A SANJAY GUPTA & ORS.

v.

STATE OF UTTAR PRADESH & ORS.

(Writ Petition (Civil) No. 338 of 2006)

JULY 31, 2014

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[DIPAK MISRA AND V. GOPALA GOWDA, JJ.]

Commission of Enquiry Act, 1952 - ss. 8B and 8C - Non-compliance - Effect of - Held: Since the Commission C *constituted under the Act, did not comply with the provisions of ss. 8B and 8C which seriously prejudiced the accused, the report submitted by the Commission cannot be sustained - Appointment of new Commissioner.*

D *Constitution of India, 1950 - Art. 32 - Writ petition - Seeking damages and other reliefs - Against the State as well as private parties-accused - Holding them responsible for the 64 deaths and above 100 injuries in a fire accident which broke-out in a consumer exhibition - Held: Fact finding* E *Commission constituted under Commission of Enquiry Act, was not sustainable for non-compliance of statutory provisions - New Commissioner appointed and directed to submit his report - So long as the Commission is awaited, liability to pay damages cannot be fastened on the parties - The facts of the case show that there has been statutory violations and* F *negligence by the State authorities - Therefore, as an interim measure, State directed to pay some more amount to the victims, in addition to the amount it has already paid as compensation - The accused-organizers of the event also directed to deposit an amount of ss. 30 lakhs with the Court* G *to be kept in fixed deposit interest bearing account - Apportionment of the liability between different erring parties also to be decided after receipt of the report of the Commission - Commission of Enquiry Act, 1950 - Damages.*

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A consumer show organized by the organizers (respondent Nos. 10 to 12), caught fire resulting in death of 64 persons and injuries to more than hundred persons. FIR was lodged against the accused persons u/ss. 304A, 337, 338 and 427 IPC. In view of the magnitude of the tragedy, the State Government appointed a one-man Commission under the Commissions of Enquiry Act, 1952. The petitioners also filed the present writ petition u/Art. 32 of the Constitution, seeking inter alia to award damages against the respondents jointly and severally to be paid to the victims.

Respondent Nos. 10 to 12 (the organizers of the event) contended that they have been seriously prejudiced due to non-compliance of ss. 8B and 8C of the Act by the Commission.

Issuing certain directions and granting interim relief, the Court

HELD: 1.1. The notices were sent by the Commission of Inquiry in the nature of notice requiring the respondents to appear. They have to be construed as notices under Section 4(a) of the Act. That apart, on a scrutiny of the list of witnesses who were examined by the Commission, it is found that the respondents 10 to 12 were summoned almost after examination of 45 witnesses and the respondent-organisers were not afforded opportunity of cross-examination. The Commission, on the basis of the evidence and taking recourse to certain violation of statutory provisions, has submitted the report. Therefore, it is difficult to sustain the report. [Para 8] [1003-H; 1004-A-B]

State of Bihar v. Lal Krishna Advani and others 2003 (3) Suppl. SCR 844 (2003) 8 SCC 361 - relied on.

1.2. Regard being had to the gravity of the situation and the magnitude of the tragedy, Justice S.B. Sinha, formerly a Judge of the Supreme Court is appointed, as

A the one man Commission. The witnesses, who were examined by the previous Commission and not cross-examined by respondents 10 to 12, their depositions shall be treated as examination-in-chief and they shall be made available for cross-examination by the respondent. It has
B also been conceded that the documents which have been marked as exhibits, unless there is a cavil over the same, they shall be treated as exhibited documents. The contractors who were engaged by the organizers, as they were summoned by the previous Commission, should be
C summoned by the present Commission. The Commission should issue notices to the contractors so that the proceeding under the Act can continue in accordance with the provisions of the Act. They shall have the similar opportunity that has been made available to the
D organizers. The organizers as well as the contractors would be at liberty to adduce evidence in support of their respective pleas. The Commission shall record the evidence at Meerut and hear the arguments in Delhi. [Para 10] [1005-C-G]

E 2.1. The Consumer Show was organized at a place belonging to the State Government, permission was granted by the Additional District Magistrate in consultation with the Superintendent of Police, the State Government had not taken pains to see whether the other
F statutory authorities as required under law had granted "No Objection Certificate" or not and also how far the organizers had complied with the directions. The primary obligation of the State was to see whether the preparations made at the place of exhibitions by the
G organizers involved any risk or not and whether, there was proper arrangement for extinguishing the fire or not in the covered area. Under these circumstances, there has to be some initial arrangement for payment of compensation by the State awaiting the report from the
H Commission. [Para 22] [1014-E-G]

Nilabati Behera (Smt) alias Lalita Behera (through the Supreme Court Legal Aid Committee) v. State of Orissa and others **1993 (2) SCR 581 = (1993) 2 SCC 746**; *Union Carbide Corpn. v. Union of India* **1991 (1) Suppl. SCR 251 = (1991) 4 SCC 584**; *Chairman, Railway Board and others v. Chandrima Das (Mrs.) and others* **2000 (1) SCR 480 = (2000) 2 SCC 465**; *Sube Singh v. State of Haryana and others* **2006 (2) SCR 67 = (2006) 3 SCC 178**; *Raghuvansh Dewanchand Bhasin v. State of Maharashtra and another* **2011 (11) SCR 300 = (2012) 9 SCC 791**; *Mehmood Nayyar Azam v. State of Chhattisgarh and others* **2012 (8) SCR 651 = (2012) 8 SCC 1**; *Hardeep Singh v. State of M.P.* **(2012) 1 SCC 748 - relied on.**

Union of India v. Prabhakaran **2008 (7) SCR 673 = (2008) 9 SCC 527 - referred to.**

2.2. As far as respondents 10 to 12 are concerned, no liability can be fastened under Article 32 of the Constitution of India, and definitely not at this stage. The principle of apportionment also can be thought of only after the Commission's report is received, but, the victims and the families cannot be left on the lurch. [Paras 12 and 27] [1006-E; 1019-B]

2.3. Since there has been statutory violations and negligence on the part of the State authorities in not taking due care while granting permission and during the exhibition was in progress, the Court directs payment of compensation, by way of interim measure, by the State. [Para 27] [1019-C]

2.4. Regard being had to the facts and circumstances of the case and taking note of the fact that some amount has already been given, it is directed, as an interim measure, that the legal representatives of the deceased shall be paid Rs.5 lakhs more and the seriously injured persons would be paid a further sum of Rs.2 lakhs each, and the persons who have suffered minor injuries would

A be paid an additional sum of Rs.75,000/-. The legal representatives of the deceased have been paid certain ex gratia amount and the injured persons have been paid certain amount ex gratia, their identity is known and, therefore, the Additional District Judge shall conduct a B summery enquiry only for proper identification and disburse the amount. [Para 27] [1019-C-F]

2.5. The direction to the State Government, at present, is only to see that the victims do not remain in a constant state of suffering and despair. The issue of maintainability C of the writ petition would be addressed after submission of the report. But the organizers cannot be allowed to remain as total strangers in this regard. The organizers should deposit certain amount before the Registry of this Court and regard being had to the said observation, the D respondents 10 to 12 are directed to deposit a sum of Rs.30 lakhs before the Registry of this Court within a period of two months. The said amount shall be kept in a fixed deposit on an interest bearing account. [Para 28] [1020-A-D]

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2.6. This arrangement is absolutely interim in nature and without prejudice to the contentions to be raised by the State and the respondent Nos. 10 to 12. [Para 28] [1020-D]

F *Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy and Ors.* 2011 (16) SCR 1 = AIR 2012 SC 100; *DAV Managing Committee and another v. Dabwali Fire Tragedy Victims Association and others* (2013) 10 SCC 494 - referred to.

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Case Law Reference :

2003 (3) Suppl. SCR 844	relied on	Para 9
1993 (2) SCR 581	relied on	Para 13
H 1983 (3) SCR 508	referred to	Para 13

1991 (1) Suppl. SCR 251	**relied on**	**Para 13**
2000 (1) SCR 480	**relied on**	**Para 15**
2006 (2) SCR 67	**relied on**	**Para 16**
2011 (11) SCR 300	**relied on**	**Para 17**
2012 (8) SCR 651	**relied on**	**Para 18**
(2012) 1 SCC 748	**relied on**	**Para 18**
2011 (16) SCR 1	**relied on**	**Para 23**
2008 (7) SCR 673	**referred to**	**Para 25**
(2013) 10 SCC 494	**referred to**	**Para 26**

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 338 of 2006.

Under Article 32 of the Constitution of India.

Tushar Mehta, ASG., Vikas Pahwa, Shanti Bhushan, Gaurav Bhatia, AAG., B. Badrinath, Rishi Malhotra, Prem Malhotra, Dr. Ashok Dhamija, B.V.B. Das, Kamlendra Mishra, P. Parmeswaran, R.D. Upadhyay, Sunil Kumar Jain, Ravi Prakash Mehrotra, Vibhu Tiwari, Anuvrat Sharma, Gunnam Venkateswara Rao, Manoj K. Mishra, Rohit Kumar Singh, Kartik Seth for the appearing parties.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. The 10th of April, 2006, the last day of the India Brand Consumer Show organized by Mrinal Events and Expositions at Victoria Park, Meerut, witnessed the dawn of the day with hope, aspiration, pleasure and festivity at the Victoria Park, Meerut, but, as ill-fortune (man made) would have it, as the evening set in, it became the mute spectator to a devastating fire inside the covered premises of the brand show area which extinguished the life spark of sixty-four persons and

A left more than hundreds as injured; and with the clock ticking, the day turned to be a silent observer of profused flow of human tears, listener of writhing pain and cry, and eventually, marking itself as a dark day of disaster in human history. Some, who were fortunate to escape death, sustained serious injuries, and
B some minor injuries. The cruelest day of April converted the last day of the festival of Consumer Show to that of a horrifying tragedy for the families of the persons who were charred to death, the victims who despite sustaining serious injuries did not fall prey to the claw of fatality, and the others, slightly
C fortunate, who had got away with minor injuries bearing the mental trauma. The dance of death, as it appears, reigned supreme and the cruel demon of injury caused serious injuries as well as minor injuries. The assembly of pleasure paled into total despair and before the people could understand the gravity
D of the tragedy, it was over, leaving the legal representatives who have lost their parents, or the parents who have forever been deprived of seeing their children, or the wives who had become widows within fraction of a minute, blaming and cursing the officials of the State Government. The contemporaneous history records it as "Great Meerut Fire Tragedy.
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2. After the tragedy paraded at the Victoria Park a First Information Report was lodged against the accused persons under Sections 304A, 337, 338 and 427 of Indian Penal Code. The State Government, regard being had to the magnitude of
F the tragedy, vide notification No. 2155/p/Chh.p-3-2006-12(51)p/ 2006 dated 2.6.2006, appointed Justice O.P. Garg, a former Judge of Allahabad High Court, as one man Commission under the Commissions of Enquiry Act, 1952 (for short "the Act"). The Commission was required to submit the report in respect of four
G issues, namely: -

"1. To find out the facts, causes on account of which the aforesaid accident occurred.

2. To decide the ways and means to keep up the
H situation in control.

3. In respect of the aforesaid occurrence, determination of liability and the extent thereof. A

4. Measures to be adopted to avoid the occurrence of such incident in future."

3. Almost at the time the Commission was appointed, the present writ petition under Article 32 of the Constitution was filed seeking the following reliefs: - B

"A. Pass appropriate writ, order or direction directing the respondent No. 13, CBI to take up the investigation of the case FIR No. 95 of 2006, registered at Civil Lines, Meerut, UP, u/s 304A/337/338/427, IPC and investigate the case in accordance with law, and this Hon'ble Court may be pleased to monitor the investigation from time to time, to ensure that no person guilty of any of the offences is able to escape the clutches of law and that the investigation is carried out as expeditiously as possible in a free and fair manner. C D

B. Pass appropriate writ, order or direction directing the State Government to initiate action against the erring administrative officers for their atrocious and negligent ehavior while dealing with tragedy of this magnitude. E

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C. Pass appropriate writ order or direction awarding damages against the respondents, jointly and severally, to the petitioners including all victims who lost their lives, the names and particulars of which, are given in Annexure P.6 for a sum of Rs.106 crores (Rs.20 lakhs for 53 dead) with the direction to equally distribute the same to the first degree heirs of all the victims evenly or in such manner as may be considered just and proper, by this Hon'ble Court. G

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D. Award damages against the respondents, jointly and severally, to the tune of Rs.63 crores (Rs.5 lakhs for 126 injured) to the injured whose names and addresses are mentioned in Annexure P-6 to be distributed evenly or in such manner as may be considered just and proper, by this Hon'ble Court.

E. Award punitive damages against the respondents to pay a sum of Rs.50 crores jointly and severally for the purpose of setting up and augmenting the Centralized Accident and Trauma Services and other allied services in Western UP. Respondent No. 3, the District Magistrate may be directed to create a fund for the purpose and submit a detailed report to this Hon'ble Court in accordance with which the said services will be set up under the supervision of this Hon'ble Court.

F. Pass appropriate writ, order or direction issuing guidelines to be followed by all, at the time of creating a temporary structure for organizing Seminars, Exhibitions etc."

4. In course of hearing of the writ petition we have been apprised by Mr. Vikas Pahwa, learned senior counsel that 64 persons have died in the incident and not 53. The said fact is not disputed by learned counsel for the State. As the hearing progressed, this Court directed for filing of the translated copy of the relevant portion of the report of the commission as it had already been submitted to the competent authority. In compliance with the order learned counsel for the State has brought on record the report dated 5.6.2007. On a perusal of the said report, we have found that the Commission has returned its findings in respect of all the aspects.

5. Mr. Shanti Bhushan, learned senior counsel appearing for respondents 10 to 12, the organizers of the event, submitted that the Commission has fallen into grave error by not complying

with Sections 8B and 8C of the Act as a consequence of which the said respondents have been seriously prejudiced. It is his further proponement that they were only issued notices under Section 4(a) of the Act, but that would not meet the requirement as mandated under Sections 8B and 8C of the Act.

6. To appreciate the said submission, it is apposite to refer to Sections 8, 8A, 8B and 8C of the Act. Section 8 provides for procedure to be followed by the Commission empowering it to have power to regulate its own procedure including the fixing of place and time of its sitting and deciding whether to sit in public or in private. Section 8A stipulates that the inquiry not to be interrupted by reason of vacancy or change in constitution of the Commission. Sections 8B and 8C on which emphasis has been placed by Mr. Shanti Bhushan need to be reproduced. They read as follows: -

> "**8B. Persons likely to be prejudicially affected to be heard**. – If, at any state of the inquiry, the Commission, -
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> i. considers it necessary to inquire into the conduct of any person; or
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> ii. is of opinion that the reputation of any person is likely to be prejudicially affected by the inquiry,
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> the Commission shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:
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> Provided that nothing in this section shall apply where the credit of a witness is being impeached.
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> **8C. Right of cross-examination and representation by legal practitioner**. – The appropriate Government,

A every person referred to in section 8B and, with the permission of the Commission, any other person whose evidence is recorded by the Commission, -

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

(b) may address the Commission; and

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

7. It is submitted by Mr. Shanti Bhushan, learned senior counsel, that no opportunity was given to the respondents 10 to 12 to cross-examine the witnesses though they are directly
D affected by the said inquiry and the findings recorded by the Commission. It is canvassed by him that the notice that was sent to the said respondents is basically under Section 4(a) of the Act. To bolster his submission he has drawn our attention to the notices that have been sent by the Commission. We may
E fruitfully refer to one of the notices sent by the Commission to one of the organizers, namely, Lakhan Tomar, respondent No. 10. The said notice reads as follows: -

"Sh. Lakhan Tomar, (in Jail),
F Organizer, Consumer Show,
Victoria Park,
Meerut,
Via
Superintendent, District Jail, Meerut,
G Meerut

On 10th of April, a sad incident of massive fire occurred in the 3 Pandals of Brand Consumer Show at Victoria Park, Civil Lines area of police station, District Meerut. In

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order to ascertain the reasons, circumstances and fixing of responsibilities, the Government of Uttar Pradesh issued notification bearing No. 2155p/Chh.p-3-2006-12(51)p/2006 dated 2 June, 2006 appointing a one member Enquiry Commission under the Commission of Inquiry Act 1952 (Government Order no. 60 of 1952) and the said Commission is in progress. The Commission is enquiring into the following issues:

1. To find out the circumstances and causes on account of which the aforesaid accident occurred.

2. To recommend ways and means to keep up such incidents in check in future.

3. In respect of the aforesaid occurrence, determination of liability and fixing the same.

4. Measures to be adopted to prevent such occurrences in future.

Your presence is mandatorily required for the said Enquiry. You are hereby directed to appear before the Commission on the 27th of September 2006 at 10:30 AM and ensure the recording of your Statement. You are also required to present before the Commission all the Documents, correspondence, Acts, Rules, Government Orders, Departmental orders, if any, related to the circumstances of the incident.

You are also informed that the above notice is issued under the provisions of Commission of Enquiry Act 1952 (Government Order no. 60 of 1952) and the compliance of which is necessary, mandatory and binding."

8. Similar notices were sent to the other organizers. On a perusal of the said notice, it is limpid that the said notice is in the nature of notice requiring him to appear. It has to be

A construed as a notice under Section 4(a) of the Act. That apart, on a scrutiny of the list of witnesses who were examined by the Commission, we find that the respondents 10 to 12 were summoned almost after examination of 45 witnesses and the respondent-organisers were not afforded opportunity of cross-
B examination. The Commission, on the basis of the evidence and taking recourse to certain violation of statutory provisions, has submitted the report.

9. In *State of Bihar* v. *Lal Krishna Advani and others*[1] while interpreting Section 8B of the Act which has been brought into
C the statute by the Amending Act 79 of 1971, the Court has opined thus: -

"**8.** It may be noticed that the amendment was brought about, about 20 years after passing of the main Act itself.
D The experience during the past two decades must have made the legislature realize that it would but be necessary to notice a person whose conduct the Commission considers necessary to inquire into during the course of the inquiry or whose reputation is likely to be prejudicially
E affected by the inquiry. It is further provided that such a person would have a reasonable opportunity of being heard and to adduce evidence in his defence. Thus the principles of natural justice were got inducted in the shape of a statutory provision. It is thus incumbent upon the
F Commission to give an opportunity to a person, before any comment is made or opinion is expressed which is likely to prejudicially affect that person. Needless to emphasise that failure to comply with the principles of natural justice renders the action *non est* as well as the consequences
G thereof."

10. In view of the aforesaid enunciation of law, it is difficult to sustain the report. We are obliged to state here that in course of hearing, we had asked the learned counsel for the

H 1. (2003) 8 SCC 361.

parties that in case the report of the Commission would be set aside, the Commission has to proceed after following the provisions of the Act. The said position was acceded to. On a further suggestion being made, learned counsel for the parties had fairly agreed for appointment of another retired Judge as Commission. Learned counsel for the parties had suggested certain names in sealed covers but there was no commonality. Regard being had to the gravity of the situation and the magnitude of the tragedy, on due deliberation we appoint Justice S.B. Sinha, formerly a Judge of this Court, as the one man Commission. It is agreed by the learned counsel for the parties that the witnesses, who were examined by the previous Commission and not cross-examined by respondents 10 to 12, their depositions shall be treated as examination-in-chief and they shall be made available for cross-examination by the respondent. It has also been conceded that the documents which have been marked as exhibits, unless there is a cavil over the same, they shall be treated as exhibited documents. Mr. Shanti Bhushan, learned senior counsel, submitted that the contractors who were engaged by the organizers, as they were summoned by Justice O.P. Garg Commission, should be summoned by the present Commission. Appreciating the said submission, we think it apposite that the Commission should issue notices to the contractors so that the proceeding under the Act can continue in accordance with the provisions of the Act. Needless to say, they shall have the similar opportunity that has been made available to the organizers. The organizers as well as the contractors would be at liberty to adduce evidence in support of their respective pleas. The Commission shall record the evidence at Meerut and hear the arguments in Delhi. It needs no special emphasis to say that the State shall provide the requisite infrastructure, secretarial staff to the Commission for its smooth functioning and pay the fees of the Commission which shall be fixed by the Commission. The Commission is requested to submit the report by the end of January, 2015.

11. Having so opined, we cannot comatose our judicial

A conscience to the plights of the victims who have approached this Court. Some of the petitioners are themselves the victims or next kin of the deceased and the injured persons who have suffered because of this unfortunate man made tragedy. It is the admitted position that 64 deaths have occurred and number
B of persons have suffered grievous injuries. There are also persons who have suffered simple injuries as has been asserted by the State. We have been apprised at the Bar that the State Government has already paid Rs.2 lakhs to the legal representatives of the persons who have breathed their last, and
C a sum of rupees one lakh has been paid by the Central Government. As far as seriously injured persons are concerned, rupees one lakh has been paid by the State Government and Rs.50,000/- has been paid to the victims who have suffered simple injuries.

D 12. The question that we would like to pose is whether this Court should wait for the Commission's report and then direct the State Government to pay the amount of compensation to the grieved and affected persons, who have been waiting for the last eight years, or should they get certain sum till the matter
E is finalized. We will be failing in our duty if we do not take into consideration the submission of Mr. Shanti Bhushan, learned senior counsel, that as far as respondents 10 to 12 are concerned, no liability can be fastened under Article 32 of the Constitution of India, and definitely not at this stage. As far as
F first part of the submission is concerned, we keep it open to be dealt with after the report is obtained by this Court. As far as second aspect is concerned, we shall deal with it after we address the issue of public law remedy and the liability of the State in a case of this nature.

G 13. In *Nilabati Behera (Smt) alias Lalita Behera (through the Supreme Court Legal Aid Committee)* v. *State of Orissa and others*[2], J.S. Verma, J. (as his Lordship then was) speaking

H 2. (1993) 2 SCC 746.

for himself and Venkatachala,J., after referring to various authorities, opined thus: - A

> "**17.** It follows that 'a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in *Rudul Sah v. State of Bihar*[3] and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.
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> **18.** A useful discussion on this topic which brings out the distinction between the remedy in public law based on strict liability for violation of a fundamental right enabling award of compensation, to which the defence of sovereign immunity is inapplicable, and the private law remedy,

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3. (1983) 4 SCC 141. H

A wherein vicarious liability of the State in tort may arise, is to be found in Ratanlal & Dhirajlal's Law of Torts, 22nd Edition, 1992, by Justice G.P. Singh, at pages 44 to 48.

Thereafter, the learned Judge referred to the authority in
B *Union Carbide Corpn.* v. *Union of India*[4] and observed: -

"We respectfully concur with the view that the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new
C tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this
D Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to
E grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be
F real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the
G have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate."

H 4. (1991) 4 SCC 584.

14. Dr. Anand,J. (as his Lordship then was) in his concurring opinion has observed that: -

"**34.** The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law."

A 15. In *Chairman, Railway Board and others v. Chandrima Das (Mrs.) and others*[5], this Court while dealing with an appeal arising out of a public interest litigation before the High Court pertaining to the grant of damages by the railways after referring to earlier decisions came to hold as follows:-

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> "Running of the Railways is a commercial activity. Establishing the Yatri Niwas at various railway stations to provide lodging and boarding facilities to passengers on payment of charges is a part of the commercial activity of the Union of India and this activity cannot be equated with
> C the exercise of sovereign power. The employees of the Union of India who are deputed to run the Railways and to manage the establishment, including the railway stations and the Yatri Niwas, are essential components of the government machinery which carries on the commercial
> D activity. If any of such employees commits an act of tort, the Union Government, of which they are the employees, can, subject to other legal requirements being satisfied, be held vicariously liable in damages to the person wronged by those employees."

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16. In *Sube Singh v. State of Haryana and others*[6], while dealing with the grant of compensation in a public law remedy, the Court ruled thus:-

> "It is thus now well settled that the award of compensation
> F against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation
> G (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy

5. (2000) 2 SCC 465.

H 6. (2006) 3 SCC 178.

in tort, nor come in the way of the criminal court ordering compensation under Section 357 of the Code of Criminal Procedure." A

17. In *Raghuvansh Dewanchand Bhasin v. State of Maharashtra and another*[7], the Court reiterated the view that the power and jurisdiction of this Court and the High Courts to grant monetary compensation in respect of petitioners under Articles 32 and 226 of the Constitution of India and fundamental rights under Article 21 of the Constitution of India are violated are well-established. B C

18. In *Mehmood Nayyar Azam v. State of Chhattisgarh and others*[8]while dealing with the mental torture of the petitioner – an Ayurvedic doctor in custody, the Court after referring to the earlier judgments including in *Hardeep Singh v. State of M.P.*[9] ruled: D

"35. We have referred to these paragraphs to understand how with the efflux of time, the concept of mental torture has been understood throughout the world, regard being had to the essential conception of human dignity. E

36. From the aforesaid discussion, there is no shadow of doubt that any treatment meted out to an accused while he is in custody which causes humiliation and mental trauma corrodes the concept of human dignity. The majesty of law protects the dignity of a citizen in a society governed by law. It cannot be forgotten that the welfare State is governed by the rule of law which has paramountcy. It has been said by Edward Biggon "the laws of a nation form the most instructive portion of its history". The Constitution as the organic law of the land has unfolded itself in a manifold manner like a living organism F G

7. (2012) 9 SCC 791.

8. (2012) 8 SCC 1.

9. (2012) 1 SCC 748. H

A in the various decisions of the court about the rights of a person under Article 21 of the Constitution of India. When citizenry rights are sometimes dashed against and pushed back by the members of City Halls, there has to be a rebound and when the rebound takes place, Article 21 of
B the Constitution springs up to action as a protector. That is why, an investigator of a crime is required to possess the qualities of patience and perseverance as has been stated in *Nandini Satpathy* v. *P.L. Dani.*[10]"

Thereafter placing reliance on *Raghuvansh Dewanchand*
C *Bhasin* (supra), *Sube Singh* (supra) and *Hardeep Singh* (supra), the Court granted a sum of Rs.5,00,000/- (rupees five lakhs only) as compensation.

19. Having stated about the legal position pertaining to
D public law remedy under Article 32 of the Constitution of India as regards the grant of compensation we are obliged to address with regard to the responsibility and involvement of the State. Mr. Vikas Pahwa, learned senior counsel appearing for the petitioners, would submit that the organizers had sought
E permission from the Additional District Magistrate, Meerut City, vide letter dated 27.3.2006 for conducting the Consumer Show and in the said letter they had undertaken to follow all the guidelines and all suggested security and precautionary measures and also sought other permissions from the
F competent authorities under the U.P. Fire Services Act, 1944 and the authorities of the State had granted permission without proper verification and hence, they should be held liable to pay first subject to recovery of the same proportionately from the organizers and contractors after recording the findings on all
G the contentions issues including the quantum of compensation that may be determined in the report by the Commission.

20. Mr. Gaurav Bhatia, learned Additional Advocate General appearing for the Sate, submitted that the liability that

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H 10. (1978) 2 SCC 424.

would be eventually determined, has to be apportioned between the State and the organizers and the same has to be done on percentage basis, that is to say, the liability of the organizers should be 85% and that of the State should be 15% and said proportionality should be followed at this stage also.

21. Mr. Shanti Bhushan, learned senior counsel, would submit that the liability cannot be fastened on the organizers under Article 32 of the Constitution as the grievance is not tenable against the private persons and, in any case, the organizers cannot vicariously be held liable for the act of the contractors. We have noted these submissions but we are not intending to address these aspects in praesenti. Be it stated, with regard to the precise exact quantum, liability of the organizers, liability of the contractors and, if found liable by this Court, would depend upon the eventual verdict, regard being had to the report of the Commission. As stated hereinbefore, we have to see whether the State and its authorities prima facie are responsible to make them liable to pay the compensation. The issue of apportionment would come afterwards. As we find from the material on record, pursuant to the letter of request issued by the organizers, the Additional District Magistrate obtained a report from the Superintendent of Police, Meerut and expressed the view that there was no objection if the programme was organized from 6.4.2006 to 10.4.2006. It has also come on record that after obtaining permission from the Additional District Magistrate the organizers requested the Principal, Government Inter College, Meerut, requesting for providing of the GIC Play Ground and toilet facilities for hosting of the build-in-style exhibition on the said dates. The relevant part of the said letter reads as follows: -

> "The event is assured to be both an elite and very tidy affair conducted in the maximum possible professional manner, with support and involvement of many a senior officials/

A technocrats, major companies and well placed professionals. Moreover it has been purposely scheduled at the time when it does not interfere with the regular school classes or other activity.

B With the above inference it is earnestly requested that we may please graciously be allowed to use the GIC Playground and the allied services for toilet etc. for the purpose on the above dates and also make the ground available for general maintenance/preparatory works etc. 4 days prior to the proposed event."

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22. The Principal of the Government College granted the permission subject to certain restrictions. Be it clarified, the said premises was an additional one. It is averred in the petition that though the pandals were not properly constructed, there was D only one entry and one exit gate, there had been violation of UP Fire Services Act, 1944, there was no proper fire safety arrangements yet the permission was granted to hold the exhibition. Few things are extremely clear from the entire assertion of facts. The Consumer Show was organized at a E place belonging to the State Government, permission was granted by the Additional District Magistrate in consultation with the Superintendent of Police, the State Government had not taken pains to see whether the other statutory authorities as required under law had granted "No Objection Certificate" or F not and also how far the organizers had complied with the directions. The primary obligation of the State was to see whether the preparations made at the place of exhibitions by the organizers involved any risk or not and whether, there was proper arrangement for extinguishing the fire or not in the G covered area. Under these circumstances, we are disposed to think that there has to be some initial arrangement for payment of compensation by the State awaiting the report from the Commission.

23. We will be failing in our duty if we do not take note of

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another submission of Mr. Gaurav Bhatia, who would vehemently urge that the principles stated in *Municipal Corporation of Delhi* v. *Association of Victims of Uphaar Tragedy & ors.*[11], as regards the apportionment of damages should be considered. In the said case the Municipal Corporation had approached this Court assailing the decision of the Division Bench of the High Court of Delhi. This Court analysed the factual matrix, took note of the contentions of various parties and modified the award as follows: -

> "Taking note of the facts and circumstances, the amount of compensation awarded in public law remedy cases, and the need to provide a deterrent, we are of the view that award of Rs.10 lakhs in the case of persons aged above 20 years and Rs.7.5 lakhs in regard to those who were 20 years or below as on the date of the incident, would be appropriate. We do not propose to disturb the award of Rs.1 lakh each in the case of injured. The amount awarded as compensation will carry interest at the rate of 9% per annum from the date of writ petition as ordered by the High Court, reserve liberty to the victims or the L.Rs. of the victims as the case may be to seek higher remedy wherever they are not satisfied with the compensation. Any increase shall be borne by the Licensee (theatre owner) exclusively."

24. Thereafter, in the concluding portion the Court recorded its conclusion in seriatim. Some of the conclusions we reproduce below: -

> "(iv) The licensee (appellant in CA No. 6748 of 2004) and Delhi Vidyut Board are held jointly and severally liable to compensate the victims of the Uphaar fire tragedy. Though their liability is joint and several, as between them, the liability shall be 85% on the part the licensee and 15% on the part of DVB.

11. AIR 2012 SC 100.

A (v) CA No. 6748 of 2004 is allowed in part and the judgment of the High Court is modified as under:

(a) The compensation awarded by the High Court in the case of death is reduced from Rs.18 lacs to Rs.10 lacs (in the case of those aged more than
B 20 years) and Rs.15 lacs to Rs.7.5 lacs (in the case of those aged 20 years and less). The said sum is payable to legal representatives of the deceased to be determined by a brief and summary enquiry by the Registrar General (or nominee of learned
C Chief Justice/Acting Chief Justice of the Delhi High Court).

(b) The compensation of Rs. One lakh awarded by the High Court in the case of each of the 103 injured
D persons is affirmed.

(c) The interest awarded from the date of the writ petition on the aforesaid sums at the rate of 9% per annum is affirmed.

E (d) If the legal representatives of any deceased victim are not satisfied with the compensation awarded, they are permitted to file an application for compensation with supporting documentary proof (to show the age and the income), before the
F Registrar General, Delhi High Court. If such an application if filed within three months, it shall not be rejected on the ground of delay. The Registrar General or such other Member of Higher Judiciary nominated by the learned Chief Justice/Acting
G Chief Justice of the High Court shall decide those applications in accordance with paras above and place the matter before the Division Bench of the Delhi High Court for consequential formal orders determining the final compensation payable to
H them."

25. In the said case, Radhakrishnan, J., in his concurring opinion, after referring to earlier decisions of this Court, especially the pronouncements in *Nilabati Behera* (supra) and *Union of India* v. *Prabhakaran*[12], came to hold as follows: -

> "Right to life guaranteed under Article 21 of the Constitution of India is the most sacred right preserved and protected under the Constitution, violation of which is always actionable and there is no necessity of statutory provision as such for preserving that right. Article 21 of the Constitution of India has to be read into all public safety statutes, since the prime object of public safety legislation is to protect the individual and to compensate him for the loss suffered. Duty of care expected from State or its officials functioning under the public safety legislation is, therefore, very high, compared to the statutory powers and supervision expected from officers functioning under the statutes like Companies Act, Co-operative Societies Act and such similar legislations. When we look at the various provisions of the Cinematographic Act, 1952 and the Rules made thereunder, the Delhi Building Regulations and Electricity Laws the duty of care on officials was high and liabilities strict."
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> Legal liability in damages exist solely as a remedy out of private law action in tort which is generally time consuming and expensive and hence when fundamental rights are violated claimants prefer to approach constitutional courts for speedy remedy. Constitutional courts, of course, shall invoke its jurisdiction only in extraordinary circumstances when serious injury has been caused due to violation of fundamental rights especially under Article 21 of the Constitution of India. In such circumstances the Court can

12. (2008) 9 SCC 527.

A invoke its own methods depending upon the facts and circumstances of each case."

26. Relying on the said decision, Mr. Bhatia has placed emphasis on the facet of apportionment. We have also been B commended to the decision in *DAV Managing Committee and another* v. *Dabwali Fire Tragedy Victims Association and others*[13] wherein the Court took note of the fact that the High Court had modified the percentage of the compensation as fixed by the Inquiry Commission and appreciating the factual score held as follows:

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"It is not possible for this Court to apportion the liability of compensation between the appellants and Respondent 8, particularly in the absence of the material evidence on record either before the Inquiry Commission or before the D High Court and particularly having regard to the fact that what is stated that economic capacity of the partners of Rajiv Marriage Palace. In the absence of such findings it is not proper for this Court to frustrate the judgment of the High Court which is based on the Commission of Inquiry E report submitted by a retired Judge of the Allahabad High Court and further on behalf of Respondent 8 it is stated that out of six family members, two persons, namely, Kewal Krishan and Chander Bhan died on account of the burn injuries in the said function and further the land where Rajiv F Marriage Palace was built up has been taken over by the district authorities and the same has been converted into "Shahid Smarak Park" and what is the other properties left out of the partners of Rajiv Marriage Palace and the evidence is not forthcoming in this Court or before the High Court or in these proceedings. In this way, in the absence G of the same it is not possible for this Court to apportion the liability of compensation and confine the same upon the appellants and Respondent 8 out of 55% of the liability

H 13. (2013) 10 SCC 494.

of compensation confined and holding both the appellants and Respondent 8 responsible jointly and severally." A

27. We have referred to aforesaid authorities as Mr. Bhatia has impressed upon us for apportionment at this stage. The principle of apportionment can be thought of only after the Commission's report is received, but, a pregnant one, the victims and the families cannot be left on the lurch. As we find, there has been statutory violations and negligence on the part of the authorities in not taking due care while granting permission and during the exhibition was in progress, we intend to direct payment of compensation, by way of interim measure, by the State. Regard being had to the facts and circumstances of the case and taking note of the fact that some amount has already been given, we direct, as an interim measure, that the legal representatives of the deceased shall be paid Rs.5 lakhs more and the seriously injured persons would be paid a further sum of Rs.2 lakhs each and the persons who have suffered minor injuries would be paid an additional sum of Rs.75,000/-. The said amount shall be deposited before the District Judge, Meerut within two months hence. The learned District Judge may nominate an Additional District Judge, who, on making summary enquiry, shall pay the amount to the legal representatives and the victims. Be it noted, as asseverated by the State, the legal representatives of the deceased have been paid certain ex gratia amount and the injured persons have been paid certain amount ex gratia, their identity is known and, therefore, the Additional District Judge shall conduct a summery enquiry only for proper identification and disburse the amount. The Collector, Meerut shall produce all the documents for facilitating the summary enquiry at the earliest so that the victims should not suffer and for the said purpose we grant four weeks' time to the Collector, Meerut. The disbursement shall be made within one month from the date of deposit. B C D E F G

28. We are absolutely conscious about the fixation of liability, the quantification and their apportionment as has been H

held in *Uphaar Tragedy* and *Dabwali Fire Tragedy* cases. Our direction to the State Government, at present, is only to see that the victims do not remain in a constant state of suffering and despair. We have taken note of the submission of Mr. Shanti Bhushan and observed hereinbefore that we will address the issue of maintainability of the writ petition after submission of the report. Needless to say, in any event the issue of apportionment is kept open. But the organizers cannot be allowed to remain as total strangers in this regard. In course of hearing we had observed that the organizers should deposit certain amount before the Registry of this Court and regard being had to the said observation we direct the respondents 10 to 12 to deposit a sum of Rs.30 lakhs before the Registry of this Court within a period of two months. The said amount shall be kept in a fixed deposit on an interest bearing account. We repeat at the cost of repetition that this arrangement is absolutely interim in nature and without prejudice to the contentions to be raised by the learned Additional Advocate General for the State and Mr. Shanti Bhushan, learned senior counsel for the respondent Nos. 10 to 12.

29. As we have fixed the date i.e. 31.1.2015 for submission of the report by the Commission, let the matter be listed on 11th February, 2015. In case the report is submitted earlier, the registry shall list the matter immediately before the Court.

Kalpana K. Tripathy

Matter adjourned.