Reportable

* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ RFA No. 364 of 2003

% *Reserved on : August 18, 2008*
Pronounced on : September 30 , 2008

Police Commissioner & Ors. . . . Appellants

through : Ms. Anju Bhattacharya, Advocate

VERSUS

Yash Pal Sharma . . . Respondent

through : Mr. Alok Kumar with
Ms.Manisha Aggarwal, Advocates
Respondent in-person.

CORAM :-
THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The Police Commissioner of Delhi, the then Assistant Commissioner of Police Shri Bal Kishan, Union of India and Delhi Administration (all appellants before us) were the defendants in the suit for recovery of damages filed by the respondent herein (hereafter referred to as the 'plaintiff'). The plaintiff had claimed damages in the sum of Rs.5 lacs from the appellants (hereafter referred to as the 'defendants') alleging that the police had used violent force against him in which

and expression were violated. The learned Addl. Distric (ADJ) has decreed the suit in the sum of Rs.1,12,500/- vide judgment and decree dated 7.9.2002. Subject matter of this appeal is the said judgment and decree.

2. In the plaint filed by the plaintiff, he had alleged that on 25.2.1993, the Commissioner of Police had promulgated orders under Section 144 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') within the Union Territory of Delhi. The promulgation of these orders was not liked by some persons, including some Advocates practicing at Patiala House Courts. The plaintiff is also among those Advocates. Accordingly, they decided to raise a democratic voice by way of protest against the said order. It was further alleged that about 50 lawyers of Patiala House Courts, including the plaintiff, when stepped out of Gate No.2 of the court premises in their robes, the police force swooped upon them and surrounded them. This police force was headed by Shri Bal Kishan, Assistant Commissioner of Police (defendant No.2). The police personnel started hurling lathi blows upon the Advocates who were making peaceful demonstration. Neither any warning nor any order of dispersal was given by the police officers before inflicting lathi blows and before using force against them. The plaintiff alleged that in the process, he was beaten black and blue by lathi wielding policemen. He still kept his calm and pleaded with the policemen to

any heed to his plea and rather responded by another lat with vengeance in the orders of defendant No.2. The hapless lawyers rushed inside Patiala House Courts for shelter. When the plaintiff reached inside the boundary of Patiala House Courts, he noticed one Shri J.P. Dixit, Advocate lying motionless on the ground floor leaning against the inside gate pillar and profusely bleeding. He was surrounding by 4-5 policemen who were still inflicting lathi blows on his body. In order to save him, the plaintiff broke through the policemen and managed to drag Shri Dixit to safety. However, this infuriated the policemen who turned their ire towards the plaintiff and started giving him the lathi blows. With great difficulty he was rescued by other Advocates. In this entire episode, the plaintiff allegedly suffered severe wounds. He consulted one Dr. Ajit Tewari, a private practitioner, who advised him certain medicines and treatment. When he noticed that the plaintiff is not recovering from injuries and as the pain was aggravating, he was taken to Safdarjung Hospital on 28.2.1993 where he was medically examined and certain x-rays were also taken. The MLC report prepared by the doctors at the Safdarjung Hospital (Ex.P-6/1) showed the following injuries :-

(i) Tenderness over left calf and foot swelling.

(ii) Bruises over posterior aspect of calf mid level.

(iii) Bruises over lateral aspect of right shoulder/right back near spine at scapular spine level.

(iv) Small Hematomas two 1' x 1' and 1' x 1' over occipital

(v) Multiple bruises over dorsum of left hand/vertical as left wrist/right knee and right hand.

(vi) Multiple bruises over back buttock.

3. Matter was reported to Hon'ble the Chief Justice of the Delhi High Court through the Additional Sessions Judge/In-charge of the Patiala House Courts. Thereafter, the petitioner served notice upon the defendants under Section 80 of the Code of Civil Procedure, 1908 as well as under Section 140 of the Punjab Police Act claiming damages. However, when no response was received, he filed the suit as aforesaid, which was registered as Suit No. 314/1994. The plaintiff further alleged in the plaint that due to the injuries suffered by him, he was unable to attend his professional work for a long time. He was unable to walk properly on account of the injuries on the occipital region. His hearing and vision were also impaired. Terming the police attack as illegal, unwarranted, uncalled for, arbitrary, cruel and without justification, the plaintiff claimed damages under the following heads :-

(a)	Medical expenses including special diet and conveyance charges etc. already incurred	Rs. 24,000.00
(b)	Expected medical expenses including special diet, conveyance etc.	Rs. 10,000.00
(c)	Loss of earnings already suffered	Rs. 12,000.00
(d)	Expected loss of earnings till recovery	Rs. 10,000.00
(e)	Shock, mental agony suffered	Rs. 1,30,000.00
(f)	Pain, suffering and defamation	Rs. 3,14,000.00
	TOTAL	Rs.5,00,000.00

He also prayed for interest @ 15% p.a. on the aforesaid

4. In the joint written statement filed by all the defendants, allegations made by the plaintiff were denied. The version of the defendants in the written statement was that a call for *'Bharat Band'* for 25.2.1993 had been given by the Bhartiya Janata Party, which had also proposed a rally at the Boat Club. It was for this reason that orders under Section 144 of the Code were promulgated to ensure maintenance of public peace and proper law and order. Necessary police arrangements were also made in different zones and sectors within the Union Territory of Delhi. Local police staff and outside force of Punjab Police were detailed for duty at Patiala House Courts, Tilak Marg, Purana Quila Road and C-Hexagon Road. At about 10.45 a.m., an information was received on wireless that 35-40 persons at Patiala House Courts had assembled. On receiving this information, S.I. Satish Sharma reached the spot. He found that a group of 35-40 persons who had gathered outside Gate No.2 on C-Hexagon Road was taking a shape of procession. They were informed about promulgation of prohibitory orders because of which it was not permissible for them to form a group of 5 or more people and directed them to disperse from the place. The assembly of persons, however, did not accede to this legal direction of the police and formed a part of unlawful assembly. They were dispersed after giving warning and to ensure this mild force was used in which one or two persons received minor cane injuries, while others received minor injuries in the melee. On the complaint of S.I. Satish Sharma,

police station Tilak Marg. During investigation, certain pers had received injuries were admitted in JNJPN Hospital. The plaintiff, who was another injured, got himself medically examined in Safdarjung Hospital. The defendants denied that these persons, including the plaintiff, simply wanted to lodge a peaceful protest against promulgation of orders under Section 144 of the Code. It is also denied that police had beaten these protesters mercilessly. As per the police, minimum force was used to stop the agitators who were heading towards the Boat Club, which action was not permissible in law and, therefore, the defendants pleaded for dismissal of the suit.

5. The plaintiff also filed replication reiterating the averments made in the plaint.

6. On the basis of pleadings, following issues were framed by the trial court :-

ISSUES : 2-1-1996:

1. Whether the use of force by the deft. No. 2 and the subordinate police against the pltff was necessary, legal and just, as alleged in W/s.? OPD

2. Whether the force used by the deft. No.2 and the subordinate police against the pltff. was illegal, abusive of law or excessive in law? If so, to what effect? OPP.

3. Whether the plaintiff is entitled to damages? If so, to what quantum? OPP.

4. Relief.

ADDITIONAL ISSUE: 6.5.1996:

3-A. Whether the pltff is entitled to interest? If so at what rate and on what amount and from when? OPP

7. The plaintiff examined as many as eight witnesses, including himself as PW-2. Other witnesses were: PW-1 Mr. Parmod Saxena, care taker at Patial House Courts; PW-3 Mr. Babu Lal Rustagi, Assistant – Delhi High Court; PW-4 Mr. J.P. Bhardwaj, Medical Record Technician, Safdarjung Hospital; PW-5 Record Clerk Hardyal from LNJPN Hospital; PW-6 Dr. Sanjeev Bhalla, Chief Medical Officer, Sardarjung Hospital; PW-7 Dr. Ajit Tiwari; and PW-8 Mr. Ram Chander Verma, Advocate. The defendant examined Mr. Tilak Chand as DW-1; ASI Narain Singh as DW-2; Inspector S.L. Aggarwal as DW-3; Mr. Bal Kishan as DW-5; and SI Satish Kumar as DW-6.

8. The learned trial court, after hearing the arguments and going through the pleadings and evidence on record, has concluded that the police used excessive force and inflicted injuries upon the lawyers who were holding peaceful demonstration in which the plaintiff suffered injuries and which action of the defendants was unlawful. He, thus, granted a sum of Rs.5,000/- towards purchase of medicines, special diet, conveyance etc.; Rs.7500/- as damages for a period of 1 ½ months during which period the plaintiff could not attend the work; and a sum of Rs.1,00,000/- on account of shock, mental agony, pain and suffering, indignation and for loss of

9. Before we proceed to take note of the submissions of learned for the appellant challenging the judgment and decree, it would be appropriate to discuss the manner in which findings have been arrived at by the learned ADJ.

10. JUDGMENT OF THE TRIAL COURT

The learned ADJ took up issues No. 1 & 2 together. Before discussing these issues, he referred to the legal position as expressed by the Supreme Court in *Kameshwar & Ors.* v. *State of Bihar & Anr.,* AIR 1962 SC 1166 for the proposition that freedom of speech and expression as enshrined in Article 19(1)(a) and (b) of the Constitution of India was the fundamental right of the citizens which would cover peaceful and oral demonstration by any person or group of persons. He then referred to as many as five judgments of the Apex Court, including *Rudal Sah* v. *State of Bihar & Anr.,* AIR 1983 SC 1986 and *Peoples' Union for Democratic Rights* v. *State of Bihar & Ors.,* AIR 1987 SC 355 from where he deduced the principle that a citizen is entitled to compensation for violation of his fundamental rights or for torts committed by the employees of the State. After stating this to be the legal position, in para 26 of the judgment he posed the following question for consideration :-

> "26. Now the question for consideration is whether the members of the police force had acted illegally, unjustifiably or had violated the fundamental rights of the plaintiff i.e. the freedom of speech and expression and right to life and personal liberty?"

For answering this question, he first referred to the p and found that various averments made in the plaint regarding peaceful demonstration and severe lathi charge by the policemen on the demonstrators were not specifically denied and there was vague denial. Applying the provisions of Order VIII CPC that such evasive and vague denial of facts in the written statement would not constitute proper denial in law and averments in the plaint would be deemed to have been admitted, the learned ADJ concluding that following factual position stated in the plaint could be treated as admitted by the defendants :-

> "(i) that there was a peaceful demonstration by the plaintiff and others;
>
> (ii) that members of the assembly were without any arms;
>
> (iii) that the plaintiff was surrounded and subjected to brutal lathi charge by the police officials;
>
> (iv) that the plaintiff broke through the cordon of lathies inflicting policemen and somehow, managed to reach inside the boundary of Patiala House Courts;
>
> (v) that Shri J.P. Dixit Advocate, was beaten mercilessly by the police;
>
> (vi) that the plaintiff took him to safety and then at that time, the policemen had hurried lathi blows on the plaintiff."

11. The learned ADJ thereafter pointed out that there was variance between the pleadings and proof by the defendants. The defendants had abandoned what was pleaded in their written statement and led evidence to prove certain facts which had not been pleaded. His

> received minor cane injuries while other had received inju in melee and that there was use of minor force against protestors. When Bal Kishan, Defendant No.2, who was the Incharge of the police party, entered the witness box, as DW-5, he stated that the police force wanted to stop them (protestors) with the help of cane shields. The cane charge was admitted in the written statement, whereas, at the time of evidence, it was stated that the protestors were simply stopped with the help of can-shields and they had suffered injuries in stampede. Thus, in view of the vacillating stand of the defendants in the written statement and during evidence, it would be difficult to place any reliance thereon."

12. Thereafter, the learned ADJ proceeded to discuss the evidence of the plaintiff and concluded as under :-

> "29.....Thus, it is established from overwhelming evidence on record that the plaintiff had suffered injuries during 'lathi' charge once, outside gate No.2 of Patiala House courts and secondly, inside the Patiala House Courts complex, when he was trying to save Shri J.P. Dixit, Advocate."

13. The next logical step taken by the learned ADJ was to address himself the question as to whether, in using the force in which the plaintiff has sustained the injuries, the amount of force used was reasonable. He referred to Rule 14.56of Punjab Police Rules, as applicable to the Delhi Police, as per which the police can use force against the crowd in accordance with the provisions of Section 127 and 129 of the Code of Criminal Procedure, 1898 (corresponding to Section 129 of the Code). Object of this Rule is to use the force to quell a disturbance of the peace or disperse an assembly which threatens such disturbance and has either refused to disperse or shows a determination not to disperse. This rule also commands that no ulterior objects, such as punitive or repressive effect, shall be taken

that the force is to be used only when such an assembly c disperse or conducts itself in such a manner as to show a determination not to disperse. In that course, force can be used by the Executive Magistrate or Police Officer for the purpose of dispersing such assembly.

14. Applying the principle on the facts of the case, the learned ADJ returned the findings that: (a) It was established on record that the protestors were totally unarmed and peaceful, even when such an assembly of protestors had become an unlawful assembly because of promulgation of orders under Section 144 of the Code. (b) The defendants failed to show that this assembly was commanded to disperse or that they had refused to disperse. (c) Even if it is assumed that they were asked to disperse and they refused to do so, it was totally unlawful on the part of police to use the force to the extent it was used by them against the plaintiff and others. (d) The trial court opined that as this assembly had committed an offence under Section 188 of the IPC for violating the orders promulgated under Section 144 of the Code, they could have been arrested for committing this offence. Instead of doing so, resorting to lathi charge was illegal, more so when the use of force was excessive, inasmuch as, the defendants had failed to prove that use of force was necessary, legal and just.

15. After returning the aforesaid findings on Issues No.1 & 2, the trial court took up Issues No. 3 & 3-A together and awarded the damages of Rs.1,12,500/- in the manner already mentioned above.

16. ARGUMENTS OF THE APPELLANT

Ms. Anju Bhattacharya, learned counsel for the appellants, submitted that it was an admitted case of the parties that prohibitory orders under Section 144 of the Code had been issued. It was also an undisputed fact that the plaintiff was part of the assembly consisting of more than 5 members and, therefore, this assembly was unlawful. On the basis of this admitted position, she rested her entire case on Section 129 of the Code and submitted that it was lawful for the police to use necessary and reasonable force to disperse such an assembly and, therefore, no such suit for claiming damages could be filed by the plaintiff. Her further submission was that the judgments of the Supreme Court, as relied upon by the learned ADJ, application to the facts of the present case. She submitted that in ***Rudal Sah*** (supra), it was found that there was flagrant violation of peoples' fundamental rights on account of police/authorities acting beyond their powers illegally, inasmuch the petitioner in that case was illegally detained in prison even after 14 years of his acquittal. Likewise, in ***Peoples' Union for Democratic Rights*** (supra), the police had resorted to lathi charge on the landless people who had gathered for holding a peaceful meeting without any previous

lawful ordinance had been promulgated under Section 144 Code, defying those orders, the plaintiff and others had formed an unlawful assembly. She emphasized that they were given sufficient warning for dispersal, but when they failed to accede to the legal request, mild force was used. Such an action was in consonance with Rule 14.56 of the Punjab Police Rules as well as Section 129 of the Code. She also referred to the deposition of defendant No.2 who had testified that he had told the gathering and explained that orders under Section 144 of the Code had been promulgated and, therefore, sufficient warning was given.

17. Learned counsel for the plaintiff/respondent, *per contra*, reiterated the submissions made before the learned ADJ and accepted by the trial court. He referred to various observations in the impugned judgment, to which we have already adverted to above, and submitted that such findings were correctly recorded on the basis of evidence on record. Referring to the MLC (Ex.PW-6/1) and the age of the plaintiff, who was 60 years old at that time, he submitted that the lathi blows which were given and the injuries suffered by him clearly showed that the force used by the police was not mild or reasonable force to disperse the crowd. He also submitted that the plaintiff was not part of an unlawful assembly, which was clear from the fact that though the plaintiff was subsequently prosecuted along with others under Section 188 of the IPC, but he was not charged for

allegation of the respondent was that the assembly of a became an unlawful assembly simply because of disobedience of legal warning.

18. OUR ANALYSIS

We have gone through the record of the suit file and have also given our deep consideration to the various submissions made by counsel for both sides.

19. As already pointed out above, the case of the appellant is that since there was an unlawful assembly, which fact is undisputed, it was lawful for the police to use necessary and reasonable force to disperse such an assembly. According to the appellant, therefore, the action is authorized by the provisions of Section 129 of the Code and, therefore, no suit for claiming damages could be filed. It is not in dispute that prohibitory orders under Section 144 of the Code had been issued. It is also not in dispute that the procession which was taken out consisted of more than 5 persons and, therefore, such an assembly would be an 'unlawful assembly'. However, the entire dispute has altogether different hue, namely, whether the police used necessary and reasonable force to disperse such an assembly or whether the police exceeded its limits and resorted to severe lathi charge, not warranted by the situation.

20. From the various decisions cited in the judgment by the learned trial

such unlawful assembly. This proposition flows from the that otherwise it is a well-settled law that citizens of this country have fundamental right of speech and expression, as enshrined in Article 19(1)(a) and (b) of the Constitution of India. Such freedom of action includes peaceful and oral demonstration by any group of group of persons, as held by the Supreme Court way back in the year 1962 in the celebrated judgment in the case of ***Kameshwar*** (supra). That case related to the right of holding demonstration by people and the Court explained the principle in the following manner :-

> "13. The first question that falls to be considered is whether the right to make a "demonstration" is covered by either or both of the two freedoms guaranteed by Art.19(1)(a) and 19(1)(b). A "demonstration" is defined in the Concise Oxford Dictionary as "an outward exhibition of feeling, as an exhibition of opinion on political or other question especially a public meeting or procession". In Webster it is defined as "a public exhibition by a party, sect or society..... as by a parade or mass-meeting". Without going very much into the niceties of language it might be broadly stated that a demonstration is a visible manifestation of the feelings or sentiments of an individual or a group. It is thus a communication of one's ideas to others to whom it is intended to be conveyed. It is in effect therefore a form of speech or of expression, because speech need not be vocal since signs made by a dumb person would also be a form of speech. It has however to be recognized that the argument before us is confined to the rule prohibiting demonstration which is a form of speech and expression or of a mere assembly and speeches therein and not other forms of demonstration which do not fall within the content of Art. 19(1)(a) or 19(1)(b). A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles. It necessarily follows that there are forms of demonstration which would fall within the freedoms guaranteed by Art. 19(1)(a) and 19(1)(b). It is needless to add that from the very nature of things a demonstration may take various form; it may be noisy and disorderly, for instance stone-throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not

21. It is also now a settled principle of law that if the State, through its employees, violates fundamental rights of the citizens by committing acts of torts, a citizen would be entitled to compensation. {See – *Rudal Sah* (supra); *Peoples' Union for Democratic Rights* (supra); *Saheli v. Commissioner of Police, Delhi*, AIR 1990 SC 513; *M.C. Mehta & Anr. v. Union of India & Ors.,* AIR 1987 SC 1086; and *Kommineni Sanjeeva Rao v. SI of Police & Ors.,* 1997 Crl.L.J. 3109}.

22. In *Rudal Sah* (supra), while awarding compensation of Rs.35,000/- to the petitioner as an interim measure with liberty to bring a suit for recovery of appropriate damages against the State and its erring officers, the Supreme Court made the following pertinent observations :-

> "10….The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders to release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to

> shield. If civilization is not to perish in this country as it perished in some others too well-known to suffer mention, necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."

23. A case having close resemblance with the case at hand would be the decision of the Supreme Court in ***Peoples' Union for Democratic Rights*** (supra). In that case the peasants and landless people had collected for holding a peaceful meeting. Without any previous warning by the police or any provocation on the part of the people, who had so collected, the Superintendent of Police, surrounded the gathering and opened fire as a result of which several people were injured and 21 died. The Supreme Court granted a compensation of Rs.20,000/- in the case of every death and Rs.5,000/- in the case of injury, without prejudice to any just claim for compensation by way of filing a civil suit.

24. It is for this reason we pointed out above that the moot question would be as to whether the action of the police was within the limits prescribed by law or it crossed the boundaries of right to use reasonable force and entered the arena of tort.

25. Whether the force used in a particular case, to disperse such demonstration, is reasonable or not would depend upon the facts and circumstances of each case. It would be a totally different

or are equipped with lathis, etc. with an intention to at police or use some kind of force when the police try to disperse such a mob. In the present case, however, it is found, as a fact, that the demonstration in question was peaceful; all the demonstrations were without any arms; and were holding peaceful march.

26. Though the learned counsel for the appellant argued that the police had given oral instructions to the demonstrators to disperse, but the demonstrators failed to accede to this legal request and only thereafter mild force was used, this argument does not gel with the finding of facts recorded by the learned trial court and no convincing argument could be given to dislodge such findings, which are the following :-

(a) The plaintiff/respondent was surrounded and subjected to brutal lathi charge by the police officials.

(b) The plaintiff broke through the cordon of lathi inflicting policemen and somehow managed to reach the boundary inside the Patiala House Courts.

(c) While inside, when he saw Shri J.P. Dixit, Advocate, beaten mercilessly by police, he took him into safety and then at that time the policemen hurried lathi blows on the plaintiff.

This was clearly unprovoked use of force by the police. There was no reason, at least, to inflict lathi blows on the plaintiff after he

in taking Shri Dixit to safety infuriated the police officials w after the plaintiff and gave him severe beating.

(d) The defence of the appellants is found to be contradictory, i.e. what is stated in the written statement is at variance with the oral evidence trying to justify the incident of lathi charge.

(e) The nature of injuries suffered by the plaintiff is sufficient to expose the hollowness of the defence of the appellant that only mild force was used.

We have already reproduced above the MLC report prepared by the doctors at the Safdarjung Hospital (Ex.P-6/1) which shows grave injuries on the person of the plaintiff, therefore, such injuries cannot be the result of *'mild force'*. It is nowhere pleaded nor is it the case of the appellants that the plaintiff had attacked the police or used force which necessitated the police to resort to use of such a force to counter the said attack. An unarmed lawyer of 60 years could not have done anything justifying such kind of brutal attack on his person under the garb of Section 129 of the Code. It is manifest that the police exceeded its powers and saw occasion to *"teach the lesson"* to the demonstrators, of which the plaintiff became the worst victim.

27. We are, therefore, in agreement with the findings arrived at by the

provisions of Section 129 of the Code, or for that matter Ru of the Punjab Police Rules, is to use the force to quell a disturbance of the peace or disperse an assembly which threatens such disturbance and has either refused to disperse or shows a determination not to disperse. Forgetting this, the act of the police was punitive and repressive.

28. In these circumstances, and having regard to the injuries sustained by the plaintiff with further regard to his age, profession and position in the society, we are of the opinion that damages of Rs.1,00,000/- on account of shock, mental agony, pain and suffering, indignation and for loss of reputation and insult is quite reasonable, if not on lesser side.

29. We, therefore, do not find any merit in this appeal and dismiss the same with costs of Rs.15,000/-.

(A.K. SIKRI)
JUDGE

(MANMOHAN SINGH)
JUDGE

September 30, 2008
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