

Ghaziabad Development Authority vs Balbir Singh on 17 March, 2004

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Bench: S.N. Variava, H. K. Sema

CASE NO.:

Appeal (civil) 7173 of 2002

PETITIONER:

Ghaziabad Development Authority

RESPONDENT:

Balbir Singh

DATE OF JUDGMENT: 17/03/2004

BENCH:

S.N. VARIAVA & H. K. SEMA.

JUDGMENT:

J U D G M E N T O R D E R WITH Civil Appeal No. 7391/2002, C.A.No.7793/2002, C.A.No.8400/2002, C.A.No.7700/2002, C.A.No. 7288/2002, C.A.No.7792/2002, C.A. No.7788/2002, C.A.No.7396/2002, C.A.No. 7685/2002, C.A.No.8408/2002, C.A. No.8415/2002, C.A.No.7786/2002, C.A.No. 7790/2002, C.A.No.7672/2002, C.A. No.7289/2002, C.A.No.7723/2002, C.A.No. 8418/2002, C.A.No.7690/2002, C.A. No.8407/2002, C.A.No.7782/2002, C.A.No. 7725/2002, C.A.No.7695/2002, C.A. No.8404/2002, C.A.No.7662/2002, C.A.No. 7676/2002, C.A.No.7693/2002, C.A. No.7724/2002, C.A.No.7286/2002, C.A.No. 7670/2002, C.A.No.7688/2002, C.A. No.8405/2002, C.A.No.7787/2002, C.A.No. 7789/2002, C.A.No.8530/2002, C.A. No.8527/2002, C.A.No.8588/2002, C.A.No. 7776/2002, C.A.No.7667/2002, C.A. No.7783/2002,

C.A.No.7224/2002, C.A.No. 7699/2002, C.A.No.7698/2002, C.A. No.7120/2002, C.A.No.390/2003, C.A.No. 394/2003, C.A.No.397/2003, C.A.No. 399/2003, C.A.No.400/2003, C.A.No.413/2003, C.A.No.414/2003, C.A.No.415/2003, C.A.No.416/2003, C.A.No.417/2003, C.A.No.1057/2003, C.A.No.1012/2003, C.A.No.1018/2003, C.A.No.1488/2003, C.A.No.1489/2003, C.A.No.1492/2003, C.A.No.1493/2003, C.A.No.1494/2003, C.A.No.1495/2003, C.A.No.1499/2003, C.A.No.3256/2003, C.A.No.3910/2003, SLP(C)No.8758/2003, SLP(C)No.8760/2003, SLP(C)No.8764/2003, C.A.No.3955/2003, C.A.No.4068/2003, SLP(C)No.6079/2003, SLP(C)No.6081/2003, SLP(C)No.6083/2003, SLP(C)No.6084/2003, SLP(C)No.6085/2003, SLP(C)No.9600/2003, SLP(C)No.9663/2003, SLP(C)No.9666/2003, SLP(C)No.9669/2003, SLP(C)No.9060/2003, SLP(C)No.9061/2003, SLP(C)No.9062/2003, C.A.No.3657/2003, C.A.No.8417/2002, C.A.No.2692/2003, C.A.No.4082/2003, SLP(C)No.11676/2003, SLP(C)No.12592/2003, C.A.No.5473/2003, C.A.No.1010/2003, SLP(C)No.6082/2003, SLP(C)No.12594/2003, C.A.No.1013/2003, C.A.No.1019/2003, C.A.No.1960/2003, C.A.No.1964/2003, C.A.No.3382/2003, SLP(C)No.20283/2003, SLP(C)No.20285/2003, SLP(C)No.6299/2003, SLP(C)No.6302/2003, SLP(C)No.6303/2003, SLP(C)No.6304/2003, SLP(C)No.6305/2003, SLP(C)No.6306/2003, SLP(C)No.6307/2003, SLP(C)No.9715/2003, SLP(C)No.20289/2003, C.A.No.8504/2003, SLP(C)No.22189/2003, C.A.No.549/2003, SLP(C)No.23127/2003, C.A.No.8402/2002, C.A.No.392/2003, C.A.No.404/2003, C.A.No.405/2003, C.A.No.410/2003, C.A.No.1014/2003, C.A.No.1491/2003, C.A.No.1498/2003, C.A.No.3381/2003, C.A.No.8514/2002, C.A.No.1009/2003, C.A.No.7878/2002, C.A.No.7775/2002, C.A.No.7781/2002, SLP(C)No.12584/2003, SLP(C)No.12596/2003, SLP(C)No.12601/2003, SLP(C)No.12604/2003, SLP(C)No.14905/2003, SLP(C)No.12593/2003, C.A.No.8529/2002, C.A.No.7389/2002, C.A.No.393/2003, C.A.No.409/2003, C.A.No.9747/2003, C.A.No.7780/2002, C.A.No.8403/2002, C.A.No.7777/2002, SLP(C)No.14052/2003, SLP(C)No.14053/2003, C.A.No.7395/2002, C.A.No.7388/2002, C.A.No.407/2003, SLP(C)No.8765/2003, SLP(C)No.8766/2003, SLP(C)No.8763/2003, SLP(C)No.9190/2003, SLP(C)No.9670/2003, SLP(C)No.9665/2003, SLP(C)No.9662/2003, SLP(C)No.12583/2003, SLP(C)No.12587/2003, SLP(C)No.12588/2003, SLP(C)No.12589/2003, SLP(C)No.12591/2003, SLP(C)No.12599/2003, SLP(C)No.12603/2003, SLP(C)No.12605/2003, SLP(C)No.12606/2003, SLP(C)No.12607/2003, SLP(C)Nos.12608-12609/2003, SLP(C)No.12585/2003, SLP(C)No.12586/2003, SLP(C)No.14905/2003, SLP(C)No.15139/2003, SLP(C)No.17803/2003, SLP(C)Nos.17805-17806/2003, SLP(C)No.16414/2003, C.A.No.7397/2002, C.A.No.7385/2002, C.A.No.7390/2002, C.A.No.7875/2002, C.A.No.7778/2002, C.A.No.8399/2002, C.A.No.7774/2002, C.A.No.7879/2002, C.A.No.8398/2002, C.A.No.7232/2002, C.A.No.7236/2002, C.A.No.8401/2002, C.A.No.8586/2002, C.A.No.8528/2002, C.A.No.7287/2002, C.A.No.7779/2002, C.A.No.389/2003, C.A.No.391/2003, C.A.No.395/2003, C.A.No.401/2003, C.A.No.403/2003, C.A.No.408/2003, C.A.No.1011/2003, C.A.No.1016/2003, C.A.No.1015/2003, C.A.No.1017/2003, C.A.No.1020/2003, C.A.No.1490/2003, C.A.No.1496/2003, C.A.No.1961/2003, C.A.No.1962/2003, C.A.No.1963/2003, C.A.No.1966-1967/2003, C.A.No.1965/2003, C.A.No.3956/2003, C.A.No.3957/2003, C.A.No.3958/2003, C.A.No.3959/2003, C.A.No.3658/2003, C.A.Nos.411-412/2003, C.A.No.7386/2002, C.A.No.1021/2003, R.P.(C)No.1649/2003 in SLP(C)No.18369/2003, SLP(C)No.4275/2004 Not ready matters - listed for

directions C.A.No.7225/2002 , C.A. No.7285/2002, C.A. No.8589/2002, C.A. No.8587/2002, C.A. No.398/2003, C.A.No.1500/2003, C.A. No.1501/2003, SLP(C) No.8755/2003, SLP(C) No.6078/2003, SLP(C) No.6080/2003, SLP(C) No.9059/2003, SLP(C) No.9063/2003, SLP(C) No.9064/2003, SLP(C) No.12582/2003, SLP(C) No.12590/2003 SLP(C) No.12610/2003, SLP(C) No.16415/2003, SLP(C) No.6077/2003, SLP(C) No.15291/2003, SLP(C) No.20287/2003, SLP(C) No.20288/2003, SLP(C) No.23120/2003, SLP(C) No.23124/2003, SLP(C) No.23122/2003, SLP(C) No.6297/2003, SLP(C) No.6298/2003, SLP(C) No.6300/2003, SLP(C) No.6301/2003, SLP(C) No.9717/2003, C.A. No.1562/2004, with SLP(C) Nos.4853-4854/2004.

In this batch of matters the question is whether grant of interest at the rate of 18% per annum by the Consumer Forums in all cases is justifiable. As facts are varying, at this stage, this Court is only dealing with the question of law. Thereafter this Court shall take up each case separately.

The National Consumer Disputes Redressal Commission considered a bunch of matters, the lead matter being the case of Haryana Urban Development Authority vs. Darsh Kumar. The Commission held, in those cases, that in cases of deficiency of service by development authorities like HUDA and GDA, interest must be awarded at the rate of 18% per annum and that this would take into consideration the escalation in the cost of construction as well. Pursuant to this Judgment the National Commission has been disposing of all subsequent matters with a one paragraph order which, for all practical purposes, reads as under :-

"We have already taken a view in the case of Haryana Urban Development Authority vs. Darsh Kumar [Revision Petition No. 1197 of 1998], where we have upheld the award of interest at the rate of 18% per annum. We have provided for certain period during which the interest would not run. The impugned judgment is modified only to that extent. This Revision Petition is disposed of in terms of our judgment in the case of HUDA Vs. Darsh Kumar".

It has been shown to us that the facts are varying and different. Whilst facts of all cases cannot be set out by way of illustration it must be stated that in some cases even though monies had been paid and allotments had been made of flats/plots, the scheme itself got cancelled for some reason or the other. Possession was thus refused to be delivered of the flats/plots allotted to the allottees. In some cases, at a much later date, possession of some other flat/plot was offered at an increased rate. In some cases possession was offered but not taken by the party. In some cases even though the scheme was not cancelled and there was no refusal to deliver possession, yet possession was not delivered for a number of years even after monies had been received. In some cases the construction was of sub- standard quality or it was incomplete. In some of the cases the authority has demanded extra amounts from the party. In some cases the party had not paid the extra amounts whilst in some cases they had paid those amounts. The question, therefore, was of refund of those amounts wrongly collected. In some cases allotments were made and possession offered of flats/land which was encumbered or occupied by some other party. In some cases the party had asked for refund of amounts paid.

Irrespective of the type of case, irrespective of the amount of delay, the National Commission has been granting/confirming interest at the rate of 18% per annum without even going into the facts of the case. It must be mentioned that in some of the matters before us it has been pointed out that the District and the State Forums had granted interest at a lower rate. Appeals had been filed only by the authority. Yet the National Commission has, in the Appeal filed by the authority, increased the rate of interest to 18% per annum. The learned Attorney General submitted that the liability to pay interest only arises if there is any default or omission on the part of the Body which caused damage or prejudice to the allottee of the flat/plot. This submission requires to be accepted. However, in the context of the Consumer Protection Act the principles laid down in the case of Lucknow Development Authority vs. M. K. Gupta reported in (1994) 1 SCC 243 have to be kept in mind. In this case the question was whether a Development Authority rendered service to bring it within the purview of the Consumer Protection Act. It has been held that the Development Authority is rendering service. It has been also held as follows:-

"8. Having examined the wide reach of the Act and jurisdiction of the Commission to entertain a complaint not only against business or trading activity but even against service rendered by statutory and public authorities the stage is now set for determining if the Commission in exercise of its jurisdiction under the Act could award compensation and if such compensation could be for harassment and agony to a consumer. Both these aspects specially the latter are of vital significance in the present day context. Still more important issue is the liability of payment. That is, should the society or the tax payer be burdened for oppressive and capricious act of the public officers or it be paid by those responsible for it. The administrative law of accountability of public authorities for their arbitrary and even ultra vires actions has taken many strides. It is now accepted both by this Court and English Courts that the State is liable to compensate for loss or injury suffered by a citizen due to arbitrary actions of its employees. In *State of Gujarat v. Memon Mahomed Haji Hasam* [(AIR 1967 SC 1885: (1967) 3 SCR 938)] the order of the High Court directing payment of compensation for disposal of seized vehicles without waiting for the outcome of decision in appeal was upheld both on principle of bailee's 'legal obligation to preserve the property intact and also the obligation to take reasonable care of it to return it in the same condition in which it was seized' and also because the Government was, 'bound to return the said property by reason of its statutory obligation or to pay its value if it had disabled itself from returning it either by its own act or by act of its agents and servants'. It was extended further even to bona fide action of the authorities if it was contrary to law in *Lala Bishambar Nath v. Agra Nagar Mahapalika, Agra* [(1973) 1 SCC 788: AIR 1973 SC 1289]. It was held that where the authorities could not have taken any action against the dealer and their order was invalid, 'it is immaterial that the respondents had acted bona fide and in the interest of preservation of public health. Their motive may be good but their orders are illegal. They would accordingly be liable for any loss caused to the appellants by their action.' The theoretical concept that King can do no wrong has been abandoned in England itself and the State is now held responsible for tortuous act of its servants. The First Law Commission constituted after coming into force of

the Constitution on liability of the State in tort, observed that the old distinction between sovereign and non-sovereign functions should no longer be invoked to determine liability of the State. Friedmann observed:

"It is now increasingly necessary to abandon the lingering fiction of a legally indivisible State, and of a feudal conception of the Crown, and to substitute for it the principle of legal liability where the State, either directly or through incorporated public authorities, engages in activities of a commercial, industrial or managerial character. The proper test is not an impracticable distinction between governmental and non-governmental function, but the nature and form of the activity in question."

Even *Kasturi Lal Ralia Ram Jain v. State of U.P.* [AIR 1965 SC 1039: (1965) 1 SCR 375: (1966) 2 LLJ 583] did not provide any immunity for tortuous acts of public servants committed in discharge of statutory function if it was not referable to sovereign power. Since house construction or for that matter any service hired by a consumer or facility availed by him is not a sovereign function of the State the ratio of *Kasturi Lal* could not stand in way of the Commission awarding compensation. We respectfully agree with Mathew, J. in *Shyam Sunder v. State of Rajasthan* (1974) 1 SCC 690 that it is not necessary, 'to consider whether there is any rational dividing line between the so-called sovereign and proprietary or commercial functions for determining the liability of the State' (SCC p. 695, para 20). In any case the law has always maintained that the public authorities who are entrusted with statutory function cannot act negligently. As far back as 1878 the law was succinctly explained in *Geddis v. Proprietors of Bann Reservoir* (1878) 3 AC 430 thus:

"I take it, without citing cases, that it is now thoroughly well established that no action will lie for doing that which the Legislature has authorised, if it be done without negligence, although it does occasion damage to anyone; but an action does lie for doing what the Legislature has authorised, if it be done negligently."

Under our Constitution sovereignty vests in the people. Every limb of the constitutional machinery is obliged to be people oriented. No functionary in exercise of statutory power can claim immunity, except to the extent protected by the statute itself. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour before authorities created under the statute like the commission or the courts entrusted with responsibility of maintaining the rule of law. Each hierarchy in the Act is empowered to entertain a complaint by the consumer for value of the goods or services and compensation. The word 'compensation' is again of very wide connotation. It has not been defined in the Act. According to dictionary it means, 'compensating or being compensated; thing given as recompense;'. In legal sense it may constitute actual loss or expected loss and may extend to physical mental or even emotional suffering, insult or injury or loss. Therefore, when the Commission has been vested with the jurisdiction to award value of goods or services and compensation it has to be construed widely enabling the Commission to determine compensation for any loss or damage suffered by a consumer which in law is otherwise included in wide meaning of compensation. The provision in our opinion enables a consumer to claim and empowers the Commission to redress any injustice done to him. Any other construction would defeat the very purpose of the Act. The Commission or the Forum in the Act is thus entitled to

award not only value of the goods or services but also to compensate a consumer for injustice suffered by him."

This Court then went on to hold as follows:

"10. Who should pay the amount determined by the Commission for harassment and agony, the statutory authority or should it be realised from those who were responsible for it? Compensation as explained includes both the just equivalent for loss of goods or services and also for sufferance of injustice. For instance in Civil Appeal No.... of 1993 arising out of SLP (Civil) No.659 of 1991 the Commission directed the Bangalore Development Authority to pay Rs.2446 to the consumer for the expenses incurred by him in getting the lease-cum-sale agreement registered as it was additional expenditure for alternative site allotted to him. No misfeasance was found. The moment the authority came to know of the mistake committed by it, it took immediate action by allotting alternative site to the respondent. It was compensation for exact loss suffered by the respondent. It arose in due discharge of duties. For such acts or omissions the loss suffered has to be made good by the authority itself. But when the sufferance is due to mala fide or oppressive or capricious acts etc. of a public servant, then the nature of liability changes. The Commission under the Act could determine such amount if in its opinion the consumer suffered injury due to what is called misfeasance of the officers by the English Courts. Even in England where award of exemplary or aggravated damages for insult etc. to a person has now been held to be punitive, exception has been carved out if the injury is due to, 'oppressive, arbitrary or unconstitutional action by servants of the Government' (Salmond and Heuston on the Law of Torts). Misfeasance in public office is explained by Wade in his book on Administrative Law thus:

"Even where there is no ministerial duty as above, and even where no recognised tort such as trespass, nuisance, or negligence is committed, public authorities or officers may be liable in damages for malicious, deliberate or injurious wrong-doing. There is thus a tort which has been called misfeasance in public office, and which includes malicious abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury." (p.777).

The jurisdiction and power of the courts to indemnify a citizen for injury suffered due to abuse of power by public authorities is founded as observed by Lord Hailsham in *Cassell & Co. Ltd. v. Broome* [1972 AC 1027: (1972) 1 All ER 801] on the principle that, 'an award of exemplary damages can serve a useful purpose in vindicating the strength of law'. An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law. It acts as a check on arbitrary and capricious exercise of power. In *Rookes v. Barnard* [1964 AC 1129: (1964) 1 All ER 367, 410] it was observed by Lord Devlin, 'the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service'. A public functionary if he acts

maliciously or oppressively and the exercise of powers results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it. Compensation or damage as explained earlier may arise even when the officer discharges his duty honestly and bona fide. But when it arises due to arbitrary or capricious behaviour then it loses its individual character and assumes social significance. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. Crime and corruption thrive and prosper in the society due to lack of public resistance. Nothing is more damaging than the feeling of helplessness. An ordinary citizen instead of complaining and fighting succumbs to the pressure of undesirable functioning in offices instead of standing against it. Therefore the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally but helps in curing social evil. It may result in improving the work culture and help in changing the outlook. Wade in his book Administrative Law has observed that it is to the credit of public authorities that there are simply few reported English decisions on this form of malpractice, namely, misfeasance in public offices which includes malicious use of power, deliberate maladministration and perhaps also other unlawful acts causing injury. One of the reasons for this appears to be development of law which apart, from other factors succeeded in keeping a salutary check on the functioning in the government or semi-government offices by holding the officers personally responsible for their capricious or even ultra vires action resulting in injury or loss to a citizen by awarding damages against them. Various decisions rendered from time to time have been referred to by Wade on Misfeasance by Public Authorities. We shall refer to some of them to demonstrate how necessary it is for our society. In *Ashby v. White* (1703) 2 Ld. Raym 938 the House of Lords invoked the principle of *ubi jus ibi remedium* in favour of an elector who was wrongfully prevented from voting and decreed the claim of damages. The ratio of this decision has been applied and extended by English Courts in various situations. In *Roncarelli v. Duplessis* (1959) 16 DLR 2d 689 the Supreme Court of Canada awarded damages against the Prime Minister of Quebec personally for directing the cancellation of a restaurant-owner's liquor licence solely because the licensee provided bail on many occasions for fellow members of the sect of Jehovah's Witnesses, which was then unpopular with the authorities. It was observed that, 'what could be more malicious than to punish this licensee for having done what he had an absolute right to do in a matter utterly irrelevant to the Alcoholic Liquor Act? Malice in the proper sense is simply acting for a reason and purpose knowingly foreign to the administration, to which was added here the element of intentional punishment by what was virtually vocation outlawry. In *Smith v. East Elloe Rural District Council* [1956 AC 736: (1956) 1 All ER 855] the House of Lords held that an action for damages might proceed against the clerk of a local authority personally on the ground that he had procured the compulsory purchase of the plaintiff's property wrongfully and in bad faith. In *Farrington v. Thompson* [1959 UR 286] the Supreme Court of Victoria awarded damages for exercising a power the authorities knew they did not possess. A licensing inspector

and a police officer ordered the plaintiff to close his hotel and cease supplying liquor. He obeyed and filed a suit for the resultant loss. The Court observed:

"Now I take it to be perfectly clear, that if a public officer abuses his office, either by an act of omission or commission, and the consequence of that is an injury to an individual, an action may be maintained against such public officer."

In *Wood v. Blair* [The Times, July 3, 4, 5, 1957 (Hallet J and Court of Appeal)] a dairy farmer's manageress contracted typhoid fever and the local authority served notices forbidding him to sell milk, except under certain conditions. These notices were void, and the farmer was awarded damages on the ground that the notices were invalid and that the plaintiff was entitled to damages for misfeasance. This was done even though the finding was that the officers had acted from the best motives.

11. Today the issue thus is not only of award of compensation but who should bear the brunt. The concept of authority and power exercised by public functionaries has many dimensions. It has undergone tremendous change with passage of time and change in socio-economic outlook. The authority empowered to function under a statute while exercising power discharges public duty. It has to act to subserve general welfare and common good. In discharging this duty honestly and bona fide, loss may accrue to any person. And he may claim compensation which may in circumstances be payable. But where the duty is performed capriciously or the exercise of power results in harassment and agony then the responsibility to pay the loss determined should be whose? In a modern society no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no result. The culture of window clearance appears to be totally dead. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated and it erodes the credibility in the system. Public administration, no doubt involves a vast amount of administrative discretion which shields the action of administrative authority. But where it is found that exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover. When a citizen seeks to recover compensation from a public authority in respect of injuries suffered by him for capricious exercise of power and the National Commission finds it duly proved then it has a statutory obligation to award the same. It was never more necessary than today when even social obligations are regulated by grant of statutory powers. The test of permissive form of grant is over. It is now imperative and implicit in the exercise of power that it should be for the sake of society. When the Court directs payment of damages or compensation against the State the ultimate sufferer is the common man. It is the tax payers' money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with law. It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately

where there are more than one functionaries."

We are in full agreement with what is observed herein. Thus the law is that the Consumer Protection Act has a wide reach and the Commission has jurisdiction even in cases of service rendered by statutory and public authorities. Such authorities become liable to compensate for misfeasance in public office i.e. an act which is oppressive or capricious or arbitrary or negligent provided loss or injury is suffered by a citizen. The word compensation is of a very wide connotation. It may constitute actual loss or expected loss and may extend to compensation for physical, mental or even emotional suffering, insult or injury or loss. The provisions of the Consumer Protection Act enables a consumer to claim and empower the Commission to redress any injustice done. The Commission or the Forum is entitled to award not only value of goods or services but also to compensate a consumer for injustice suffered by him. The Commission/Forum must determine that such sufferance is due to malafide or capricious or oppressive act. It can then determine amount for which the authority is liable to compensate the consumer for his sufferance due to misfeasance in public office by the officers. Such compensation is for vindicating the strength of law. It acts as a check on arbitrary and capricious exercise of power. It helps in curing social evil. It will hopefully result in improving the work culture and in changing the outlook of the officer/public servant. No authority can arrogate to itself the power to act in a manner which is arbitrary. Matters which require immediate attention should not be allowed to linger on. The consumer must not be made to run from pillar to post. Where there has been capricious or arbitrary or negligent exercise or non exercise of power by an officer of the authority, the Commission/Forum has a statutory obligation to award compensation. If the Commission/Forum is satisfied that a complainant is entitled to compensation for loss or injury or for harassment or mental agony or oppression, then after recording a finding it must direct the authority to pay compensation and then also direct recovery from those found responsible for such unpardonable behaviour.

At this stage itself it must be mentioned that learned Attorney General had relied upon the case of Ghaziabad Development Authority vs. Union of India reported in (2000) 6 SCC 113 wherein, whilst considering a case of breach of contract under Section 73 of the Contract Act, it has been held that no damages are payable for mental agony in cases of breach of ordinary commercial contracts. This Court considered the case of Lucknow Development Authority (supra) and held that liability for mental agony had been fixed not within the realms of contract but under principles of administrative law. In this case the award towards mental agony was deleted on the ground that these were no pleadings to that effect and no finding on that point. This authority does not take a contrary view to the principles laid down in Lucknow Development Authority's case but merely differentiates it on facts. Thus where there is a specific finding of misfeasance in public office compensation for mental agony can be granted. If there are findings of misfeasance in public office then the principles set out in this authority will have no application and the principles set out in Lucknow Development Authority's case (supra) would apply. In such cases it would be open for the Commission/Forums to grant compensation for mental agony.

However, the power to and duty to award compensation does not mean that irrespective of facts of the case compensation can be awarded in all matters at a uniform rate of 18% per annum. As seen above what is being awarded is compensation i.e. a recompense for the loss or injury. It therefore

necessarily has to be based on a finding of loss or injury and has to correlate with the amount of loss or injury. Thus the Forum or the Commission must determine that there has been deficiency in service and/or misfeasance in public office which has resulted in loss or injury. No hard and fast rule can be laid down, however a few examples would be where an allotment is made, price is received/paid but possession is not given within the period set out in the brochure. The Commission/Forum would then need to determine the loss. Loss could be determined on basis of loss of rent which could have been earned if possession was given and the premises let out or if the consumer has had to stay in rented premises then on basis of rent actually paid by him. Along with recompensing the loss the Commission/Forum may also compensate for harassment/injury both mental and physical. Similarly, compensation can be given if after allotment is made there has been cancellation of scheme without any justifiable cause.

That compensation cannot be uniform and can best of illustrated by considering cases where possession is being directed to be delivered and cases where only monies are directed to be returned. In cases where possession is being directed to be delivered the compensation for harassment will necessarily have to be less because in a way that party is being compensated by increase in the value of the property he is getting. But in cases where monies are being simply returned then the party is suffering a loss inasmuch as he had deposited the money in the hope of getting a flat/plot. He is being deprived of that flat/plot. He has been deprived of the benefit of escalation of the price of that flat/plot. Therefore the compensation in such cases would necessarily have to be higher. Further if the construction is not of good quality or not complete, the compensation would be the cost of putting it in good shape or completing it along with some compensation for harassment. Similarly, if at the time of giving possession a higher price or other amounts is collected unjustifiably and without there being any provision for the same the direction would be to refund it with a reasonable rate of interest. If possession is refused or not given because the consumer has refused to pay the amount, then on the finding that the demand was unjustified the consumer can be compensated for harassment and a direction to deliver possession can be given. If a party who has paid the amount is told by the authority that they are not in a position to ascertain whether he has paid the amount and that party is made to run from pillar to post in order to show that he has paid the amount, there would be deficiency of service for which compensation for harassment must be awarded depending on the extent of harassment. Similarly, if after delivery of possession, the sale deeds or title deeds are not executed without any justifiable reasons, the compensation would depend on the amount of harassment suffered. We clarify that the above are mere examples. They are not exhaustive. The above shows that compensation cannot be the same in all cases irrespective of the type of loss or injury suffered by the consumer. As has been set out hereinabove, the National Forum has been awarding interest at a flat rate of 18% per annum irrespective of the facts of each case. This, in our view, is unsustainable. Award of compensation must be under different separate heads and must vary from case to case depending on the facts of each case. At this stage, it must be mentioned that the National Forum has, in its Judgment in Darsh Kumar's case (supra) stated that the interest at the rate of 18% per annum takes into consideration the escalation in the cost of construction as well. Even if that be so the compensation cannot be at a uniform rate. If the delay is only of one or two years the escalation in the cost of construction will not be as much as in a case where the delay is of five years or more. Therefore, if compensation has to be awarded for escalation in the costs of construction, it must be done under that head after taking into consideration the amount of delay.

Such compensation can be fixed on the basis of indexes of bodies like CPWD or PWD. Further, it must be noted that where a flat is allotted and possession given even though it is given belatedly there will be no question of escalation in the cost of construction. Yet, even in such cases interest at the rate 18% per annum including escalation in the cost of construction has been granted. Further in cases where the Commission/Forum has directed delivery of possession the party has to a certain extent has already got a benefit. The cost of the land/flat would have gone up in the meantime. Of course, even in cases where delivery of possession has been directed there could be compensation for the harassment/loss. But such compensation has to be worked out after looking into the facts of each case and after determining what is the amount of harassment/loss which had been caused to the consumer. The National Forum in the lead judgment has considered the authorities of this Court in the case of Ghaziabad Development Authority vs. Dhanesh Chand Goel [SLP (Civil) no. 11315/2000) decided on 12th January, 2001 arising from the order of the MRTD Commission dated 22nd February, 2000] and the case of Haryana Urban Development Authority vs. Rajnish Chander Sharde reported in JT 2000 (8) SC 154. From these decisions, the National Forum has concluded that award of interest at the rate of 18% per annum on amount deposited by the allottee where there is a delay in handing over possession is reasonable and could be awarded on equitable grounds. In our view, this conclusion of the National Forum is not correct. In Dhanesh Chand Goel's case (supra) the facts were gross. Those facts have been set out in the order of the National Forum itself. Those facts show that GDA started a scheme for allotment of houses in Governdpuram. Dhanesh Chand had applied for allotment. He had paid the amount. He had been intimated on 16th November, 1993 that he had been allotted a house, as per the draw held on 20th October, 1993. Thereafter in 1996 he was informed that there was an increase in the price. He did not pay the increased amount and therefore possession was not given to him. It appears that the flat which had been allotted to him was thereafter allotted to one Shanti Suraksha Bal. Shri Dhanesh Chand was asked to give his option for allotment in some other scheme at a different place. It is under those circumstances that refund was directed with interest at the rate of 18% per annum. This Court while dismissing the Special Leave Petition was careful enough to record that the rate of 18% interest per annum was reasonable given the facts recorded by the lower authority. Thus, this case shows that if the facts are gross then 18% interest could be given but the Forum must first conclude that the facts justified grant of interest at such a rate. Similarly, in Rajnish Chander Sharde's case (supra), the facts were such that they justified a grant of interest at the rate of 18% per annum. This Court has noted that there was delay in delivery of possession and in the meantime the complainant had been compelled to live in rented accommodation and pay Rs.1600/- per month. This Court has noted that interest at 18% was given instead of directing the body to compensate for the loss caused i.e. at the rate of Rs.1600/- per month. It is on those facts this Court upheld the grant of interest @ 18% per annum. Far from showing that these authorities justify grant of interest at 18% in all cases irrespective of the facts, the authorities of this Court clearly indicate that interest at such rate is to be granted only when the facts so justify.

The learned Attorney General submitted that interest is to be awarded taking into consideration the rates of interest which would be payable by Financial Institutions if amounts are deposited with them. He submitted that the Interest Act, 1978 is applicable even to a Tribunal. He pointed out that under the Interest Act the "current rate of interest" would mean the highest of the maximum rates at which interest may be paid on different classes of deposits by different classes of scheduled banks in

accordance with the directions given or issued by the Reserve Bank of India under the Banking Regulations Act, 1949. He relied on Section 3 of the Interest Act which provides that in any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest. He submitted that the Commission whilst awarding interest has to follow the provisions of the Interest Act. He submitted that the same principles apply under Section 34 of the Code of Civil Procedure.

The learned Attorney General relied upon the case of Central Bank of India vs. Ravindra reported in (2002) 1 SCC 367, wherein interest has been defined as follows:

"37. Black's Law Dictionary (7th Edn.) defines "interest"

inter alia as the compensation fixed by agreement or allowed by law for the use or detention of money, or for the loss of money by one who is entitled to its use; especially, the amount owed to a lender in return for the use of the borrowed money. According to Stroud's Judicial Dictionary of Words And Phrases (5th Edn.) interest means, inter alia, compensation paid by the borrower to the lender for deprivation of the use of his money. In *Secy., Irrigation Deptt., Govt. Of Orissa v. G.C. Roy* [(1992) 1 SCC 508] the Constitution Bench opined that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages.... this is the principles of section 34 of the Civil Procedure Code. In *Sham Lal Narula (Dr) v. CIT* [AIR 1964 SC 1878:(1964) 7 SCR 668] this Court held that interest is paid for the deprivation of the use of the money. The essence of interest in the opinion of Lord Wright, in *Riches v. Westminster Bank Ltd.* [(1947) 1 All ER 469: 1947 AC 390(HL)] All ER at p. 472 is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had had the use of the money, or, conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation; the money due to the creditor was not paid, or, in other words, was withheld from him by the debtor after the time when payment should have been made, in breach of his legal rights, and interest was a compensation whether the compensation was liquidated under an agreement or statute. A Division Bench of the High Court of Punjab speaking through Tek Chand, J. In *CIT v. Dr. Sham Lal Narula* [AIR 1963 Punj 411:(1963) 50 ITR 513] thus articulated the concept of interest: (AIR p. 414, para 8) "8. The words 'interest' and 'compensation' are sometimes used interchangeably and on other occasions they have distinct connotation. 'Interest' in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. In its narrow sense, 'interest' is understood to mean the amount which one has contracted to pay for use of borrowed money. ... In whatever category 'interest' in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money, belonging to another, or for the delay in paying money after it has become payable."

In this case it is also observed that the Reserve Bank of India has supervisory role over banking. It is observed that Reserve Bank of India has been issuing directions/circulars dealing with rates of interest. It is held that the Reserve Bank of India circulars can be treated as standards regarding rates of interest. The learned Attorney General then referred to the case of *In Defence of Arnit Das vs. State of Bihar* reported in (2001) 2 SCC 9, wherein, in the context of a claim under the Motor Vehicles Act, this Court has noted that with the change in economy and policy of Reserve Bank of India the interest rates are lowered. Interest at the rate of 9% was granted on the footing that nationalised banks now grant interest at that rate on fixed deposits for one year. It was pointed out that this reasoning was approved by this Court in the case of *United India Inausrance Co. Ltd. Vs. Patricia Jean Mahajan* reported in (2002) 6 SCC 281.

The learned Attorney General also relied on the case of *Bihar State Housing Board vs. Prio Ranjan Roy* reported in (1997) 6 SCC 487 wherein it is held that where damages are awarded there must be assessment thereof. It is held that the Order awarding damages must contain an indication of the basis upon which the amount awarded is arrived at. It was held that in the Order there must be some statement about the relationship between the amount awarded and the default and unjustifiable delay and harassment found to have been caused. This Court then remitted the matter back to National Commission for consideration of the aspect of compensation de-hors. It was directed that if damages are awarded reasons must be set out. The learned Attorney General also relied upon the case of *Prashant Kumar Shahi vs. Ghaziabad Development Authority* reported in (2000) 4 SCC 120. In this case it has been held that facts would have to be looked into to ascertain whether the authority or the allottee was responsible for the alleged delay. There can be no dispute to the principles laid down in *Prashant Kumar Shahi's* case and *Bihar State Housing Board's* case (*supra*). It is on these principles that it is already held that awarding interest at a flat rate of 18% is not justified. It is clear that in all these cases interest is being awarded as and by way of compensation/damages. Whilst so awarding it must be shown that there is relationship between the amount awarded and the default/unjustifiable delay/harassment. It is thus necessary that there be separate awards under each such head with reasons why such award is justified. However, the principles that interest must be granted at the current rate of interest is only applicable where the proceeding are for recovery of debt or damages. They apply where a refund of amount is being claimed and the direction is to refund amounts with interest. The principles which govern grant of interest do not apply to grant of compensation. For this reason also it becomes necessary to consider facts and award damage/compensation under various heads.

That brings to the question as to the date from which interest would be payable. Normally in cases of refund interest will be payable from the date the monies were deposited with the body till they are returned either by payment to that party or deposited in a Court. In cases where compensation is directed to be paid, the Commission/Forum must direct payment within a particular period and further direct that if payment is not made within that time the authority will also pay interest. Such interest must be based on the current rate of interest.

Now we come to the question as to what is to be done in all these matters where the Commission/Forum has already passed the stereo-type order set out above. To remit all matters back to the Commission would cause undue hardship and unnecessary costs to the Consumer, many

of whom are appearing in person as they cannot afford a lawyer. In all future matters the Commission/Forum must now award compensation under various heads if it concludes that there has been deficiency of service or misfeasance in public office. So far as this bunch of matters is concerned instead of remitting them back we consider it expedient to take up each matter ourselves. If we find that the Forum/Commission has on facts found deficiency of service or misfeasance in public office, then depending on facts of that case we may not interfere with the award of interest. We will then treat it to be in lieu of compensation. We may however vary the rate of interest depending on facts of each case. Just by way of example we take two instances set out below.

In a Scheme known as "Karpuripuram Scheme" plots were allotted, monies collected. However thereafter the scheme was cancelled. In some of the matters we have seen that the District Forum has recorded that the authority could give no explanation as to why the Scheme was cancelled. Before us some sort of explanation is sought to be given. In our view, irrespective of whether there was genuine reason to cancel or not, the monies must be returned with interest at the rate of 18%. We say so because it is clear that even if the body has not already floated another scheme on the same land it is clear that the body is going to derive great profit from this land and therefore compensating the allottee with interest at 18% per annum is just and fair.

In Civil Appeal No. 7224 of 2002 the Respondent had applied for a house in a Scheme floated in 1992. He had paid the entire cost. He had been allotted a flat and issued a reservation letter. Yet no possession was given. Thereafter, in 1996 the Respondent was informed that for unavoidable reasons the house has been allotted to somebody else and if he desires, he can obtain an alternate flat at a much higher price. This therefore is also a case where absolutely no justifiable reason why the party has not been delivered possession of the flat which had been allotted to him nor has any offer been made to return his money with interest. Instead the body has asked the party to apply for an alternate flat at a higher rate. In our view, on these facts the award of interest at the rate 18% is justified. It is not just interest on the amount invested but is also compensation for the harassment and agony caused to the allottee. We have given these two instances only by way of illustrations.

As stated above the interest, in both these cases, will be payable from the date the monies were paid till they are retained or deposited in Court/Tribunal. We however clarify that merely because we are maintaining awards of interest it must not be taken to mean that in future the Commission/Forum must not work out compensation under various heads and that they can continue to grant interest only by way of damage/compensation.

We clarify that in all cases where interest has already been paid @ 18% irrespective of the above order, the authority will not be entitled to call upon the party to refund the amount which have already been paid.

Another point also requires consideration at this stage. In the lead Judgment the National Commission has held that no interest is payable for the period 24/4/1991 to 16/12/1993 as during that period there was a stay order passed by the Allahabad High Court in operation. Some of the allottees have filed Appeals challenging that portion of the Order. It is contended, on their behalf that there was no stay order in respect of the plots allotted to them. It was contended that the

authority cannot justify non-delivery to them. As against this it is pointed out that this Court has already in the case of G.D.A. vs. Sanchar Vihar Sahkari Avas Samiti Ltd. reported in (1996) 9 SCC 314 upheld the view of the National Commission in refusing interest or damages for the period during which the stay operated. It is also pointed out that the Commission had deputed the Vice-Chairman to enquire and report whether the authority was prevented from delivering possession to all due to the stay order. It is pointed out that the Vice-Chairman had submitted a Report pointing out that even though the stay Order was not in respect of all plots, yet the authority could not deliver possession of any plot as well the pipelines and other infrastructural work had to be taken through the plots in respect of which the stay Order operated. As per the Report of the Vice Chairman the authority was prevented, by the stay Order, from delivering possession to anybody. The National Commission has accepted this Report. We see no reason to take a different view, particularly when another Bench has already refused to interfere on this aspect.

Before we part with this Order, we have to mention that many parties complained to us that even the undisputed amounts had not been paid to them. This was disputed on behalf of the authorities. However, it is clear that the amounts were paid/deposited belatedly. We therefore clarify that unless there is a stay obtained from a higher forum, the mere fact of filing of an Appeal/Revision will not entitle the authority to not comply with the Order of the Forum. Even though the authority may have filed an Appeal/Revision, if no stay is obtained or if stay is refused, the Order must be complied with. In such cases the higher forum should, before entertaining the Appeal/Revision, ensure that the Order is first complied with.

The matters are adjourned for two weeks.