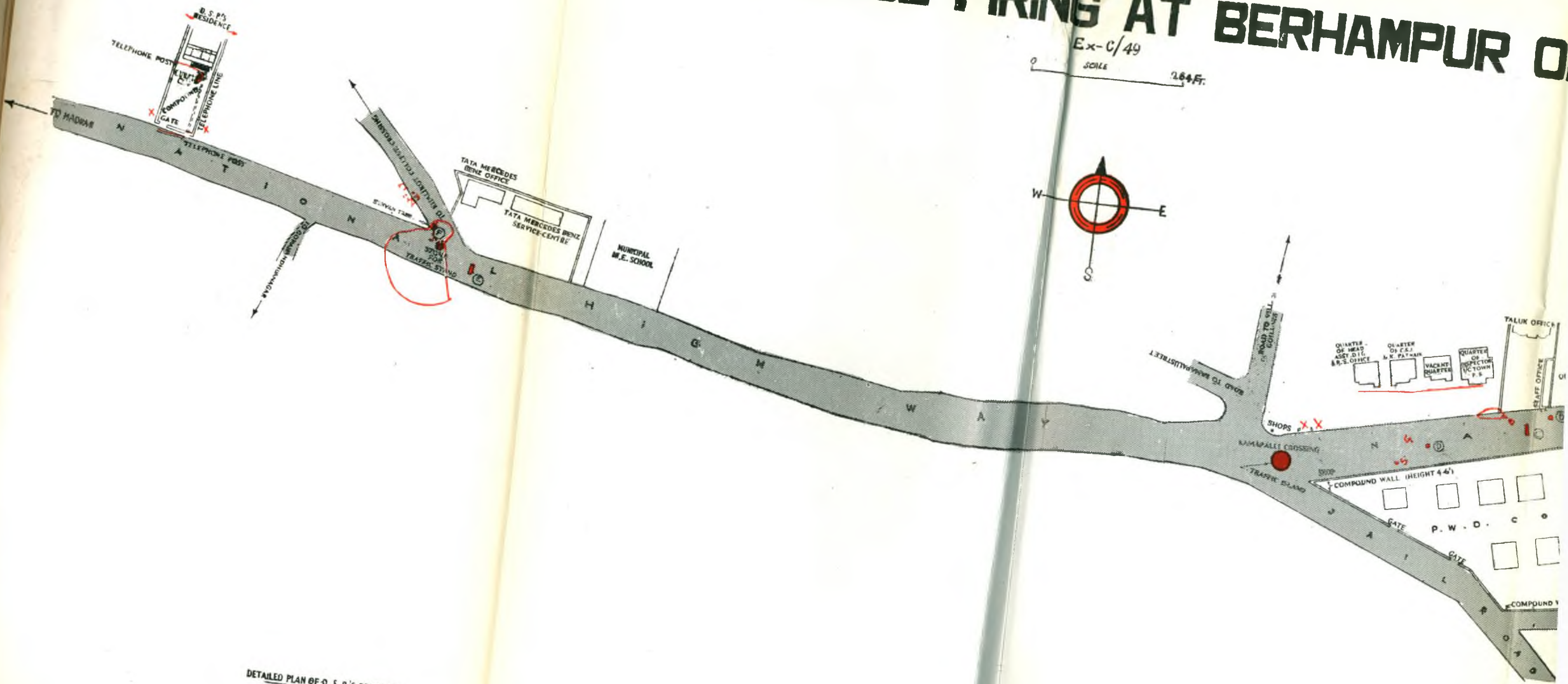
DETAILED LINE PLAN OF POLICE QUARTERS

SCALE 40 FT.

SPOT MAP OF POLICE FIRING AT BERHAMPUR

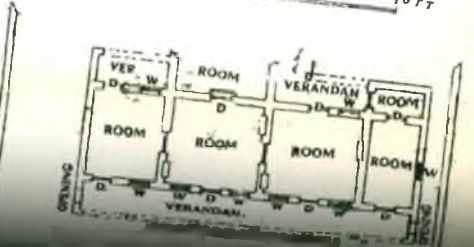
Ex-C/49

SCALE 1:264 FT.



DETAILED PLAN OF D. S. P.'S RESIDENCE & COMPOUND

SCALE 1:48 FT.

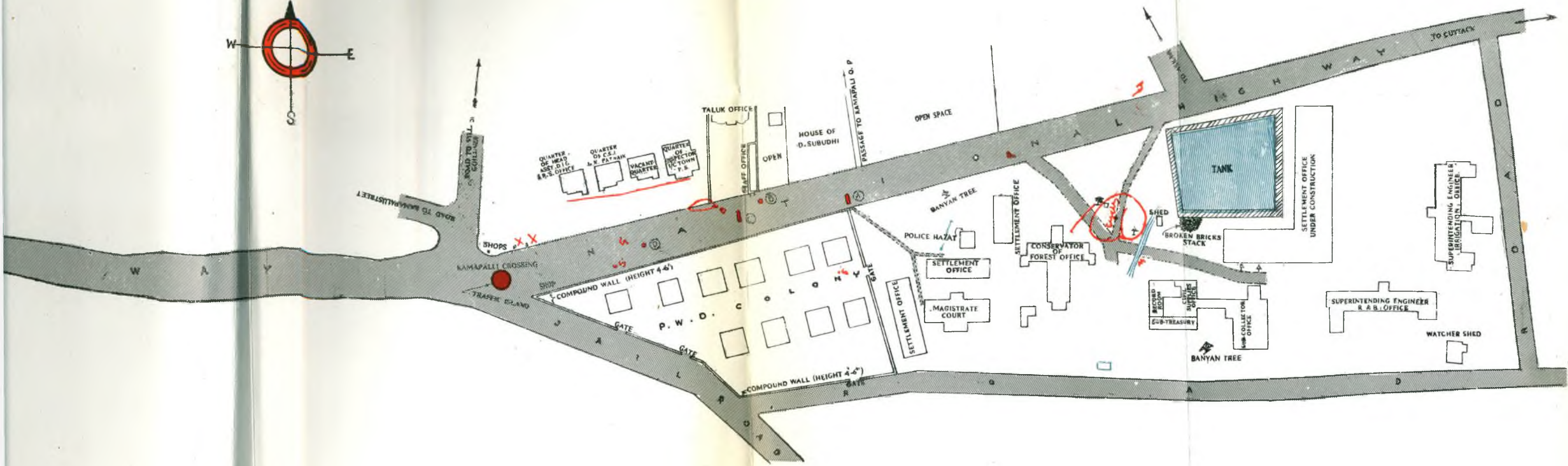


INDEX

POLICE FIRING AT BERHAMPUR ON 29.10.64.

Ex-C/49

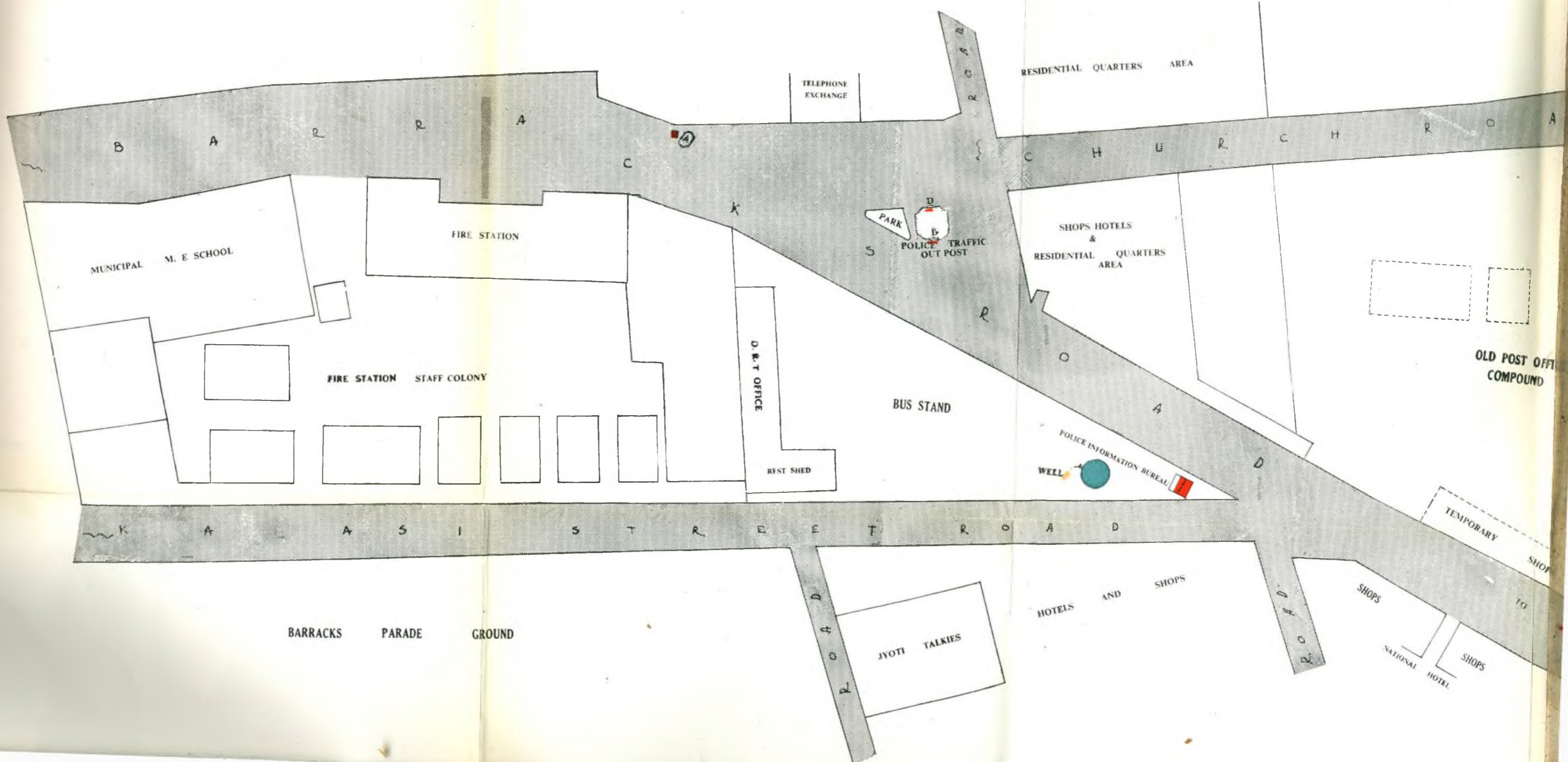
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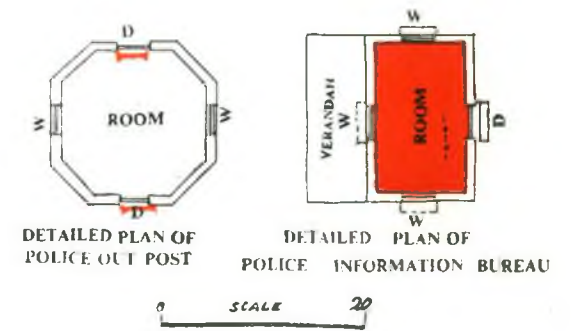
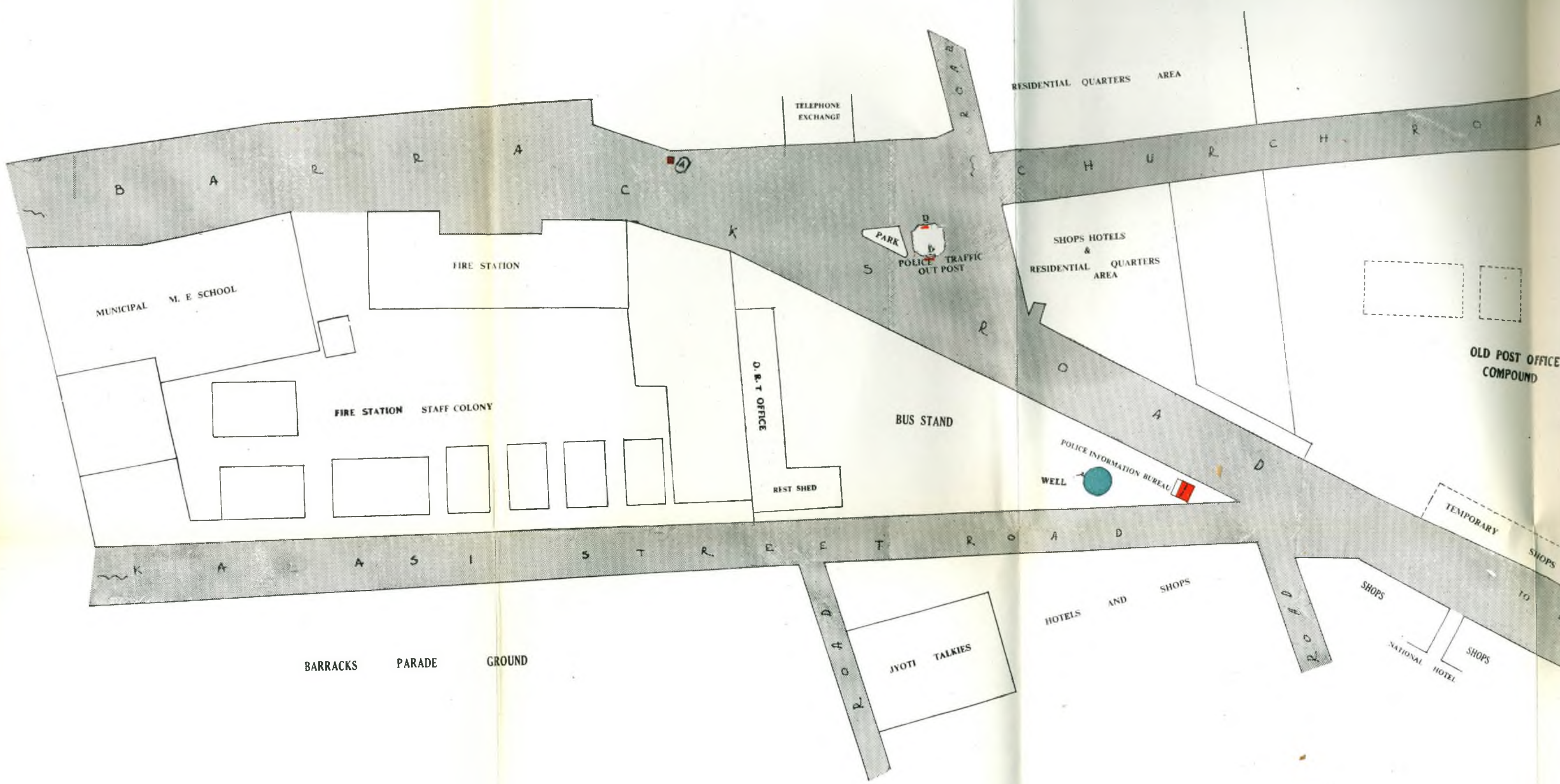
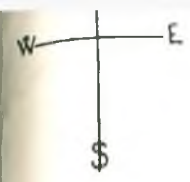


SPOT MAP OF POLICE FIRING AT BERHAMPUR ON 29.10.0

SCALE 1" = 132 FT.

EX-C/56





COLOUR INDEX

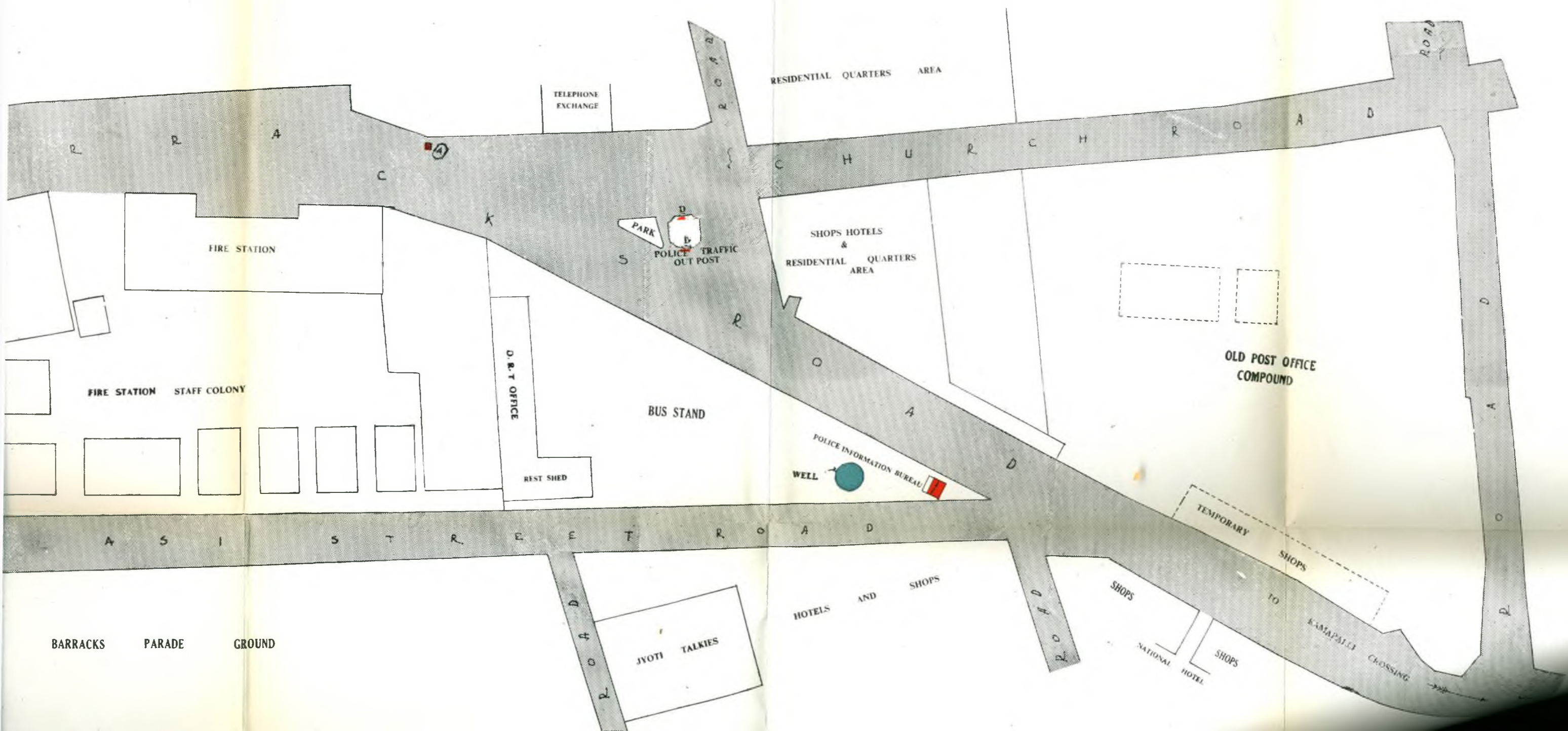
PLACE FROM WHERE ONE ROUND OF BULLET WAS FIRED (A)	
BURNT POLICE INFORMATION BUREAU	
WELL	
DAMAGED PORTION OF POLICE TRAFFIC OUTPOST BUILDING	
ROADS	

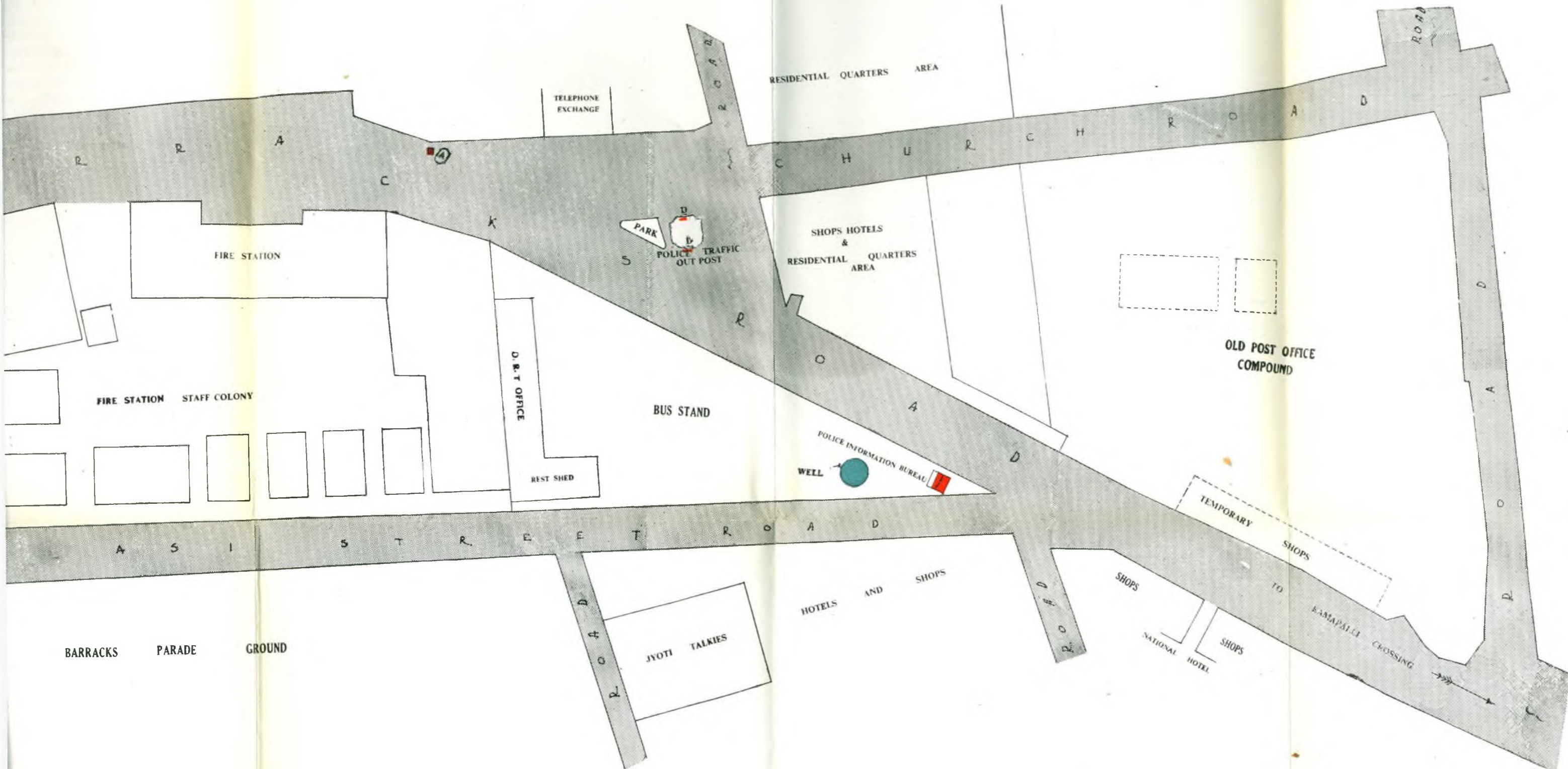
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SPOT MAP OF POLICE FIRING AT BERHAMPUR ON 29.10.64

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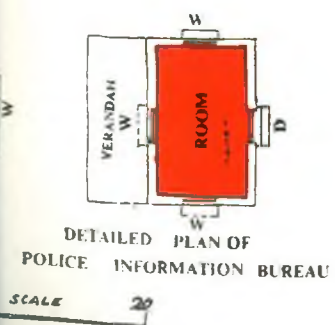
EX-C/56





COLOUR INDEX

PLACE FROM WHERE ONE ROUND OF BULLET WAS FIRED (A)	
BURNT POLICE INFORMATION BUREAU	
WELL	
DAMAGED PORTION OF POLICE TRAFFIC OUTPOST BUILDING	
ROADS.	



R. B. PATNAIK
BUILDING A.S.I, POLICE
T BY. S. N. MOHANTY.

leave at once, he would drive them by firing; yet nobody listened to him; instead the mob rushed forward in the direction where he was standing on the road; the constable apprehended his own life as also the lives of the police people who were in the Traffic Outpost and Information Bureau were in danger;

- (l) that in these circumstances the constable Dandapani Sahu fired one round with the object of dispersing the mob which at that point of time were 2,000—3,000 throwing stones; the Police Information Bureau which was set on fire by the mob was 250 cubits and the Traffic Outpost where the lives of the policemen were in danger was 100 cubits from the place where the constable was standing when he fired;
- (m) that evidently the constable fired to save life and property: he could not wait for the order of his superiors (who were not available at the spot at the time) because the situation was grave in that the lives of the Havildar and constables inside the Police Traffic Outpost were in danger as attacked by the mob; the mob also rushed towards the constable Dandapani Sahu while he had come outside the Control Room with the gun on the road in front of the Fire Station and the mob did not listen to his warning to disperse;
- (n) that there is no basis for the allegation that the constable Dandapani Sahu fired in order to disperse the public meeting which was taking place as far as Old Post Office; in view of the distance from the front of the Fire Station, from where the constable fired, to Old Post Office where the meeting was taking place, the suggestion on behalf of the public that the constable fired at the meeting which was going on in front of Old Post Office in order to disperse the meeting so that no resolutions could be passed is not acceptable;
- (o) that in the result, therefore, the constable Dandapani Sahu fired one round in self-defence and in defence of life and property then in danger in the circumstances hereinbefore discussed; it cannot be held that one round of firing by him in the circumstances was unjustified.

CHAPTER XX

BHAWANIPATNA (KALAHANDI) INCIDENT

	Paragraph		Paragraph
Introduction	1—5	In what situation the assembly was declared unlawful : warnings had no effect	51—58
A. Case of the students : defence of the administration:	6—19	Use of tearsmoke : why was it not effective	59—62
Was a representation to the Chief Minister containing demands handed over to the District Magistrate	13—19	In what circumstances was firing resorted to	63—68
B. Background : previous instances of students, indiscipline : activities of the politicians prior to the date of the incident	20—32	How the firing order was executed	69—78
C. What happened on October 29 at Bhawanipatna : was the crowd out to create trouble:	33—94	Why there was no lathi charge before firing	79—83
Efforts by the District Magistrate and other officers to pacify the crowd	37—38	Was firing justified : what was the apprehension	84—92
Parley with student deputationists failed	39—41	Chasing after firing : object was to arrest : no lathi charge	93—94
Why thereafter the student leader Mr. Ahean Khan was arrested	44—45	D. Alleged assault on P. W. 91 Mr. Susil Kumar Panda:	95—1107
Reaction of the arrest of the student leader Mr. Ahean Khan on the crowd : further efforts by the District Magistrate to pacify the crowd outside	46—48	Argument on behalf of the administration in defence	97—1107
Brickbattling started : threat to attack Court Building and the Treasury	49—50	E. Other allegations not connected with student movement : DIR and other cases	108—111
		F. Findings of the Commission	112

INTRODUCTION

Bhawanipatna is the official headquarters of Kalahandi district—once a princely State now merged in the State of Orissa along with other feudatory States from January 1, 1948. The State was not originally one of the Garhjat States which composed the cluster under Patna and Sambalpur, but was a tributary chieftainship, owing formerly allegiance to the reigning Maratha family of Nagpur. When the province of Nagpur lapsed in 1853 to the Crown, Kalahandi or Karomd came under the jurisdiction of the British Government and was subsequently created a Feudatory State.

2. Bhawanipatna has a population of 14,000. At one end of the town is the Kalahandi Science College; at the other end is the District Office. The residence of the District Magistrate is 400 yards from his office. A tarred PWD road runs in front of the District Magistrate's residence at a distance of 35 yards from his gate and a link road connects his residence with the PWD road. The main scene of the incident at Bhawanipatna was in this area in front of the District Magistrate's office-cum-residence. The residences of the Civil Surgeon, SP, Sub Judge, DFO, the Statistical Office and the Hospital are all by the side of this road.

3. There are good and commodious offices including Court-rooms (Civil and Criminal) and the Treasury in the same building; there is also a Dak Bungalow near the Court, and almost adjacent to the Dak Bungalow compound is the fine masonry jail.

4. The total strength of the student population within Bhawanipatna police station area is said to be more than 6,500 on the rolls as it stood in October, 1964. There is a college known as the Kalahandi Science College with 98 students on the rolls in 1964. There is one Higher Secondary School, one High School, 7 M.E. Schools, 26 Primary UP Schools, 64 Primary LP Schools, 4 Sevashram UP Schools 1 Elementary Training School and 1 Secondary Training School within Bhawanipatna police station area. The Higher Secondary and Training Schools are near the Government Offices where the incident on October 29 had taken place to which this discussion is confined.

5. Bhawanipatna is a small well-planned town with the magnificent palace almost at the entrance of the town.

A. Case of the students: defence of the administration:

6. The case of the students as stated by P. W. 32 Mr. Govinda Chandra Rath in his affidavit is this:

“ 4. That on 29-10-1964 we went in a peaceful procession to hand over a representation to the Chief Minister, Orissa through the Collector, Kalahandi and we halted on the road outside the residential office of the Collector. From among us Shri Ahesan Khan, Shri Maheswar Panda and Shri Giridhari Patnaik went to meet the Collector after obtaining his permission and handed over the representation.

5. That after about 15 minutes Shri Maheswar Panda and Shri Giridhari Patnaik returned whereas Ahesan Khan was detained and arrested.

6. That thereafter we enquired about the whereabouts of Shri Ahesan Khan to which we were given no reply, but we were asked to go away.

7. That when we were coming back Shri A. K. Palit raising his arms said that he was Magistrate I Class and commanded us to disperse within one minute. He did not use any loudspeaker to express his command, and one Pradipkumar Behera a student said that this command may be relayed through microphone and for that the students, microphone be used since there was no other microphone available.

8. That immediately thereafter a number of teargas shells were burst at the students which affected the police and the magistrates because it was carried away by the wind which was blowing to their side. And this caused a very humiliating scene at which the small boys who were in the procession started laughing and jumping with joy.

9. That this caused sufficient irritation and annoyance to the District Magistrate, to Mr. A. K. Palit and SP which prompted the magistracy to order for firing without giving any previous warning to us whatsoever. The firing was resorted to a few seconds after the bursting of the teargas shells.

10. That in the said procession there were only 15 to 16 college students and the rest were of the local High School and LP and UP Schools, and after the firing the students ran hither and thither to save their lives and the armed police chased them in different directions."

Mr. Rath also gave evidence. Similar—verbatim and identical—affidavits were also filed by Natabar Mohanti and Pradip Kumar Behera, both students. Sundar Singh, a student of B. M. High School, also filed an affidavit stating substantially the same story as others.

7. It was also argued on behalf of the students that the mob was peaceful; there was no brickbatting by the mob. It was suggested to the District Magistrate C. W. 37 Mr. J. P. Das in cross-examination that there was no brickbatting at all on October 29 and that no brickbats were thrown at him or at the police or at that place by the crowd and that what he was stating before the Commission was only to create evidence to justify the firing. It was contended that there was no necessity of firing; firing without its being effective was a mere show of police force—an arbitrary act. It was also submitted that firing from a distance of 100 feet—not effective, nobody having been injured—was a violation of Rules of the Police Manual; it was illegal use of firearms. As regards the apprehension of the police force being overpowered by the crowd it was submitted that there was no question of the crowd overpowering the police force as there was parley going on between the District Magistrate and the student leaders. It was also commented that firing without first resorting to lathi charge was unjustified.

8. As regards alleged assault by the police, P. W. 31 Mr. Sushil Kumar Panda, a trainee of C. T. School at Bhawanipatna, made an allegation of assault on him by the police on the date of the incident, October 29. His case was that at about 11 A. M. that day he went to the Headquarters Hospital for medicine as he was suffering from cold and headache; at that time Dr. Dasarathi Mishra was on duty. Mr. Sushil Kumar Panda stated that he was standing on the verandah of the hospital when there was firing of teargas shells and bullets at the students near the residence of the

District Magistrate; he found the students were running away hither and thither through fear; some of them also entered into the hospital compound; the armed police chased them by trespassing into the hospital compound. It was alleged that some of the armed forces also entered into Hospital Wards. Then the manner in which he was assaulted by the police and what followed thereafter was stated by him in his affidavit thus:

“ 4. That I was standing and looking at this scene when suddenly some of the armed forces pounced upon me and assaulted me at which I repeatedly implored not to assault me as I was not the student but a trainee. But nobody paid any heed to it. As a result of this beating, I fainted and did not know what happened then. I regained my senses in the Police Van.

5. That though I was arrested at about noon, I, along with other students, were given food in the mid-night and during all these time we were not given even water to drink.

6. That for assault on my person as stated in para 4 above, I was treated in the Jail.

7. That I was released from the Jail on the 7-11-1964 unconditionally.”

9. P. W. 33 Dr Dasarathi Mishra also filed an affidavit in support of the case of the students as an eye witness to what he had seen.

10. There was also an affidavit by a political worker in SSP Mr. Pardeshi Naik making certain allegations including his arrest by the police under the DIR which all do not appear to be within the scope of the present reference. Similarly, Mr. Balaram Patnaik, Advocate, also filed an affidavit alleging that he was illegally arrested under the DIR on false and imaginary grounds. He also mentioned about the firing of teargas shells and bullets on a peaceful procession of students on October 29; that many of them were beaten, chased and arrested.

11. The case of the administration was stated by the State officials including the District Magistrate C. W. 37 Mr. J. P. Das, the Magistrate C. W. 38 Mr. A. K. Palit, the Havildar C. W. 41 D. C. Patnaik, all denying the allegations of alleged police excesses and in justification of the use of force –teargassing and firing in the circumstances hereinafter stated. Supporting affidavits were also filed by the Assistant Surgeon C. W. 39, Dr. Monimala Mandal and Civil Surgeon C. W. 40, Dr. K. N. Kar. They all also gave evidence. Apart from them, other officials including the ADM, Mr. H. Khan and SP Mr. S. Sen also filed supporting affidavits.

12. C. W. 41 Havildar D. C. Patnaik in his affidavit and evidence denied that on October 29, he entered into the hospital and beat Mr. Sushil Kumar Panda. He stated that he did not know him nor had he beaten anybody by entering into the hospital compound or anywhere.

13. *Was a representation to the Chief Minister containing demands handed over to the District Magistrate?*: The case of the students as stated by P. W. 32 Mr. Govind Chandra Rath was that apart from the notice of picketing Ext. C/93 they handed over another demand which they had written to the Chief Minister (Q. 31). The case of the administration as suggested to Mr. Govind Chandra Rath was that his evidence with regard to another representation addressed to the Chief Minister was not true; that with the sole object of making demands for fulfilment of their terms and to go on picketing in case the demands were not fulfilled by the District Magistrate they went to the residence of the District Magistrate (P. W. 32 Govind Chandra Rath Q. 42).

14. It was submitted on behalf of the students that the District Magistrate in paragraph 11 of his "Synopsis of Events of the period of Students' Disquietude" which was annexed to his affidavit dated April 25, 1965 did not mention about any representation having been handed over by the students to him. The District Magistrate in another affidavit filed on the same date while stating about the incident on October 29 mentioned that the students wanted to present their demand and demonstrate; ultimately one of them gave an application addressed to the District Magistrate Ext. C/93. For convenience of reference it is quoted as follows :

" To
The District Magistrate, Kalahandi
Sir,

We the student representatives are going to picket before your office in protest against the police excess and brutal treatment with the students.

Yours faithfully

1. Sd. Girdhari Pattanayak
2. Sd. Ahesan Khan
3. Sd. Maheswar Prasad Panda
4. Sd. Ratnakara Swain
5. Sd. Hyder Ali"
6. Sd. Pitambar Bisi
7. Sd Debi Prasad Mishra

Sd Illegible 3-11-64
Sd. Illegible 3-11-64"

In the said affidavit the District Magistrate also said that the student leaders wanted him to assure them that Government would appoint an Enquiry Commission headed by a Judge to enquire into the police excesses against the students at Cuttack and other places. The District Magistrate said that he agreed to forward their representation to the Government.

15. The students' point was that there were two documents, namely, notice to picket and also a representation to the Chief Minister both of which, according to them, were handed over to the District Magistrate at the same time. The State produced only the notice and not the representation.

16. It is not understandable how these two documents—notice to picket and the demand for Enquiry Commission—could be handed over at the same time. It was only if the Government did not accede to the demand for Enquiry Commission that then only there would be occasion for picketing. In the notice to picket Ext. C/93 there was no mention that unless the demands were fulfilled there would be picketing.

17. That apart, the notice to picket Ext. C/93 was not referred to in the affidavit of either Mr. Govind Chandra Rath or any other student. The evidence of the District Magistrate C. W. 37 Mr. J. P. Das was that one of the boys gave him a piece of paper (referring to Ext. C/93 notice to picket). In cross-examination the District Magistrate was asked as to what he meant when he said that he would forward their memorandum demanding a Judicial Commission; he replied that there was no memorandum containing demand for Judicial Enquiry; what he meant was that he would forward a memorandum if one was given to him. The students' demand was not that the District Magistrate would forward their demands to Government; their demand was that he should give them an assurance. In further clarification he said that when the word 'forward' was used, it implied that there should be a written memorandum which could be forwarded; since it was verbally mentioned to him he informed the Government that students came to him and demanded a Commission of Enquiry.

18. Moreover in paragraph 4 of his affidavit Mr. Govind Chandra Rath stated that the students went in a peaceful procession to hand over a representation to the Chief Minister through the District Magistrate; that three of them went to meet the District Magistrate and handed over their representation to him. It is significant that none of the

students made any reference whatsoever to the notice to picket Ext. C/93 in any of their affidavits. Evidently the students were suppressing the truth, namely that instead of representation to the Chief Minister they had handed over to the District Magistrate the notice to picket Ext. C/93. This shows the students went to the office-cum-residence of the District Magistrate to picket at his office in a body of 400 and not to hand over to the District Magistrate a representation addressed to the Chief Minister.

19. The evidence of P. W. 32 Govind Chandra Rath was that they handed over to the District Magistrate a representation addressed to the Chief Minister; that they had no object of creating disturbance or picketing or demonstration at the residence of the District Magistrate. With reference to Ext. C/93 (which was in fact notice to picket) Mr. Gobind Chandra Rath said that this was the representation which was made over to the District Magistrate and it was signed by, among others, Ahasan Khan; that there was another demand which they wrote to the Chief Minister. It is significant that this notice to picket Ext. C/93 was written in that very morning of the incident on October 29 (P. W. 32 Govind Chandra Rath Qq. 22—33, 39). Evidently, from the very beginning, the students decided to picket at the residence of the District Magistrate and create trouble. The story of the students having handed over to the District Magistrate a representation addressed to the Chief Minister demanding a Judicial Commission, as subsequently stated in their affidavits, was an after-thought purporting to be in support of the students' case that it was a peaceful procession for the purpose of handing over to the District Magistrate a representation addressed to the Chief Minister for appointment of a Judicial Commission.

**B. Background: previous instances of students,
indiscipline: activities of the politicians
prior to the date of the incident**

20. In this context, the political background of the student movement in October 1964 as stated by the District Magistrate C. W. 37 Mr. J. P. Das in his evidence (Q. 57) is briefly this: The Swatantra Party has considerable influence in Kalahandi district because all the Assembly seats were won by Swatantra members except one; most of the important activities on the political front are done by the Swatantra Party, when the student agitation started at other places in the State it had its natural effect on this district also; that

the students here were rather quiet and well-behaved, and in normal circumstances they would not have behaved in the way they did. The District Magistrate's appreciation of the situation was that the politicians with a view to their own political gain incited the students to these unlawful activities. He said that some days before October 29, the Maharaja of Kalahandi who is a Swatantra Member of Parliament from this district had addressed a public meeting at Bhawanipatna where he demanded judicial enquiry into the alleged police excesses at other parts of the State. The District Magistrate was also getting frequent reports from the police and from other sources that leaders of different political parties were keeping close contact with the students and were found to be inciting them.

21. Mr. Pardeshi Naik, a political worker of SSP in his affidavit stated that he along with his other political companions observed the "BHARAT BANDH" day on September 25 and criticised the Government with regard to their economic, financial and food policy; they also observed the "BHRASTACHARI GADI CIHADO" week at Bhawanipatna; he led a delegation of local cultivators who were charged to pay irrigation taxes without any water being supplied and submitted a memorandum to the District Magistrate as a result of which collection of water taxes was suspended so far. That apart Mr. Pardeshi Naik is said to have addressed a public meeting when there was cholera epidemic in the month of October 1964 at Bhawanipatna; the local administration failed to cope with the situation as a result of which there were a number of deaths and the dead bodies were thrown here and there; he also submitted a representation to the Government against the local authorities for their failure.

22. It appears from the evidence of P. W. 33 Dr. Dasarathi Mishra that there was a feeling of general unhappiness in the present regime, particularly in contrast to the conditions during the princely administration of the State before merger. What he said, in substance, was this: In Kalahandi State during the princely administration corruption was not there; people were getting rice 24 seers per rupee mung and other commodities of food, ghee two seers per rupee which all were available; no such day to day exploitation by the officers of the State; people were treated impartially; nepotism and favouritism were totally absent. He complained that in these days merit, ability, capacity, culture and efficient

work are never appreciated by the Government except in the case of a few persons of their own choice; the people, at least the people of Kalahandi during the regime of the Maharaja, were allowed to put forth their grievances for immediate remedy; there were no such powerful people as they are now; during the State regime agriculture was flourishing (Q. 309).

23. When asked about the difference between the old princely State and the present administration since 1949, Dr. Dasarathi Mishra stated to the effect that the present Government is firstly a corrupt one; secondly, people without food are starving; thirdly partiality is much more prevalent; fourthly persons of innocent type are ensnared; fifthly, capacity is never appreciated; sixthly approach or access to the authorities is not easy; on the whole there are none to listen to the poor people (Q. 306).

24. This political sense among the people had apparently affected the younger generation, namely the students. The District Magistrate Mr. J. P. Das in his affidavit narrated some of the instances of student indiscipline in Bhawanipatna as hereinafter stated.

25. On September 29, 1964 a student served a notice on the Headmaster of the B. M. Higher Secondary School, Bhawanipatna, that he would resort to hunger-strike if he was not permitted to appear in the final examination; the boy was debarred from appearing at any examination prior to the annual H. S. S. C. examination, 1966 by the Board of Secondary Education, Orissa for adopting unfair means in the examination; the boy loitered in front of the Headmaster's office on September 29, 1964 and did not listen to his advice and persuasion to give up hunger-strike; the Headmaster thought that the presence of this boy in the school premises and his activities might create untoward situation and indiscipline in the school. The Headmaster therefore requested the District Magistrate to remove the boy from the school premises and to deal with him according to law. The Headmaster also requested the SP to provide adequate police protection to the school property and the residence of the Headmaster. It is said that the boy loitered in front of the Headmaster's office from 2-25 P. M. till 6 P. M. that day. Then at 6 P. M. the boy submitted another application admitting his fault and withdrawing his previous hunger-strike notice. The Headmaster however considered his movements suspicious and needed watch even on the next day, that is September 30. It

was reported that the hunger-strike of the student was instigated by two of the teachers of his School. This sort of conduct on the part of the teachers in instigating the students is reprehensible.

26. Within 2 to 3 days thereafter the students held out a threat to the Magistrate Mr. A. K. Palit who was also the Executive Officer of Bhawanipatna Municipality in these circumstances : The authorities of Bhawanipatna Municipality had closed a portion of the road near daily market for repairs by fixing wooden poles across the road. On October 1, 1964 at about 10 A. M. some students approached the Magistrate Mr. Palit who was the Executive Officer of the Municipality and asked him to open the road as it was causing inconvenience to the students because they had to take a circuitous route for going to the college. Mr. Palit refused to accede to their demand. The students then threatened to take appropriate steps. Ultimately, the same night the District Magistrate intervened and in order to prevent unpleasant situation asked Mr. Palit to remove the barricade and this was done. This was undoubtedly interference by the students with the general administration.

27. On October 2, 1964 the students took out a procession in the afternoon and held a meeting at Gandhi Chowk. In that meeting some students delivered speeches narrating police excesses at Cuttack and Bhubaneswar and condemned police action against students; they demanded setting up of a Judicial Commission.

28. On October 12, 1964 the students of Bhawanipatna College organised a public meeting which was presided over by Maharaja Shri P. K. Deo, Swatantra MP. The meeting was addressed by Mr. Jagannath Patnaik, Mr. Govind Chandra Rath, Mr. Balaram Patnaik (SSP), Mr. Pardeshi Naik (SSP), Mr. Janardan Sarangi (Swatantra), Mr. Rahas Bihari Mund and Mr. B. K. Deo, Swatantra MIA. The speakers at the meeting criticised alleged police excesses at Cuttack and adopted resolutions to urge upon Government to set up an Enquiry Commission to probe into the police excesses, to make good the loss of properties of students and to release the arrested students unconditionally.

29. Then on October 26, 1964 about 20 students headed by student leader Mr. Govind Chandra Rath and SSP worker Mr. Pardeshi Naik held group discussions in Bhawanipatna town. They formed an Action Committee consisting

of students. They moved in the town with SSP worker Mr. Pardeshi Naik, wearing black badges. They approached the shop-keepers to observe hartal the next day. On the same date October 26, 1964 the District Magistrate held a meeting with the guardians. The guardians of prominent student leaders were present in this meeting. They assured the District Magistrate that they would see that their wards did not indulge in agitation and lawlessness.

30. The following day on October 27, 1964 College and High School students headed by the student leaders moved in the town. On their persuasion, partial hartal was observed. The SSP worker Mr. Pardeshi Naik and Swatantra worker Asaraf Ali Khan were found helping the students; in fact Mr. Pardeshi Naik is said to have been instigating the students. They stopped on the road near the High School and invited school students to join them. On their persuasion and show of force, school students also joined. They moved in a procession in the main streets of the town shouting slogans such as "Police Police Down Down", "Biren Sarkar Murdabad" "Amar Dabi Puran Heu". In the evening they held a public meeting at Gandhi Chowk attended by about 500 students and public. The meeting was presided over by a student; it was addressed by other students and the SSP worker Pardeshi Naik. In their speeches they incited the students to hold violent demonstration against the Government

31. On the same date October 27, 1964 the B. M. Higher Secondary School reopened after Puja holidays. Most of the boys did not attend their classes. The students gathered at the junction near the school almost blocking the way. They gave a notice to the Headmaster that they were going to observe a sympathetic strike for the distressed fellow students. At 12-30 P. M. a college student went to the Headmaster and enquired about payment of the school fees ; he was not the guardian of any student and had not gone to pay fees of his ward ; presumably he went there to lead the students and incite them to join the strike.

32. On October 28, 1964, that is to say, the day before the incident, though most of the students of the B. M. Higher Secondary School came to attend the school, they were prevented from entering the school compound by some student leaders. It was seen that some students and also an outsider were attempting to drag out the students who were already in

their class rooms. The Headmaster apprehended that untoward incidents might happen. The students took out a procession of about 200 ; they moved in the town shouting slogans against Chief Minister, Home Minister and the Police. The students carried effigies of the Chief Minister and the Home Minister in a mock funeral procession and burnt their effigies in the market place. The agitation spread to other places in Kalahandi district in that the students of Junagarh and Nawapara were reported to have gone on strike. This shows that the tempo of the movement throughout was high by that time.

**C. What happened on October 29 at Bhawanipatna :
Was the crowd out to create trouble :**

33. The sequence in which the events of the day happened from the time the crowd was advancing towards the residence of the District Magistrate until the firing and dispersal of the crowd is stated hereunder.

34. On October 29 at about 10 A. M. in the morning the District Magistrate while sitting in his residential office got a telephone call from the ADM Mr. Habibulla Khan who was at the time at the court building informing the District Magistrate C. W. 37 Mr. J. P. Das that a procession of students and outsiders were marching towards the District Magistrate's residence ; immediately the District Magistrate rang up the SP to send some force ; after some time the SDM Mr. A. K. Palit arrived in a jeep with some armed force ; it was then about 10-30 A. M. ; the Magistrate Mr. Palit posted the armed constables near the gate of the District Magistrate. The District Magistrate told Mr. Palit that it must be the students' procession coming in connection with the students' agitation. The District Magistrate then decided to watch and see what the students wanted ; within a few minutes after this, the procession was found coming towards the District Magistrate's residence.

35. The processionists were shouting slogans ; they could be seen from the windows of the District Magistrate's office room ; the processionists were about 400 in number mostly students as they appeared to be from age and appearance.

36. In the meantime the procession came from the PWD road towards the residence of the District Magistrate on the link road as appears from the Spot Map Ext. C/91 ; actually his residence was at a short distance from the PWD

road ; a link road connected his residence with the PWD road. The District Magistrate went ahead and met the procession when it entered the link road just in front of his residence.

37. *Efforts by the District Magistrate and other Officers to pacify the crowd :* The District Magistrate came out of his gate and walked towards the PWD road to meet the processionists ; he asked the processionists as to what they exactly wanted from him ; some of them came forward to present their demands ; his feeling was that most of these processionists who discussed with him were students ; actually some of them also met him on previous occasions in other connections. The District Magistrate told the students that they could present their demands to him there at the spot itself on the road. The students however said that they would like to go to his office and present the demands. The District Magistrate then told them that he was as much the District Magistrate inside his office as on the particular spot on the road and that the students could present him their demands there ; but the students said that they would give him their demands only inside his office, because, as one of them said, they had a fundamental right to come inside the office of the District Magistrate and present their grievances. The students were insistent on entering the office room of the District Magistrate and all of them also wanted to get in simultaneously. So the District Magistrate told them that it would not be desirable for all of them to enter ; he also told them not to create unpleasant situations ; he further pointed out towards the armed force which was posted at his gate and said that he did not want any unpleasantness in this matter ; but still the students did not listen. To avoid further unpleasantness the District Magistrate allowed a few of the students to come to his office room and present to him their demands ; three of the students came forward ; one of them was Mr. Ahesan Khan.

38. The students who came as deputationists were leaders of the students. The Magistrate Mr. Palit also came inside. After a few minutes the three student leaders were brought inside the office room of the District Magistrate. The SP whom the District Magistrate rang up also arrived in the meantime.

39. *Parley with student deputationists failed ;* Then what happened at the interview with the student leaders is stated hereunder.

40. The District Magistrate told the students that their demand of entering his residential office was satisfied; they might tell him that they exactly wanted; thereupon one of the students gave the District Magistrate a piece of paper the purport of which was that the students would like to picket before his office; this paper was signed by seven persons. The District Magistrate told the students that picketing was not a proper thing to do and explained to them that they had several other lawful means of ventilating their grievances; picketing was certainly not one of them. He also told them that if they had any particular grievance, he would take immediate steps to redress it; if it was not within his competence he would move the proper authorities to see that the grievances were removed. The District Magistrate asked the students to let him know their demand; they said that he should give them an assurance that a Judicial Commission must be appointed to go into the question of police excesses at Cuttack and elsewhere. The District Magistrate tried to reason out with the students that in his capacity as the District Magistrate he could not possibly give any such commitment; actually he went to the length of explaining to them that it was beyond the capacity of any officer except the Government to give any such assurance. But the students did not seem to be convinced; they said that they would not go back without this assurance from him. The District Magistrate tried to further explain this matter to them. He went to the extent of telling them that they were young boys and his brotherly advice to them would be not to indulge in these things; if they had any grievance they could write it down so that he could send it to the proper quarters; he also assured them that so far as his district was concerned there would be no police excess. Still the students would not listen. They said that they would continue picketing until he gave them assurance of appointment of a Commission.

41. Apart from the District Magistrate the other officers also tried to pacify the students. In fact the Magistrate Mr. Palit and the SP Mr. Sen also tried to persuade the students. Mr. Palit was an elderly man; he also tried to give his fatherly advice to the students. The Circle Inspector and the officer-in-charge of the Sadar Police Station were also there at the time of discussion with the student leaders inside the office room.

42. In spite of all these efforts by the District Magistrate and the other officers to pacify the students it was found that the students came determined to do picketing as was evident from the memorandum Ext. C/93 which they submitted before the District Magistrate. While this parley was going on between the students on the one hand and the District Magistrate and the other officers on the other inside the residential office room, shouts—in fact a medley of shouts—could be heard outside made by some people against the Government, the then Chief Minister and the Home Minister ; it could be felt that the crowd outside was getting restless.

43. When the students did not listen to the District Magistrate in spite of his persuasion all this time, he threatened them with consequences of picketing ; he explained to them that if they actually resorted to picketing they would be dealt with under the relevant provisions of the law. When the parley failed the District Magistrate asked the students to go away or to face the consequences of the law. Thereupon two of the students left ; the remaining student Mr. Ahesan Khan stayed on ; had said that he had decided to stay on ; he would continue the agitation even if it involved interfering with law and order.

44. *Why thereafter the student leader Mr. Ahesan Khan was arrested :* This young student leader Mr. Ahesan Khan kept on sitting there inside the office room of the District Magistrate although he was asked to leave the room. The District Magistrate had a lot of other things to attend, he wanted to resume his work but Mr. Ahesan Khan declared that he would continue to sit in his room and would not allow the District Magistrate to work. Thereupon the District Magistrate asked the officer-in-charge of the Sadar Police Station who was standing inside the office room to take away Mr. Ahesan Khan, who was accordingly taken outside and arrested under Section 7 of the Criminal Law Amendment Act.

45. A question was raised : Why was Mr. Ahesan Khan arrested ? The District Magistrate C. W. 37 Mr. J. P. Das was questioned about this. He said that this student was preventing him from doing his normal work ; Mr. Ahesan Khan said something about continuing the agitation and resorting to illegal methods, if necessary ; he also said that he would continue to sit in the office room of the District Magistrate and would prevent him from doing his normal work. The District Magistrate further told that his normal

work at that time was to deal with the situation arising out of the crowd outside besides other work which might arise at that moment ; if some important message was brought to him at that moment he was to look into it ; if there came some phone message he was to attend to it ; if some persons came to him to discuss some important matters he was to give an interview ; all these would have formed part of his normal work which Mr. Ahesan Khan by continuing to sit in the office room was preventing the District Magistrate from doing. This, in substance, was the explanation of the District Magistrate C. W. 37 Mr. J. P. Das as to why Mr. Ahesan Khan was arrested.

46. *Reaction of the arrest of the student leader Mr. Ahesan Khan on the crowd : further efforts by the District Magistrate to pacify the crowd outside :* After Mr. Ahesan Khan was kept in the verandah of the office room under arrest as aforesaid the District Magistrate went out with the Magistrate Mr. Palit and the SP towards the gate to talk with other students and the processionists who gathered outside the compound. By this time the news of the arrest of Mr. Ahesan Khan had reached the crowd. In addition to their other demands the students were now shouting that the student leader Mr. Ahesan Khan be released forthwith ; they also continued their demand of entering the compound and coming to the residential office of the District Magistrate to present their demands. The District Magistrate and other officers again tried to reason out with the students. The District Magistrate came outside the gate and discussed with some other students who gathered there. The District Magistrate and other officers again tried to persuade the students to disperse ; again the students insisted on entering the office room and presenting their demand for a Judicial Commission.

47. The District Magistrate and the other officers had a lot of discussion outside the compound with the students and told them that they were after all young boys with a future to look forward to and they had their studies to mind ; they should not be carried away by the frenzies of the events which were occurring elsewhere and take any rash action. The students however said that they were not convinced ; the police acted with high-handedness in Cuttack and other places ; the Ministers became corrupt ; the administration was going to dogs. The students said that they would agitate against such an administration.

48. It was at this stage that the District Magistrate had to deal with the situation firmly; he told the students that he tried his best to persuade them; there was something called law and order which had to be observed by everybody. The District Magistrate pointed out at the armed police and said that he would not tolerate any interference with law and order; he said that he had sympathy with them as they were young boys; they were perhaps being misguided by bad elements but in their own interest they should keep away from tampering with law and order.

49. *Brickbatting started : threat to attack Court Building and the Treasury :* It was at this time that the crowd was brickbatting; shouts by the crowd had also become loud and their tone was threatening; they were shouting that they would enter the office of the District Magistrate; some among the crowd said that the four armed constables posted near the District Magistrate's gate could not prevent a determined crowd, as they were, from doing what they wanted. It was even heard some of the crowd saying that they would press marching towards the Court building and the Treasury which were in the same building a short distance away on the PWD road itself.

50. It was argued on behalf of the students that there was no brickbatting from the crowd as stated by the State officials; the mob was peaceful. On this point the District Magistrate C. W. 37 Mr. J. P. Das was cross-examined quite at length. His evidence in substance was this; Small pieces of brickbats were being thrown all around; brickbats were falling within a distance of about 4 to 5 feet from the position where the District Magistrate, other officers and the police party were standing; if the brickbats fell on any of them they would have injured them; some of the brickbats fell inside his compound; at that time the family members in his house were his wife and a child (Qq. 380, 381).

51. *In what situation the assembly was declared unlawful : warnings had no effect :* When those shouts from the side of the crowd became severe, brickbatting continued and the mob gradually pushed forward towards the District Magistrate's gate the Magistrate Mr. Palit who was then present there in charge of the force at that time said that he felt that it was time to declare the mob unlawful. The SP was also present there. The District Magistrate, the Magistrate Mr. Palit and the SP discussed the situation and they all agreed that the Magistrate was correct in his assessment of the situation.

Thereafter the Magistrate Mr. Palit revealing his identity declared the mob unlawful after the usual procedure; he gave the mob two minutes time to disperse and warned that if they did not disperse, force would be used.

52. In the meantime the teargas party had arrived and had posted themselves somewhere near the room of the District Magistrate's stenographer at his residential office. At that point of time the strength of the force was one section consisting of one Havildar and four constables armed with rifles with no lathis, and another section consisting of one Havildar and four constables with lathis. This was all the force available at the spot at the time.

53. After the warning had been given by the Magistrate Mr. Palit, the SP and other police officers present there also repeated the warnings. Thus although the initial warning was to disperse within two minutes, still the repetition of this warning by other officers gave the mob further time of about 5 minutes more to disperse but these repeated warnings appeared to have had no effect on the mob; the mob took these warnings very lightly and some of them were even jeering at the warning given by the Magistrate Mr. Palit and the mob did not stop but on the other hand they pushed forward towards the gate of the District Magistrate.

54. Admittedly there was no microphone available to the Magistrates and the officers to announce the order by which the assembly was declared unlawful. It is unfortunate that at the district headquarters no microphone was available to the local officers in charge of law and order and particularly at the point of time when trouble was reported to have been brewing for several days prior to the date of the incident. On this point the District Magistrate was cross-examined at length by the learned counsel appearing for the students. The explanation of the District Magistrate was this: He did not ask SP to get a microphone because they could not have possibly got it at such short notice nor did he ask the Magistrate Mr. Palit to get a microphone because they never thought that it would be required to be used and no microphone was kept handy. It is not understandable why no microphone was kept in the Control Room, particularly at the district headquarters. The District Magistrate admitted that as far as he knew no microphone was available in the police office either; getting a microphone at short notice from a distant place would not have been possible.

55. It appears that the mob made fun of the situation with the Magistrate Mr. Palit. It is said that someone out of the mob offered to hand over their own mike which they had carried with them saying "if Mr. Palit had anything to say let him say through the mike". The District Magistrate when asked about this said that he remembered some of the boys had jeeringly made certain announcements; he had faint recollection that the mike was also brought inside the compound and tried but it did not work due possibly to some mechanical defect (C. W. 37 J. P. Das Qq. 426 up to 431).

56. The non-availability of a microphone is of significance. This shows that apart from the meagre strength of the force, even the minimum essential equipments were lacking. Assuming this lack of even the minimum equipments might not have any effect on the ultimate result, even so, the administration should in future take care and see that these equipments are readily available to the local officers in charge of law and order for the purpose of dealing with a riotous mob.

57. A question was raised as to why the Magistrate Mr. Palit was allowed to pass the order declaring the assembly unlawful while his superior officer the District Magistrate himself was present at the spot. It was suggested on behalf of the students to the District Magistrate in cross-examination that the reason why he himself did not pass the order declaring the assembly unlawful was because he felt that there was no necessity of declaring the assembly unlawful. The explanation as given by the District Magistrate in his evidence was this : Mr. Palit was the Magistrate in charge; he also happened to be present on the spot throughout ; as Magistrate in charge Mr. Palit took all the decisions by himself ; since, however, he was present, before implementing his decisions Mr. Palit thought it proper to consult the District Magistrate. The District Magistrate also thought it necessary to discuss matters with the SP. The fact, however, remained that the decisions were of Mr. Palit's and the responsibility was his.

58. In this connection the District Magistrate also said that as a senior Magistrate superior to Mr. Palit present at the spot the District Magistrate also took his share of the responsibility in the matter; though Mr. Palit had taken the decisions it was open to the District Magistrate as senior officer to take over the control from him at any stage. If the District Magistrate at any stage thought that Mr. Palit was not using

his discretion properly, the District Magistrate certainly would have taken over charge of the entire situation and would have passed orders himself. The District Magistrate, however, found that Mr. Palit was taking correct and proper decisions at the right time. The District Magistrate found no occasion to disagree with Mr. Palit. Thus the District Magistrate shared the responsibility in the entire matter. He further said that he took full moral responsibility for all the action taken by Mr. Palit (C. W. 37 J. P. Das Qq. 517 to 522).

59. *Use of tearsmoke : why was it not effective :* Thus while the mob in spite of the repeated warnings pushed forward towards the gate of the District Magistrate as aforesaid, it became a very difficult situation in the sense that the local officers in charge of law and order had only four armed constables and one lathi party (one Havildar and four constables) to act and the mob was very neat at the time. It was in this situation that the Magistrate Mr. Palit ordered use of tearsmoke; he gave this order to the SP who asked the teargas party to use tearsmoke; 20 rounds of tearsmoke (grenades and shells combined) were thrown; some grenades were thrown into the midst of the mob but the shells were all fired behind them. It is said the use of tearsmoke did not have much effect.

60. The fact that the use of tearsmoke was ineffective apparently emboldened the mob. The students Mr. Natabar Mohanty, Mr. Pradip Kumar Behera, Mr. Govinda Chandra Rath in their respective affidavits said to the effect that a number of teargas shells were burst at the students which however affected the police and the Magistrate because the tearsmoke was carried away by the wind which was blowing to their side; this caused a very humiliating scene for the police and the Magistrates at which the small boys who were in the procession started laughing and jumping with joy. It was also suggested on behalf of the students in cross-examination of the District Magistrate that knowing very well that wind was not favourable at that time and that it would not be effective the officers carelessly used teargas shells and grenades among the students and thereby the District Magistrate made a plan to create a situation (C. W. 37 J. P. Das Q 542).

61. The reason why the use of tearsmoke was not effective as explained by the District Magistrate in his affidavit and evidence was that the smoke did not go inside the crowd because the wind was unfavourable, that is to say, the wind

was not blowing towards the students. The fact that as many as 20 teargas shells and grenades were fired by 34 persons one after the other in about 5 minutes shows that every effort was made to make it effective but due to unfavourable wind, it did not have the desired effect on the mob.

62. Although it had not the desired effect still after tear-gassing by the police the mob fell back and retreated in different directions. After the twenty rounds of teargas had been used, the tearsmoke squad was withdrawn inside the compound. Then the District Magistrate and his party came out with the force to the main PWD road; they found the boys running in different directions but after sometime the mob reformed somewhere at the crossing near the hospital.

63. *In what circumstances was firing resorted to :* As hereinbefore stated the mob had dispersed in all directions—hospital side and other places; they reformed themselves on the cross road near the hospital; then the mob—by this time it was a more determined mob—marched forward; it appeared that whatever hesitation they initially had by now completely vanished; apparently the mob was emboldened by the failure of the tearsmoke; some of the leaders and others were found inciting the mob to march forward.

64. It was at this time that the District Magistrate and the officers brought out the lathi party and the armed force on the PWD road in front of the District Magistrate's residence and kept watch on the situation; the determined mob was marching ahead; brickbattling also started; it was a very difficult situation; the strength of the force with the District Magistrate and the officers was meagre as mentioned earlier. The District Magistrate asked the SP that he must get some more force; accordingly the SP asked one of his officers to ring up the reserve lines to send two sections. At that point of time, they were left only with four armed constables and four lathi constables to face a mob of about 400 marching towards them. It was then about 12-30/12-45 P.M.

65. In this situation, the District Magistrate again discussed with the SP and the Magistrate Mr. Palit. They realised that they could not control the mob with four lathi constables; they would be overwhelmed in no time. At this point of time brickbats were also being thrown by the mob which was gradually marching forward apparently with the intention of entering the residential office of the District Magistrate.

66. At this stage the District Magistrate was to take a difficult decision. He was conscious that in the mob there were many boys of tender age; mob was composed mostly of school and college students. The evidence of the District Magistrate is that he was very reluctant to use force-firing; but in view of the grave situation which by then developed, the Magistrate Mr. Palit said that the time had come when force must be used to disperse the mob as otherwise the mob would overpower the lathi party, might snatch away the arms from the constables, might enter the residential office of the District Magistrate and also might in their frenzied mood destroy records and other papers there. The District Magistrate again discussed the position with the SP. They all agreed with the Magistrate Mr. Palit that they could not save the situation except by use of force. As they had only one section of lathi party consisting of one Havildar and four constables it would have been impossible to meet a mob which was coming in a semi-circular fashion on the road towards the District Magistrate's residence. The two sections of police which the SP had asked for from the reserve lines had not yet arrived, in fact the two sections of police reached after the firing. So at the point of time the total strength of the force with the Magistrate was only eight constables and two Havildars.

67. It is not that the decision to resort to firing was taken in haste. After teargassing—though it had not the desired effect—the crowd reformed and reassembled somewhere at the crossing near the hospital and started a march for the second time towards the District Magistrate's residence. The interval between the time when the last tearshell or grenade was used and the time when the gun-shot firing was resorted to would be about 15—20 minutes during which the situation further deteriorated in that the mob now more determined was marching towards the District Magistrate's residence.

68. It was in this situation that the Magistrate Mr. Palit again declared the mob unlawful, asked them to disperse and warned that firing would be resorted to if they did not retreat. This warning had no effect on the mob though the SP and other officers repeatedly shouted this warning at the mob. The mob marched forward; when they were coming closer the Magistrate Mr. Palit gave order to the SP to fire two rounds; it was after the second round of firing that the mob retreated.

69. *How the firing order was executed* : The order of the Magistrate Mr. Palit to the SP to fire two rounds to disperse the mob is Ext. C/94. Here a question arose as to what was the implication of the Magistrate giving order to open two rounds of firing. The point is if one round was sufficient to disperse the mob, there would have been no necessity for the second round. Why then did the Magistrate order two rounds? This was clarified by the District Magistrate in details as discussed hereunder.

70. The Magistrate Mr. Palit by mentioning two rounds fixed the maximum limit of firing; if a third round would have been necessary in the circumstances he would have passed a second order.

71. The District Magistrate had told the SP at that time that he should fire one round and watch; second round would be used only if the first round did not have the desired effect of dispersing the mob. After one round was fired the mob thought that it was blank firing and so it had absolutely no effect; in fact, further brickbattling as before continued and the mob was advancing forward; it was then the second round was fired.

72. In further clarification of the implications of the Magistrate's order to fire two rounds the District Magistrate explained that in a firing order it is not strictly necessary to mention the number of rounds; the order can be a general order to open fire and disperse the mob but nothing prevented the SP from stopping firing after the first round. In fact before the firing order was given by the Magistrate it was discussed and agreed that they would watch the reaction of the mob after the first round.

73. As to how the SP came into the picture the District Magistrate explained that it was the duty of the police officer carrying out the order to use minimum force to the extent that if the mob would have dispersed by the time the constables took position the SP could have stopped the firing altogether. Then if the first round of firing was sufficient there would be no occasion for the second round.

74. On the question as to whether on the strength of the order passed by the Magistrate Mr. Palit for firing two rounds it was open to the police to go on firing two rounds, the District Magistrate explained that they could not do so because the police, as under the control of the SP had to

stop the use of force when the purpose had been served. The SP is said to have some discretion as to the quantum of force to be used when both the District Magistrate and the Magistrate were present at the time of firing.

75. In view of the position that the entire force was being controlled by the Magistrate, the District Magistrate was asked to explain how did the police officers including the SP come to the picture at all, when the District Magistrate and the Magistrate who ordered firing were both present. What the District Magistrate said in explanation was this: There are certain departmental instructions on the subject of control of mob by magistracy; it is left to the police to use the quantum of force necessary; the Magistrate is only to give general orders for teargassing, lathi-charge or firing. The exact number of rounds of teargas to be fired or exact method of lathi-charging or the number of rounds of gun-shot are left to the police; the instructions are that minimum force has to be used. If at any stage the police is found exceeding this minimum, the Magistrate can interfere and stop the use of force. Here, when the Magistrate Mr. Palit gave the order for firing two rounds he thereby only fixed the maximum number of rounds to be fired as aforesaid.

76. The evidence of the Magistrate C. W. 38 Mr. Palit was this: When he passed the order for firing two rounds, it meant two rounds one after the other; he gave instruction to the SP verbally that one round be fired first and its effect be watched; then if necessary the second round be fired. Accordingly under the command of the SP the first round was fired while the mob was at a distance of about 100 feet; as a result the mob was found hesitant for a while but the mob again began to advance. It was then the second round was fired. Nobody was killed or found injured but it had the desired effect in that the main body of the mob dispersed.

77. Immediately prior to the firing the SP was standing about two feet behind the firing squad, the Magistrate Mr. Palit was by his side; the District Magistrate was 5 to 6 feet away from the firing squad.

78. The Magistrate Mr. Palit was cross-examined at length as to how the firing order was executed with reference to all aspects. His explanation in evidence was on the same line as the District Magistrate's which therefore it is unnecessary to repeat herein.

79. *Why there was no lathi-charge before firing :* The evidence of the State officials is that there was no lathi-charge by the policemen on the mob. On the question whether the District Magistrate thought about lathi-charging instead of firing he said that there was only a meagre lathi party of one Havildar and four constables; this lathi party would have been ineffective against the determined mob of 400 coming in two flanks.

80. The District Magistrate in his affidavit and also in his evidence said that since the force at his disposal was not sufficient to deter and disperse the violent mob by lathi-charge and as teargas did not prove effective, firing had to be resorted to. In fact, as heretofore stated, the District Magistrate asked the SP to get some more force and accordingly the SP asked for two sections from the reserve lines but they did not arrive. With only one section of lathi party at the time, it would have been impossible to meet a mob which was coming in a semi-circular position on the PWD road towards the District Magistrate's residence. The District Magistrate said that force to be used depends on the circumstances of each case; in some cases a mob can be driven away with only lathi-charge; in other cases teargassing is necessary and in some cases firing is justified. He said that it is not always possible to use lathi party; lathi-charge is usually done from a flank; when the crowd is coming in a semi-circular fashion from two sides it is difficult for a lathi party to effectively control them. The District Magistrate further said that he could not venture to guess as to what exactly could have been done if the two sections of the lathi party had arrived. In the face of the grave situation as a determined mob was marching forward with angry shouts, even if the reinforcement of lathi party had arrived there would still be the necessity of firing to disperse the mob instead of lathi-charge.

81. It was however submitted on behalf of the students that there having been an interval of 15—20 minutes between the time when the last teargas shell or grenade was used and the first round was fired, the police had sufficient time to get further reinforcement of lathi party to deal with the situation; that it was careless—even gross negligence—on the part of the administration to resort to firing against the principle of minimum use of force without first taking recourse to lathi-charge.

82. Whether or not the arrival of reinforcement of lathi party would have made any difference to the ultimate decision of the local officers to resort to firing is another matter. The fact remains that there is no explanation why further reinforcement did not arrive though sent for by the SP as directed by the District Magistrate. In fact the District Magistrate had to admit that he did not know, till now, why the lathi parties did not arrive before firing (Q. 739); they were stationed at the reserve lines about two miles from the District Magistrate's office; there was a telephone connection with the reserve lines and also a wireless set posted there.

83. It is not understandable why the further reinforcement did not come in time. This is a matter which Government should enquire into and take suitable action against those found responsible for it.

84. *Was firing justified what was the apprehension?* A question was raised: What was the apprehension at the point of time which necessitated a firing order to be passed? The explanation of the District Magistrate in some details is stated hereunder.

85. After the teargassing the crowd retreated some distance but reformed somewhere near the hospital and were surging and marching forward towards the District Magistrate's residence. At that time they had with them only 1-4 lathi party and 1-4 armed force. The crowd was coming in a semi-circular fashion and brickbatting had also started. One of the constables is said to have actually sustained an injury; brickbatting by this time was more severe than at the earlier stage.

86. It was felt that the use of 1-4 lathi party would be foolishness on the part of the Magistrates to control a determined mob of 400 whom they were unable to disperse by the use of teargas. As already explained the teargassing did not have the desired effect of dispersing the crowd; the crowd wanted to enter the residential office of the District Magistrate; though the Magistrate succeeded for the time being in driving the mob away from the gate, the mob was found reforming themselves; at this stage the crowd appeared to be more determined, they were shouting slogans; some of them were inciting others to march upon the residential office of the District Magistrate; they did not appear to be afraid of teargas. As already stated as many as 20 teargas shells were used against them but still it did not have the effect of dispersing them.

87. Before deciding to fire, the District Magistrate, the Magistrate Mr. Palit and other officers discussed among themselves whether they should not attempt a second tear gassing. In consideration of the nature of the mob, the heavy brickbatting, the slogans and the determination of the mob to march forward even when armed forces were standing on the PWD road—all these made them give up the idea of trying second teargassing to disperse the mob. Thus all the officers agreed that it would not be desirable to try teargassing again at that particular time, especially when as many as 20 rounds had no effect and the mob even started jeering at teargassing.

88. The slogans and shouts by the determined mob and the scant regard that the mob was paying to the announcements of the Magistrate and to the use of teargas made the officers realise that at that particular point of time they could not save the situation by the use of lathi party. The determination of the mob to overpower the police force was evident from the determined way they were marching forward under the cover of brickbatting. In these circumstances there was no other way left but to order firing. In such a situation if the meagre lathi party of four constables only was sent, the lathi party itself would have been overpowered in no time.

89. There was also a possibility that if the District Magistrate and his party wasted more time in trying to parley with the students or trying to control them with this meagre lathi party, the mob would have advanced and might have snatched away the muskets from the hands of the armed constables. It was a frenzy of the moment; the officers never knew what would happen if the mob were allowed to come near the armed force. Indeed it was a very difficult decision to take. The District Magistrate said that he and his officers were very conscious of the fact that the mob consisted of teen-aged boys and mostly students; it was a very unpleasant task that they were to perform that day. They were absolutely convinced that firing was the only course open to them to save the situation.

90. If they had not resorted to firing that day the determined mob in frenzy would have overpowered the available police force and would have seriously injured other persons with brickbatting and entered the offices, the Court Building and the Treasury.

91. It is not one factor alone that made the officers take the decision to fire. Even these factors taken together would not have made them resort to firing but it was because of

the previous background of the use of tearsmoke earlier having been ineffective, they decided to fire. The main factors which weighed with the Magistrates in taking this decision were these: marching of the students earlier in the day, the earlier brickbatting, the determination of the mob to do picketing, the reaction of the mob to teargassing - all these factors weighed on their minds when order was given for firing. It was in these circumstances that the Magistrates had to take this decision to use force—firing—at that stage when they found that any other course would be disastrous.

92. In the ultimate analysis therefore the position was this : Though the mob appeared to consist mostly of students there was the possibility of some anti-social elements having been in and inciting the mob, particularly because of the background that political workers were reported to be behind the movement ; three seniormost officers—District Magistrate Mr. J. P. Das, Magistrate Mr. Palit and SP Mr. Sen—gave cool consideration before application of different forms of force ; they came to the conclusion that the situation could not be controlled except by firing. From the evidence on record it cannot be said that the decision was taken in haste or in panic. In the situation where a mob of 400 with a determination came forward in a semi-circular manner and started brickbatting it could not be dispersed with 1—4 lathi party (the other 1—4 was a rifle party) ; the possibility of their being overpowered and lathis snatched away from their hands and also the probability of their being injured and incapacitated were all there ; if the mob was allowed to move closer to the 1—4 rifle party it would have led to serious consequences—rifles could have been snatched away, the District Magistrate's residence where at the moment were his wife and one child, could have been attacked. In the circumstances, lathi-charge was the only other alternative to firing but unfortunately due to reasons for which there is no explanation, reinforcement asked for by the SP at the direction of the District Magistrate did not reach before firing. Hence firing was the only course which was unavoidable.

93 *Chasing after firing ; object of arrest ; no lathi-charge :* The case of the administration is that there was no lathi-charge by the policemen on the mob. A question then arose . If there was no lathi-charge by the policemen then what was the occasion for policemen chasing the mob. The explanation as given by the District Magistrate is that

actually the chasing was done after the firing with an intention to arrest some of the members of the unlawful assembly. It was then about 1 O' clock. The SP and some other police officers on the spot accompanied the chasing policemen who were six or seven in number; it was the lathi party which chased. It is said that it is not that the Magistrate Mr. Palit was supervising the chasing by the policemen; he might have been seeing the chasing; the chasing was being done under the supervision of the police officers. It was reported to the District Magistrate that the policemen chased the crowd up to the crossing near the hospital when the crowd was retreating the policemen arrested nine persons near about the crossing.

94. The District Magistrate, however, said that he had no personal knowledge how far the lathi party chased the crowd to make arrests; chasing by the policemen was not under the orders of the District Magistrate; he did not pass any such orders. The District Magistrate said that the policemen did this chasing on their own to scare away the students; they also arrested some people. The District Magistrate did not know whether the policemen wanted to arrest people indiscriminately nor did he know in what way the policemen chased the crowd or in what manner they wanted to make arrest. He further said that the policemen tried to arrest the ring-leaders if possible; he also said that it was not possible for the constables to find the ring-leaders out of the crowd of 400 nor did he remember any orders having been passed by anybody for making these arrests. In this context, the evidence of the District Magistrate further is that 15-20 minutes after the firing, he met the Magistrate Mr. Palit who came back to the District Magistrate's residence and reported that some students were arrested and others having retreated were forming into small groups again and some people were also found inciting them.

D. Alleged assault on P. W. 31 Mr. Susil Kumar Panda:

95. The circumstances in which Mr. Susil Kumar Panda, a trainee in the C. T. School at Bhawanipatna is stated to have been assaulted by the policemen are mentioned in his affidavit as quoted above. In support of this charge against the police P. W. 33 Dr. Dasarathi Misra in his affidavit said this:

"4. That one Susil Kumar Panda a trainee of C. T. School who was suffering from cold and headache was standing on the verandah of the O. P. D. room to take medicine, but the armed police pounced upon him and one Durga Charan Patnaik

and two other constables mercilessly kicked him with boots who cried aloud for his life after being mercilessly beaten; he fainted and was carried to the police van and thereafter Mr. Palit shouted for firing to the students there and at this inhuman cruelties towards the students, at the stake of my life, I implored him to save the lives of the boys to which Mr. Palit showed his red-eyes."

Thus while Mr. Susil Kumar Panda in his affidavit did not mention the number of policemen nor the names of any of them who had assaulted him, Dr. Dasarathi Misra mentioned that it was one Durga Charan Patnaik and two other constables who mercilessly kicked him with boots in the manner as stated in his affidavit.

96. The allegations against the policemen are denied. The case of the administration as stated in several affidavits filed by the police officers, was that Mr. Susil Kumar Panda was a member of the unlawful assembly, directly took part in the agitation and was arrested at the spot as a member of the unlawful assembly: he was not at all assaulted; no member of the police force entered into the hospital compound nor assaulted anybody. C. W. 41 Havildar Durga Charan Patnaik who was named in the affidavit of Dr. Dasarathi Misra as having assaulted Mr. Susil Kumar Panda filed an affidavit denying the allegations against him; in fact he did not know Susil Kumar Panda nor did he beat anybody by entering into the hospital compound or anywhere as alleged. The Havildar also deposed before the Commission.

97. *Argument on behalf of the administration in defence :* Admittedly as stated in his affidavit Mr. Susil Kumar Panda was arrested at about noon on October 29 along with other students and kept in the jail. He also said in his affidavit that he was treated in the jail for assault on his person and was released from jail on November 7, 1964 unconditionally.

98. The Jail Register of higher division prisoners Ext. 60, dated October 30, 1964 contains an entry made by the jail doctor to the effect that Susil Kumar Panda complained of pain over his back and left hand. On examination it was found that there was no external injury. In his evidence before the Commission P.W. 31 Mr. Susil Kumar Panda however said that he sustained injury. As regards the nature of the injury he said thus:

"PACHHAPATARU JEUNSTHANARE BOOTS BAJIJA SE STHANARU RAKTA BUNDI BUNDI BAHARI KALA KALA DAGA HOITHILA."

(Blood came out by drops from the spots on the buttock hit by boots and became black spots)

(P. W. 31 Susil Kumar Panda Q. 181 -185)

When he was feeling pain in the jail he told Dr. Dasarathi Misra, who also came to the jail after being arrested the same night under the DIR. Dr. Dasarathi gave him fomentation with hot water bottle. P.W. 33 Dr. Dasarathi Misra said that he met Susil Kumar Panda inside the jail; he found that Susil Kumar Panda sustained injuries on his buttocks and helped him by fomenting and applying liniment to the place of pain on his body; that there were three visible marks of injury on him; they were bruises—two on the right buttock and one on the left buttock; he said that the cause of the injury was that he was kicked with boots in his presence during the trouble at the hospital.

99. It is submitted on behalf of the administration that if the evidence of Mr. Susil Kumar Panda is that the external injury (RAKTA BOHIKARI KETEDIN JAMAT RAHHA) was there for about 3 or 4 days (Q. 184), it is not understandable why the Jail doctor did not record it in the Jail Medical Register Ext. 60 nor did the Civil Surgeon C.W. 40 Dr. Kar find it when he examined him in the Jail.

100. These arguments urged on behalf of the administration lose their force if the evidence of the Lady Assistant Surgeon C.W. 39 Dr. Mandal is taken into consideration. What, in substance, she said was this: while in charge of the hospital in the absence of the Civil Surgeon on that date she heard from hospital staff afterwards at about 3-30 P. M. that a student was assaulted by policemen inside the hospital; that he was dragged from the hospital verandah. She further said that as soon as the Civil Surgeon came back she reported to him that she heard from the staff that a student was dragged out of the verandah by the policemen. About the truth of what she heard she is said to have enquired and found that it was true. Her evidence was this :

- “ Q. 35 Before reporting to the Civil Surgeon, did you enquire to find out the truth of what you heard.
- A. Yes, I enquired and the fact was true
- Q. 36 When such a serious matter took place inside your hospital when you were in charge, can you assign any reason why you did not give a report in writing.
- A. The Civil Surgeon warned me not to declare it.”

101. The Civil Surgeon C.W. 40 Dr. Kar however denied that the Lady Assistant Surgeon Dr. Mandal reported to him. The evidence of the Civil Surgeon Dr. Kar is that he returned from Kesinga at 1-45 P. M. that day; that neither Dr. Mandal nor any patient nor any staff either orally or in writing gave him the information that a student was dragged out of the

hospital verandah by the policemen on October 29. He stated as incorrect the statement of Dr. Mandal in her evidence that he warned her not to disclose this thing. He also said that he had no information as yet that a policeman assaulted a student patient inside the hospital on October 29, 1964. What the Civil Surgeon said in this context was this :

“ Q. 10 Do you know of the allegations made by Dr. Dasarathi Misra that a policeman had assaulted a student patient inside the hospital on 29-10-1964.

A. I have no information Sir as yet. (Adds). May I see the affidavit.

Q. 11 Read paragraph 4 of Dr. Dasarathi Misra's affidavit Are these allegations correct. (Affidavit of Dr. Dasarathi Misra shown).

A. To my belief these allegations are not correct. Had it been so I would have got this information from Dr. Mondal or from any person when I returned from Kesinga at 1-45 p. m.”

102. It appears from paragraph 5 of the affidavit of Dr. Kar, dated April 27, 1965 that he went through paragraphs 3 and 4 of the affidavit of Dr. Dasarathi Misra in which he made allegations of trespass into the hospital campus and assault on a student patient Mr. Susil Kumar Panda by policemen. While dealing with the affidavit of Dr. Dasarathi Misra, Dr. Kar stated that he did not believe the facts stated therein about the alleged entry and acts of highhandedness inside the hospital. It is unfortunate that Dr. Kar while giving evidence before the Commission on December 8, 1965, that is to say after about 8 months after he filed his affidavit in April 1965, would tell the Commission that he had no information as yet that a policeman assaulted a student patient inside the hospital on October 29, 1964 as stated by him in answer to Q. 10 quoted above. In the face of his own affidavit filed as early as on April 27, 1965 as aforesaid it is difficult to accept the evidence of Dr. Kar.

103. That apart, the manner in which the Civil Surgeon, Dr. Kar answered the questions put to him about the nature of the injury on Mr. Susil Kumar Panda is interesting: the relevant portions of his evidence on this point are these:

“ Q. 63 Did you ever meet a boy Susil Kumar Panda in the jail (shown Jail Medical Register of 30-10-64).

A. There was a boy named Susil Kumar Panda whose name I found in the Special Medical Register for security prisoners maintained by the Jail Medical Officer and my attention was drawn by the Jail Medical Officer to examine him and I examined him and saw him in the jail.

- Q. 64 What is the ailment that he was suffering from.
- A. As I find from the record, he was suffering from myelgia, that is, muscular pain.
- Q. 65 On what part of the body.
- A. The doctor has noted like this:
 "He complains of pain over his back and left hand. On examination it is found that there is no external injuries.
- | | | |
|-------------|----|------------|
| Temperature | .. | 98.4 |
| Pulse | .. | 74 per M. |
| Resp. | .. | 18 per M." |
- He was given: Mist. Sodisalicylas
 Lint. A. B. C. to apply externally.
 Hot water bottle over the back.
- Q. 66 As a doctor what do you think may be the cause of such ailment in this boy.
- A. As there was no external injury found, it might be just a chill which causes this pain in the body only because everything else was normal.
- Q. 67 You mentioned about muscular pain. What was muscular pain due to.
- A. That might be due to little chill.
- Q. 68 It might be also due to beating.
- A. In that case there would have been some marks of injury externally.
- Q. 69 Is it possible to have muscular pain in the case of beating.
- A. To cause muscular pain is usually evident in the skin.
- Q. 70 Why did the jail doctor prescribe liniment A. B. C. to be applied externally.
- A. Just to take away the pain if any; hot water bottle also for the same purpose; sodisalicylas mixture too for the same purpose.
- Q. 71 If it was cold, surely there could not be pain in the left hand. Could there be pain in the left hand because of cold.
- A. Not likely.
- Q. 72 In this case we find in the Medical Register that the patient complained of pain over his back and left hand.
- A. Yes (Marked Ext. 60).
- Q. 73 But if it was due to cold how could it be in the left hand. How do you explain that if it was due to cold the pain could be in the left hand.
- A. That cannot be explained. That is why the doctor was particular to examine him to find out if there was any injury externally on the left hand and back

Q. 74 But pain in the left hand is not consistent with cold.

A. No, it is not."

The tenor of the evidence speaks for itself. So even leaving aside the evidence of Dr. Dasarathi Misra altogether, the evidence of the Civil Surgeon Dr. Kar read with the evidence of Dr. Mandal shows that there was some incident of assault on Mr. Susil Kumar Panda.

104. The question then is: Who and how assaulted ? He could not have been injured by lathi as according to the case of the administration there was no lathi charge. The evidence shows that Mr. Susil Kumar Panda had pain on the back and left hand. The nature of the injury—left hand and back pain—appears to be consistent with the students' case that Mr. Susil Kumar Panda was pounced upon from behind his back. The evidence of Mr. Susil Kumar Panda is that 3-4 constables and 1 Havildar pounced upon him from behind; two of the constables held him by his hands—one held his right arm and another held his left arm and another constable and Havildar kicked him with their boots and also gave fist blows; then he slipped on the steps near the verandah (P. W. 31 Susil Kumar Panda Qs. 10—13). Having regard to the nature of the injury as recorded in the Jail Medical Register Ext. 60 this appears to be somewhat an exaggeration. Even so, it is quite clear that he had pain on his back and left hand due to assault.

105. In the ultimate analysis of the evidence on record it is clear that the police had chased the crowd after two rounds of firing; such chase necessarily involved application of force; it was in course of such chase that Mr. Susil Kumar Panda was arrested at the spot wherever he was; it is possible that there was a tussle and application of force by police in course of apprehension and arrest; the complaint of pain in left hand and back is a proved fact. In fact the complaint of pain in left hand would fit in with apprehension and arrest in course of chase by the police. As regards pain on the back it is consistent with some application of force in course of chase. Evidently Mr. Susil Kumar Panda while arrested gave some resistance. The allegation that he was kicked with boots does not appear to have been established by evidence.

106. The next question is: Where could he have been apprehended and arrested by the police in course of which he suffered the injury he sustained ? In the context of what was happening in the area at the time, it is not improbable that Mr. Susil Kumar Panda—student as he also was—was chased

by the police up to the verandah of the hospital, pounced upon from behind, dragged out, apprehended, arrested and then put into the jail van.

107. While coming to this conclusion, the Commission is unable to give a finding due to want of evidence as to which particular policeman was responsible for the pain caused to Mr. Susil Kumar Panda in course of apprehension and arrest in the situation hereinbefore stated.

E. Other allegations not connected with student movement: DIR and other cases

108. Dr. Dasarathi Misra in his affidavit made certain allegations that he was illegally arrested under the DIR, ill-treated and suspended from service as fully stated therein.

109. Similarly Mr. Pardeshi Naik, a political worker in SSP also alleged in his affidavit that he was illegally arrested under the DIR, ill-treated and also made allegations of alleged hostilities of the local officers—all as stated therein.

110. Mr. Balam Patnaik, a local advocate of Bhawanipatna, also made a grievance in his affidavit that he was illegally arrested under the DIR and ill-treated in the manner as stated therein.

111. All these allegations as not directly connected with or not having any direct bearing on the student agitation are outside the scope of the reference.

F. Findings of the Commission

112. The findings of the Commission on the basis of the evidence may be briefly summarised as follows:

- (i) *Re: Background : previous instances of student discipline : activities of the politicians prior to the date of the incident:*
- (a) that the Swatantra Party has considerable influence in Kalahandi district because all the Assembly seats were won by Swatantra members except one; most of the important activities on the political front are done by the Swatantra Party;
 - (b) that some days before October 29, the leader of the Swatantra Party in the district addressed a public meeting at Bhawanipatna where he demanded judicial enquiry into the alleged police excesses in

- other parts of Orissa; that the leaders of different political parties were keeping close contact with the students and were found to be inciting them;
- (c) that the political leaders observed the "BHARAT BANDH" day on September 25 and criticised the Government with regard to their economic, financial and food policy; they also observed the "BHRASTACHARI GADICHHADA" week at Bhawanipatna;
- (d) that there was a feeling of general unhappiness in the present regime, particularly in contrast to the conditions during the princely administration of the State before merger; this political sense among the people had apparently affected the younger generation, namely the students;
- (e) that on September 29, a student served a notice on the Headmaster of the B. M. Higher Secondary School, Bhawanipatna, that he would resort to hunger-strike if he was not permitted to appear in the final examination; the boy was debarred from appearing at any examination prior to the annual H. S. S. C. Examination, 1966 by the Board of Secondary Education, Orissa for adopting unfair means in the examination; the hunger-strike of the student was instigated by two teachers of the school, this sort of conduct on the part of the teachers in instigating the students is reprehensible;
- (f) that on October 2, the students took out a procession in the afternoon and held a meeting at Gandhi Chowk; in that meeting some students delivered speeches narrating police excesses at Cuttack and Bhubaneswar and condemned police action against students; they demanded setting up of a Judicial Commission;
- (g) that at a public meeting on October 12, organised by the students of Bhawanipatna College, the leaders of the Swatantra Party and SSP criticised the alleged police excesses at Cuttack and adopted resolutions to urge upon Government to set up an Enquiry Commission to probe into the police excesses, to make good the loss of properties of students and to release the arrested students unconditionally;

- (h) that on October 26, about 20 students headed by student leaders and one SSP worker held group discussions in Bhawanipatna town; they formed an Action Committee consisting of students; they moved in the town with the SSP worker wearing black badges; they approached the shopkeepers to observe hartal the next day;
- (i) that on October 27, College and High School students headed by the student leaders moved in the town; on their persuasion, partial hartal was observed; they moved in a procession in the main streets of the town shouting slogans such as "Police Police Down Down", "Biren Sarkar Murdabad" "Amar Dabi Puran Heu"; in the evening they held a public meeting at Gandhi Chowk attended by about 500 students and public; in their speeches they incited the students to hold violent demonstration against the Government;
- (j) that on the same date October 27, the B. M. Higher Secondary School reopened after the Pujā holidays; most of the boys did not attend their classes; they gave a notice to the Headmaster that they were going to observe a sympathetic strike for the distressed fellow students;
- (k) that on October 28, that is to say, the day before the incident, the students of the School were prevented from entering into the school compound by some student leaders; some students and also one outsider were attempting to drag out the students who were already in their class rooms; the students took out a procession of about 200; they moved in the town shouting slogans against the Chief Minister, Home Minister and the police; they carried effigies of the Chief Minister and the Home Minister in a mock funeral procession and burnt their effigies in the market place;
- (l) that the agitation spread to other places in Kalahandi district in that the students of Junagarh and Nawapara were reported to have gone on strike; this shows that the tempo of the movement throughout was high by that time;

(ii) *Re : What happened on October 29, at Bhawanipatna : Was the crowd out to create trouble :*

- (a) that on October 29, at about 10 A. M. in the morning the District Magistrate while sitting in his residential office got a telephone call from the ADM informing that a procession of students and outsiders were marching towards the District Magistrate's residence ;
- (b) that immediately the District Magistrate rang up to the SP to send some force ; after some time the SDM Mr. A. L. Palit arrived in a jeep with some armed force ; it was then about 10-30 A. M. ;
- (c) that the processionists about 400 in number – mostly students as they appeared to be from age and appearance – were shouting slogans ;
- (d) that in the meantime the procession came from the PWD road towards the District Magistrate's residence on the link road ; the District Magistrate went ahead and met the procession when it entered the link road just in front of his residence ;
- (e) that evidently from the very beginning the students decided to picket at the residence of the District Magistrate and create trouble ;

(iii) *Re : Efforts by the District Magistrate and other officers to pacify the crowd : Parley with student deputationists failed :*

- (a) that the District Magistrate told the students that they could present their demands to him there at the spot itself on the road ; the students insisted that they would like to present their demands only inside his office, because one of them said that they had a fundamental right to come inside the office and present their grievances ; all of them also wanted to get in simultaneously ;
- (b) that the District Magistrate told them that it would not be desirable for all of them to enter ; he also told them not to create unpleasant situations ; he further pointed out towards the armed force which was posted at his gate and said that he did not want any unpleasantness in this matter ; but still the

students did not listen; in order to avoid further unpleasantness the District Magistrate allowed a few of the students to come to his office room and present to him their demands; three of the students came forward; one of them was Mr. Ahesan Khan;

- (c) that the Magistrate Mr. Palit also came inside; the SP whom the District Magistrate rang up also arrived in the meantime;
- (d) that then the District Magistrate asked the students what they exactly wanted; thereupon one of the students gave a piece of paper the purport of which was that the students would like to picket before his office; this paper was signed by seven persons; the District Magistrate told the students that picketing was not a proper thing to do and explained to them that they had several other lawful means of ventilating their grievances; picketing was certainly not one of them;
- (e) that in course of this parley, the students said that the District Magistrate should give them an assurance that a Judicial Commission must be appointed to go into the question of police excesses at Cuttack and elsewhere; the District Magistrate tried to reason out with the students that in his capacity as the District Magistrate he could not possibly make any such commitment; actually he explained to them that it was beyond the capacity of any officer except the Government themselves to give any such assurance; but the students did not seem to be convinced; they said that they would not go back without this assurance from him; the District Magistrate told them that they were young boys and his brotherly advice to them would be not to indulge in these things; if they had any grievance they could write it down so that he could send it to the proper quarters;
- (f) that the District Magistrate also assured the students that so far as his district was concerned there would be no police excess; still the students would not listen; they said that they would continue picketing until he gave them assurance of appointment of a Commission;

- (g) that, apart from the District Magistrate, the other officers also tried to pacify the students; in spite of all these efforts to pacify the students it was found that the students came determined to do picketing;
- (h) that while this parley was going on between the students on the one hand and the District Magistrate and other officers on the other inside the residential office room, shouts—in fact a medley of shouts—could be heard outside made by some people against the Government, the then Chief Minister and the Home Minister; it could be felt that the crowd outside was getting restless;
- (i) that when the students did not listen to the District Magistrate in spite of his persuasion all this time, he threatened them with consequences of picketing; he explained to them that if they actually resorted to picketing they would be dealt with under the relevant provisions of the law;
- (j) that when the parley failed the District Magistrate asked the students to go away or to face the consequences of the law; thereupon two of the students left; the remaining student Mr. Ahesan Khan stayed on; he said that he had decided to stay on; he said that he would continue the agitation even if it involved interfering with law and order; ultimately Mr. Ahesan Khan was taken outside and arrested under Section 7 of the Criminal Law Amendment Act;
- (iv) *Re : Reaction of the arrest of the student leader Mr. Ahesan Khan on the crowd: further efforts by the District Magistrate to pacify the crowd outside :*
- (a) that after Mr. Ahesan Khan was kept in the verandah of the office room under arrest as aforesaid, the District Magistrate went out with the Magistrate Mr. Palit and the SP towards the gate to talk with other students and the processionists who gathered outside the compound;
- (b) that in addition to their other demands the students were now shouting that the student leader Mr. Ahesan Khan be released forthwith; they also

continued their demand for entering the compound and coming to the residential office of the District Magistrate to present their demands;

(c) that the District Magistrate and other officers again tried to persuade the students to disperse; again the students insisted on entering the office room and presenting their demand for a Judicial Commission; the District Magistrate and other officers told the students that they should not be carried away by the frenzies of the events which were occurring elsewhere and take any rash action; the students however said that they were not convinced; they said that the police acted with highhandedness in Cuttack and other places; the Ministers became corrupt; the administration was going to dogs; the students said that they would agitate against such an administration;

(d) that it was at this stage that the District Magistrate was justified in dealing with the situation firmly; he told the students that he tried his best to persuade them; there was something called law and order which had to be observed by everybody; the District Magistrate pointed out at the armed police and said that he would not tolerate any interference with law and order; he said that he had sympathy with them as they were young boys; they were perhaps being misguided by bad elements but in their own interest they should keep away from tampering with law and order;

(v) *Re : In what situation the assembly was declared unlawful : warnings had no effect :*

(a) that it was at this time that the crowd was brick-batting; small pieces of brickbats were being thrown all around; brickbats were falling within a distance of about 4 to 5 feet from the position where the District Magistrate, other officers and the police party were standing; if the brickbats fell on any of them they would have injured them; some of the brickbats fell inside his compound; at that time the family members in the District Magistrate's house were his wife and a child;

- (b) that shouts by the crowd had also become loud and their tone was threatening; they were shouting that they would enter the office of the District Magistrate; some among the crowd said that the four armed constables posted near the District Magistrate's gate could not prevent a determined crowd, as they were, from doing what they wanted;
- (c) that some of the crowd were heard even saying that they would press marching towards the Court Building and the Treasury which were in the same building a short distance away on the PWD road itself;
- (d) that in this situation the Magistrate Mr Palit in consultation with the District Magistrate and the SP who were present there, declared the mob unlawful after following usual procedure; he gave the mob two minutes time to disperse and warned that if they did not disperse, force would be used to disperse them;
- (e) that at that point of time the strength of the force available at the spot was one section consisting of one Havildar and four constables armed with rifles with no lathis, and another section consisting of one Havildar and four constables with lathis;
- (f) that admittedly there was no microphone available to the officers to announce the order by which the assembly was declared unlawful; it is unfortunate that at the district headquarters no microphone was available to the local officers in charge of law and order and particularly at the point of time when trouble was reported to have been brewing for several days prior to the date of the incident it is not understandable why no microphone was kept in the Control Room, particularly at the district headquarters, evidently no microphone was available in the police office either; getting a microphone at short notice from a distant place was not possible;
- (g) that the non-availability of a microphone is of significance; this shows that apart from the meagre strength of the force, even the minimum essential

equipments were lacking; assuming this lack of even the minimum equipments might not have any effect on the ultimate result, even so, the administration should in future take care and see that these equipments are readily available to the local officers in charge of law and order for the purpose of dealing with a riotous mob;

(h) that repeated warnings by the Magistrate, the SP and the other police officers appeared to have had no effect on the mob; the mob took these warnings very lightly and some of them were even jeering at the warning given by the Magistrate Mr. Palit and the mob did not stop but on the other hand they pushed forward towards the gate of the District Magistrate;

(vi) *Re : Why use of tearsmoke was not effective :*

(a) that thus while the mob in spite of the repeated warnings pushed forward towards the gate of the District Magistrate, the Magistrate Mr. Palit ordered use of tearsmoke; he gave this order to the SP who asked the teargas party to use tearsmoke; 20 rounds of tearsmoke (grenades and shells combined) were thrown; some grenades were thrown into the midst of the mob but the shells were all fired behind them; the use of tearsmoke did not have much effect;

(b) that the reason why the use of tearsmoke was not effective was that it did not go inside the crowd because the wind was unfavourable, that is to say, the wind was not blowing towards the students; the fact that as many as 20 teargas shells and grenades were fired by 3-4 persons one after the other in about 5 minutes shows that every effort was made to make it effective but due to unfavourable wind it did not have the desired effect on the mob;

(c) that the use of tearsmoke had not the desired effect, and after sometime the mob reformed somewhere at the crossing near the hospital;

(vii) *Re: In what circumstances firing was resorted to :*

(a) that then the mob—by this time it was a more determined mob—marched forward, it appeared that whatever hesitation the mob initially had by now

completely vanished; apparently the mob was emboldened by the failure of the tearsmoke; some of the leaders and others were found inciting the mob to march forward;

- (b) that it was at this time that the District Magistrate and the officers brought out the lathi party and the armed force on the PWD road in front of the District Magistrate's residence and kept watch on the situation;
- (c) that the determined mob was marching ahead; brickbattling also started; it was a very difficult situation; the strength of the force with the District Magistrate and the officers was meagre as mentioned earlier;
- (d) that the District Magistrate asked the SP that he must get some more force; accordingly the SP asked one of his officers to ring up the reserve lines to send two sections; at that point of time the District Magistrate and the officers at the spot were left only with four armed constables and four lathi constables to face a mob of about 400 marching towards them; then it was about 12-30/12-45 P. M.;
- (e) that the District Magistrate, the Magistrate Mr. Palit and the SP realised that they could not control the mob with four lathi constables; they would be overwhelmed in no time; at this point of time brickbats were also being thrown by the mob which was gradually marching forward apparently with the intention of entering the residential office of the District Magistrate;
- (f) that in view of the grave situation which by then developed, it was decided by the Magistrate to disperse the mob as otherwise the mob would overpower the lathi party, might snatch away the arms from the constables, might enter the residential office of the District Magistrate and also might in their frenzied mood destroy records and other papers there;
- (g) that as there was only one section of lathi party consisting of one Havildar and four constables it would have been impossible to meet a mob which was coming in a semi-circular fashion on the road

towards the District Magistrate's residence; the two sections of police which the SP asked for from the reserve lines did not yet arrive; in fact the two sections of police reached after the firing; so at the material point of time the total strength of the force with the Magistrate was only eight constables and two Havildars;

(h) that it is not that the decision to resort to firing was taken in haste; the interval between the time when the last teargas shell or grenade was used and the time when the gun-shot firing was resorted to would be about 15—20 minutes during which the situation further deteriorated in that the mob, now more determined, was marching towards the District Magistrate's residence;

(i) that it was in this situation that the Magistrate Mr. Palit again declared the mob unlawful, asked them to disperse and warned that firing would be resorted to if they did not retreat; this warning had no effect on the mob though the SP and other officers repeatedly shouted this warning at the mob; the mob marched forward; when they were coming closer the Magistrate Mr. Palit gave order to the SP to fire two rounds; it was after the second round of firing that the mob retreated;

(viii) *Re : How the firing order was executed :*

(a) that the Magistrate by mentioning two rounds in the order Ext. C/94 fixed the maximum limit of firing; if one round was sufficient to disperse the mob there would be no necessity for the second round; the second round would be only used if the first round did not have the desired effect of dispersing the mob;

(b) that after the first round was fired the mob thought that it was blank firing and so it had absolutely no effect; in fact, further brickbattling as before continued and the mob was advancing forward; it was then that the second round was fired; no body was killed or found injured; but it had the desired effect in that the main body of the mob dispersed;

- (c) that the firing was controlled in that immediately prior to the firing the SP was standing about two feet behind the firing squad ; the Magistrate Mr. Palit was by his side ; the District Magistrate was 5 to 6 feet away from the firing squad ;
- (ix) *Re : Why there was no lathi charge before firing :*
- (a) that there was only a meagre lathi party of one Havildar and four constables ; this lathi party would have been ineffective against the determined mob of 400 coming in two flanks ;
- (b) that since the force at the disposal of the District Magistrate was not sufficient to deter and disperse the violent mob by lathi charge and as teargas did not prove effective firing had to be resorted to ;
- (c) that the two more sections asked for by the SP from the reserve lines at the direction of the District Magistrate did not arrive ; therefore with only one section of lathi party at the time, it would have been impossible to meet a mob which was advancing in a semi-circular position on the PWD road towards the District Magistrate's residence ;
- (d) that the District Magistrate could not venture to guess as to what exactly could have been done if the two sections of the lathi party sent for by the SP had arrived ;
- (e) that in the grave situation as a determined mob marched forward with angry shouts even if the reinforcement of lathi party had arrived there would still be the necessity of firing to disperse the mob instead of lathi charge ;
- (f) that in any event there is no explanation why the further reinforcement did not arrive though sent for by the SP as directed by the District Magistrate ; the District Magistrate admitted that he did not know, till now, why the reinforcement of lathi party did not arrive before firing ; they were stationed at the reserve lines about two miles from the District Magistrate's office ; there was a telephone connection with the reserve lines and also a wireless set posted there ; it is not understandable why the further reinforcement did not come in time ; this is a matter which Government should enquire into and take suitable action against those found responsible for it ;

(x) *Re : Was firing justified : What was the apprehension :*

- (a) that after the teargassing, the crowd retreated some distance but reformed somewhere near the hospital, they were advancing in a semi-circular fashion and brickbatting had also started ; one of the constables is said to have actually sustained an injury ; brickbatting by this time was more severe than at the earlier stage ;
- (b) that it was felt that the use of 1—4 lathi party would be foolishness on the part of the Magistrates to control a determined mob of 400 whom they were unable to disperse by the use of teargas ; the use of teargas also did not have the desired effect of dispersing the crowd ;
- (c) that at this stage the crowd appeared to be more determined ; they were shouting slogans ; some of them were inciting others to march upon the residential office of the District Magistrate ;
- (d) that in consideration of the nature of the mob, the heavy brickbatting, the slogans and the determination of the mob to march forward even when armed forces were standing on the PWD road—the idea of trying second teargassing to disperse the mob was given up ;
- (e) that the slogans and shouts by the determined mob and the scant regard that it was paying to the announcements of the Magistrate and the use of teargas made the officers realise that at that particular point of time they could not save the situation by the use of lathi party ;
- (f) that the determination of the mob to overpower the police force was evident from the determined way they were marching forward under the cover of brickbatting ; in these circumstances there was no other way left but to order firing ; in such a situation if the meagre lathi party of four constables only was deployed the lathi party itself would have been overpowered in no time ,
- (g) that if the District Magistrate and his party wasted more time in trying to parley with the students or to control them with this meagre lathi party, the mob would have advanced and might have

snatched away the muskets from the hands of the armed constables ; it was a frenzy of the moment ; the officers never knew what would happen if the mob were allowed to come near the armed force ;

- (h) that if the police had not resorted to firing that day, the determined mob in frenzy would have overpowered the available police force and would have seriously injured other persons with brickbatting and entered the offices, the Court Building and the Treasury ;
- (i) that though the mob appeared to consist mostly of students there was the possibility of some anti-social elements having been in and inciting the mob particularly because of the background that political workers were reported to be behind the movement ;
- (j) that from the evidence it cannot be said that the decision to resort to firing was taken in haste or in panic ; in the situation where a mob of 400 with a determination came forward in a semi-circular manner and started brickbatting it could not be dispersed with 1 - 4 lathi party ; the possibility of their being overpowered and lathis snatched away from their hands and also the probability of their being injured and incapacitated were all there ; if the mob was allowed to move closer to the 1-4 rifle party it would have led to serious consequences —rifles could have been snatched away, the District Magistrate's residence, where at the moment were his wife and one child, could have been attacked ;
- (k) that in these circumstances firing was the only course which was unavoidable ;
- (xi) *Re : Chasing after firing : object was to arrest : no lathi charge :*
 - (a) that after the firing, the chasing was actually done with an intention to arrest some of the members of the unlawful assembly ; the SP and some other police officers on the spot accompanied the chasing policemen who were six or seven in number : it was the lathi party which chased ;
 - (b) that the chasing was being done under the supervision of the police officers and not the Magistrate Mr. Palit who might have been seeing the chasing ;

(c) that the chasing by the police was not under the orders of the District Magistrate; he did not pass any such orders; that the policemen did this chasing on their own to scare away the students; they also arrested some people;

(d) that the policemen tried to arrest the ring-leaders, if possible; it was not possible for the constables to find the ring-leaders out of the crowd of 400; there is no evidence that any order was passed by anybody for making these arrests;

(xii) *Re : Alleged assault on P. W. 31 Mr. Susil Kumar Panda :*

(a) that after considering the entire evidence including the evidence of lady Assistant Surgeon of the hospital C. W. 39 and the Civil Surgeon C. W. 40, it appears that there was some incident of assault on Mr. Susil Kumar Panda; he could not have been injured by lathi as according to the case of the administration there was no lathi charge;

(b) that the nature of the injury—left hand and back pain—appears to be consistent with the students' case that Mr. Susil Kumar Panda was pounced upon from behind his back;

(c) that having regard to the nature of the injury as recorded in Jail Medical Register Ext. 60, the manner in which 3—4 constables and 1 Havildar are said to have pounced upon him from behind in the way as stated by him appears to be somewhat exaggerated; even so, it is quite clear that he had pain on his back and left hand due to assault;

(d) that evidently the police had chased the crowd after two rounds of firing; such chase necessarily involved application of force; it was in the course of such chase that Mr. Susil Kumar Panda was arrested at the spot, wherever he was; it is possible that there was a tussle and application of force by police in course of apprehension and arrest;

(e) that the complaint of pain in his left hand and back is a proved fact; in fact his complaint of pain in his left hand would fit in with apprehension and arrest in course of chase by the police;

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