

SHAKEEL AHMED

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v.

UNION OF INDIA & ORS.

(Writ Petition (Civil) No. 182 of 2001)

NOVEMBER 4, 2022

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**[SANJAY KISHAN KAUL, ABHAY S. OKA AND  
VIKRAM NATH, JJ.]**

*Directions – Direction issued to the State Government to implement the recommendations – Government of Maharashtra in the aftermath of communal riots and bomb blasts that occurred in Mumbai between December 1992 and March 1993 constituted a Commission – The Commission submitted its report in February 1998, which contained recommendations on various issues, including the causes of the riots, inadequate measures taken by the police, failure to register crimes, delay in the disposal of criminal cases, political interference in the functioning of the police machinery, and lack of physical fitness among police personnel – Petitioner invoked the jurisdiction of the Supreme Court u/Art. 32 of the Constitution of India, seeking directions to the respondents to accept and act on the findings and recommendations of the Commission – Petitioner alleged that many of the recommendations have not been implemented – Held: The Court formed a committee to monitor implementation of the judgment – The State government was ordered to provide a report on missing persons, compensate legal heirs, pay interest on compensation, and provide details of pending cases – The Government was given nine months to complete the exercise – State directed to implement recommendations made on the issue of police reforms and constitute a special cell to trace missing accused persons.*

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**Disposing of the writ petition, the Court**

**HELD:1. Following order was passed in disposing the petition -**

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- 1. There shall be a Committee headed by the Member Secretary of MSLSA to monitor the implementation of the directions issued by this Judgment. The State Government shall appoint a Revenue Officer, not below the rank of Deputy**

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- A **Collector, and a Police Officer, not below the rank of Assistant Commissioner of Police, who shall be the other two members of the Committee;**
  - 2. The State Government shall submit to the Committee a report containing details of 168 missing persons including their names and addresses. The State Government will also place material regarding efforts made to trace family members of 108 missing persons who have been deprived of compensation in terms of the second Government Resolution. The State Government shall make all possible efforts to trace the legal heirs/ family members of the missing persons. The Committee shall monitor this exercise. The Committee shall assist the legal representatives of the missing persons to complete the procedural formalities;**
  - 3. The State Government shall also submit to the Committee the record relating to compensation paid in terms of the Annexure to the First Government Resolution as well as in terms of the second Government Resolution by incorporating the specific dates on which the compensation was actually paid to the persons entitled to it. The State Government shall also provide a list of victims who have not been paid compensation in terms of both the Government Resolutions;**
  - 4. The State Government shall pay compensation of Rs.2 lakhs to the legal heirs of the missing persons traced out hereafter, with interest at the rate of 9% per annum from 22<sup>nd</sup> January 1999 i.e. from the expiry of the period of six months from the date of the second Government Resolution, till actual payment;**
  - 5. The Committee consisting of the Secretary of MSLSA and the other two Government Officers appointed under this order, shall monitor the efforts of the State Government to trace other victims who were entitled to compensation in terms of the Annexure to the first Government Resolution but compensation was not paid to them. The victims identified hereafter shall also be paid the compensation with interest at the rate of 9% per annum from 8<sup>th</sup> January 1994 i.e. from the expiry of the period of six months from the date of the First Government Resolution, till actual payment;**
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**6. To those who were paid compensation after the expiry of the period of six months from the date of the applicable Government Resolution, the State Government shall pay interest at the rate of 9% per annum on the amount of the compensation payable from the expiry of the period of six months from the date of the applicable Government Resolution till the date of payment. This direction will apply to those who have received compensation before the date of this Judgment. The Committee, after examining the record, shall furnish to the State Government the details of the victims who are entitled to receive interest as above;**

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**7. The State Government shall comply with the requirement of submitting necessary details as aforesaid to the Committee within a period of two months from today. Appointment of the two officers, as directed above, shall be made within a period of one month from today. Both the Government Officers shall coordinate with concerned Departments and ensure that necessary details, as directed by the Committee, are furnished to the Committee within the specified time of two months;**

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**8. The entire exercise of payment of compensation and/or interest shall be completed by the State Government within a period of nine months from today. The State Government shall report compliance made from time to time to the Committee. A detailed report containing details of the compliance of the directions as aforesaid shall be filed by the Secretary of MSLSA with this Court within a period of ten months from today;**

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**9. The Committee shall seek necessary guidance from the Executive Chairperson of MSLSA for implementation of the directions issued by this order. The Committee shall be entitled to seek the assistance of Para Legal volunteers;**

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**10. The State Government shall provide details of the only pending riot related criminal case before the Sessions Court at Mumbai to the Registrar General of the Bombay High Court who shall bring it to the notice of the concerned Court that the case needs to be disposed of at the earliest;**

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**11. The State Government shall provide details of 97 cases on dormant files to the Registrar General of the Bombay High Court within one month from today. On receipt of the details, the**

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- A **High Court on the Administrative side shall issue necessary communication to the concerned Courts in which the cases are pending to take necessary steps to trace the accused. The State Government shall immediately constitute a Special Cell to trace the absconding /missing accused in these cases and to assist the concerned Courts so that the Trial can proceed against them;**
- B **and**
- 12. The State Government shall expeditiously implement all the recommendations made by the Commission on the issue of reforms in the police force which were accepted by it. [Para 28][725-D-H; 726-A-H; 727-A-G]**

C CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No.182 of 2001.

(Under Article 32 Of The Constitution of India)

- D Sanjay Jain, ASG, Colin Gonsalves, Sr. Adv., Dr. Nafis A. Siddiqui, Ejaz Maqbool, Saif Zia, Sadiq Noor, Ms. Jyoti Mendiratta, Ms. Binu Tamta, Shivaji M. Jadhav, Brij Kishore Shah, Adarsh Kumar Pandey, Ms. Shivani Rautela, Ms. Apurva, P. Parmeswaran, B. Krishna Prasad, V. N. Raghupathy, Rahul Chitnis, Sachin Patil, Aaditya A. Pande, Geo Joseph, Ms. Shwetal Shepal, Durgesh Gupta, Ms. Swarupama Chaturvedi, Ms. Nachiketa Joshi, T. S. Sabarish, Padmesh Mishra, Arvind Kumar Sharma, Advs. for the appearing parties.
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The Judgment of the Court was delivered by

**ABHAY S. OKA, J.**

- F **FACTUAL ASPECTS**
- G 1. The city of Mumbai had a torrid time from 6<sup>th</sup> December 1992 till 12<sup>th</sup> March 1993. Mumbai witnessed perhaps the worst mob frenzy, violence, communal tension and riots from 6<sup>th</sup> December 1992 to 10<sup>th</sup> December 1992 and from 6<sup>th</sup> January 1993 to 20<sup>th</sup> January 1993. There were many incidents of arson and violence resulting in a large-scale loss of lives and damage to properties. The Police resorted to firing at many places. Ultimately, Army was called to aid the civil administration. Thereafter, the situation was gradually brought under control. When the citizens of Mumbai were about to breathe a sigh of relief, there were serial bomb blasts in various parts of the city on 12<sup>th</sup> March 1993. In
- H December 1992 and January 1993, there were about 900 deaths, 168

persons were reported missing and about 2036 persons suffered injuries. A  
As a result of the serial bomb blasts of 12<sup>th</sup> March 1993, there were 257  
deaths and 1400 people were injured.

2. The Government of Maharashtra by a notification dated 25<sup>th</sup> January 1993 constituted a Commission under the Commissions of Inquiry Act, 1952 (for short, ‘the 1952 Act’) headed by Hon’ble Shri Justice B.N. Srikrishna, the then sitting Judge of the High Court of Judicature at Bombay, who subsequently retired as a Judge of this Court. The Terms of Reference of the Commission were as under:

- “(i) The circumstances, events and immediate causes of the incidents which occurred in the Bombay Police Commissionerate area in December 1992 on or after the 6<sup>th</sup> December 1992 and, again in January 1993, on or after the 6<sup>th</sup> January 1993; C
- (ii) Whether any individual or group of individuals or any other organizations, were responsible for such events and circumstances; D
- (iii) The adequacy or otherwise of the precautionary and preventive measures, taken by the Police preceding the aforesaid incidents;
- (iv) Whether the steps taken by the Police in controlling the riots were adequate and proper and whether the Police firing resulting in deaths was justified or not; and E
- (v) The measures, long and short term, which are required to be taken by the administration to avoid recurrence of such incidents, to secure communal harmony and also to suggest improvements in law and order machinery.” F

3. Subsequently, the Terms of Reference of the Commission were expanded by the State Government and the following additional terms were incorporated:

- “(vi) The circumstances and the immediate cause of the incidents commonly known as the serial bomb-blasts of the 12<sup>th</sup> March 1993, which occurred in the Bombay Police Commissionerate area; G
- (vii) Whether the incidents referred to in term (i), have any common link with the incidents referred to in term (vi) above; and H

- A (viii) Whether the incidents referred to in term (i) and in term (vi) were part of a common design.”

- By a notification dated 23<sup>rd</sup> January 1996, the State Government disbanded the Commission on a very strange ground that there was an inordinate delay on the part of the Commission in submitting its report.
- B As noted in the report of the Commission, the then Hon’ble Prime Minister requested the Chief Minister of Maharashtra to revive the Commission and that is how it was revived by the notification dated 28<sup>th</sup> May 1996. The Commission submitted its report on 16<sup>th</sup> February 1998 which consisted of two volumes. Volume-I contained the conclusions and recommendations of the Commission. Volume II contained a summary of the evidence recorded and analysis of the evidence.

4. The present petition invokes the jurisdiction of this Court under Article 32 of the Constitution of India. There are five substantive prayers made in the petition, which read thus:

- D “i. Declare that an enquiry conducted under the Commission of Enquiry Act, 1952, would tantamount to an Inquiry within the meaning of Article 311 [2] of the Constitution of India;
- ii. Declare that a public servant found guilty/indicted under the Commission of Enquiry Act, 1952 be liable to be summarily dismissed; and
- E iii. Issue a Writ, Order or Direction in the nature of Mandamus and/or like nature directing the Respondent-State to accept and act on the finding of the Sri Krishna Commission of Enquiry; and
- F iv. Issue a Writ, Direction or Order in the nature of Mandamus and or like nature directing the Respondent-State of Maharashtra that SUMMARY cases be re-opened and action taken in accordance with the recommendations of the Sri Krishna Commission Report;
- G v. Direct Respondents to pay compensation to the persons identified as MISSING and the cases concerning them to be closed;”

**The Recommendations of Justice B. N. Srikrishna  
Commission and the Response of the State Government**

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5. The entire petition revolves around the issue of implementation of the recommendations of the Commission. The recommendations which are relevant for deciding this petition can be summarized as under:
- i. Based on the study conducted by a committee of experts of Tata Institute of Social Sciences appointed by the Commission which dealt with the immediate causes of the riots, the Commission opined that the causes were political, socio-economic and demographic; A
  - ii. The precautionary and preventive measures taken by the Police preceding the incidents of riots were inadequate. The intelligence machinery of the Police did not give information in good time about the possible damage to the Babri Masjid. Moreover, there was no effort made to make an accurate assessment of the situation, which could arise due to possible damage to the Babri Masjid. The Intelligence Department failed to gather crucial information about the closed door meetings held by the two different religious groups, which were found responsible for the riots; B
  - iii. The Police machinery proved to be inadequate to deal with the situation. Moreover, the Police were hopelessly outnumbered as the strength of the Police staff was inadequate even to handle day-to-day problems; C
  - iv. The Commission found that there was a failure to register crimes by the Police. There was a delay in registering crimes. The investigation was carried out in an arbitrary and casual manner; D
  - v. There was a delay in the disposal of criminal cases concerning riot-related offences; E
  - vi. There was a lot of political interference in the functioning of the Police machinery; F
  - vii. The commission concluded that the Police officials named in paragraph 1.30 of Volume-I of its report, were found actively participating in riots, communal incidents and incidents of looting, arson, etc. The Commission recommended the initiation of disciplinary action against the said Police officials; G
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- A           viii. The Commission noted that the members of the police force were lacking physical fitness. The Commission recorded that long and arduous working hours leave them no time for physical exercises. The Commission recommended that strict standards of physical fitness be enforced; and
- B           ix. The Commission recommended improvement of conditions of work of the Police and also recommended that proper housing facilities be provided to the police.
- C           6. The State Government issued a Memorandum of action to be taken by the Government on the report of the Commission (for short, 'the Memorandum'). Most of the recommendations were accepted by the State Government. The action proposed by the State Government was incorporated in the Memorandum. The response of the State Government to some of the relevant recommendations reads thus:
- D           i. The State Government noted that the Police have classified a large number of offences relating to riots in 'A' Summary (true but undetected). The Government decided to appoint a committee comprising Officers from Home Department, Law Department and senior Police Officers to scrutinize all 'A' Summary cases and carry out reinvestigation, wherever warranted;
- E           ii. Instructions would be issued to the Police Department to ensure effective and speedy trials in offences relating to riots;
- F           iii. The State Government has decided to pay compensation to the victims of the riots and violence;
- iv. The State Government has decided to initiate disciplinary proceedings against the erring police officials; and
- v. The State Government assured to improve the conditions in which the police force was working.
- G           The State Government did not agree with some of the conclusions drawn by the Commission especially its findings on the causes of the riots/violence. But, the Government agreed to act upon majority of recommendations.
- H           7. There are affidavits filed by both sides. The affidavits filed on the side of the petitioner make a grievance about the failure of the State

Government to implement the recommendations of the Commission and A also the failure to bring the offenders to book.

**Rival Submissions**

8. Shri Colin Gonsalves, the learned senior counsel representing the petitioner, submitted that as can be seen from the affidavits on record, the action taken by the State Government on the recommendations of the Commission is merely an eyewash. He pointed out that the Police Officials who were found guilty of serious misconduct by the Commission were let off either by exonerating them or by imposing very minor penalties. He pointed out that almost all the prosecutions ended either in discharge of the accused or in acquittal. He made a grievance that the Legal Services Authorities constituted at the State and the District levels, failed to render assistance to the victims of the offence and/or to the legal heirs of the victims of the offence, as the case may be. Legal assistance was not provided to the victims or legal heirs of the victims for challenging the orders of discharge or acquittal and for filing proceedings for recovery of compensation. As a result, the victims got no relief from the State machinery and even from the judiciary. He also submitted that meagre compensation of Rs.2 lakhs was paid to the legal heirs of those who lost lives in the riots. Moreover, there was inordinate delay in making the payment of compensation. Very few families of missing persons were paid compensation, though, by legal fiction, the persons missing for more than seven years are treated as dead. He would, therefore, submit that the compensation deserves to be enhanced substantially and a direction be issued to the State Government to ensure that compensation is paid to every eligible victim/ his or her heirs. He submitted that victims be provided interest to compensate them for the delayed payment.

9. Shri Rahul Chitnis, the learned counsel representing the State Government urged that there is no default on the part of the State Government. He submitted that all efforts were made to trace the family members of missing persons and compensation was promptly paid to them. He submitted that disciplinary proceedings were initiated against the Police Officers named by the Commission and were taken to the logical end. He submitted that it is too late in the day now for this Court to interfere and issue directions to challenge the orders of acquittal or discharge. He submitted that some such orders were unsuccessfully challenged before the higher forum. His submission is that with the passage of time, no directions are warranted in this petition.

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**A      Consideration of Submissions**

10. We have given careful consideration to the submissions. During the course of the submissions, the first two prayers were not seriously pressed by the learned senior counsel for the petitioner. The recommendations of a Commission appointed under the 1952 Act cannot bind the Government. The Courts cannot compel the Government to act upon the report. But, once the Government accepts the recommendations, a Writ Court can issue a *mandamus* for the implementation of the recommendations as it becomes an obligation of the Government to implement the recommendations. A perusal of the affidavits filed in this petition as well as connected petitions which were disposed of by the order dated 30<sup>th</sup> August 2022, shows that while the State Government disputed most of the conclusions drawn by the Commission regarding the causes of the riots, most of the recommendations regarding taking corrective measures were accepted as can be seen from the Memorandum filed by the State Government. We are conscious of the fact that the recommendations of the Commission were submitted more than 24 years back and most of the trials and disciplinary inquiries have been concluded more than 20 years back. Nevertheless, we are dealing with submissions canvassed across the Bar.

**Action Against Erring Police Officials**

11. Firstly, we will deal with the conduct of disciplinary proceedings against the erring police officials as recommended by the Commission. The details thereof are found in the Affidavit dated 13<sup>th</sup> March 2020 of Shri Amitabh Gupta, the Principal Secretary, Home Department, Government of Maharashtra. In terms of the recommendations of the Commission, FIRs were registered against nine police officials. Two of them were discharged and seven were acquitted. The complainants/victims filed revision applications against orders of discharge dated 16<sup>th</sup> April 2003 of two officials. The revision applications were dismissed. The matters were carried to this Court by way of Special Leave Petitions, which were dismissed on 4<sup>th</sup> July 2011. In the case of six police officials, orders of acquittal were passed on 18<sup>th</sup> November 2005, and one officer was acquitted by an order dated 9<sup>th</sup> September 2014. These orders of acquittal were not challenged. Out of nine police officials, seven have already been superannuated. The State Government has not stated the reasons for not questioning the orders of acquittal. The State should have been vigilant and proactive in these cases. Now it is too late in the

day to direct the State to examine whether the orders of acquittal deserve A  
to be challenged.

12. Now, coming to the disciplinary inquiry initiated against various police officials, we find that one official was dismissed from service. One official was made to compulsorily retire by way of punishment. On nine other police officials, minor penalties have been imposed. Out of the said nine police officials, against whom minor penalties were imposed, eight officials have already retired from service. Eight other police officials were exonerated. Out of them, five officials have since retired. Inquiry against one police official was dropped as he died during the pendency of the inquiry. In view of long passage of time, as far as the disciplinary action is concerned, now in the year 2022, it will be inappropriate to go into the question of the validity of the orders passed by the disciplinary authorities and the adequacy of the penalties imposed. In any case, in a writ petition in the nature of a Public Interest Litigation, a Writ Court should not normally interfere with disciplinary proceedings.

**Riot Related Criminal Cases**

13. The affidavit discloses the details of the fate of 253 riot related criminal cases. The outcome of these cases can be summarized as under:

Convicted	Acquitted	Abated	Cases found unrelated to riots	Pending Cases in Sessions Court	Cases on dormant files.
6	114	1	34	1	97

It is noted in the affidavit that the High Court of Judicature at Bombay had nominated two learned Sessions Judges and two learned Metropolitan Magistrates as the Special Courts for dealing with criminal cases relating to the violence in December 1992 and January 1993. The affidavit discloses that one case is still pending in the Sessions Court. We propose to direct the Sessions Court to dispose of the pending case at the earliest. Ninety-seven cases are on dormant files. The reason must be that either the accused therein are not traceable or are absconding. The High Court, on the administrative side, must issue appropriate directions to the concerned Courts in which these cases are pending. The High Court must ensure that the concerned Courts take appropriate steps for tracing the accused. The State Government will have to set up a special cell for tracing the accused.

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A      **Failure To Provide Legal Aid To The Victims**

14. Shri Colin Gonsalves, the learned senior counsel made a grievance that the victims of the offences ought to have been provided legal aid by the State and the District Legal Services Authorities established under the Legal Services Authorities Act, 1987 (for short, B ‘the 1987 Act’) for challenging the orders of acquittal. His grievance was that the Legal Services Authorities have not performed their duty. Though no directions can be issued at this stage to grant legal aid, nevertheless, we are examining the legal contentions.

15. Section 12 of the 1987 Act lays down the criteria for giving C legal services which reads thus:

**“12. Criteria for giving legal services — Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is—**

- D      (a) a member of a Scheduled Caste or Scheduled Tribe;
- E      (b) a victim of trafficking in human beings or begar as referred to in article 23 of the Constitution;
- F      (c) a woman or a child;
- (d) a person with disability as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);
- G      (e) a person under circumstances of underserved want such as being a victim of a mass disaster, ethnic, violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- H      (f) an industrial workman; or
- (g) in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956), or in a juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986 (53 of 1986), or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987 (14 of 1987); or
- (h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State

Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.”

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(emphasis added)

16. Under Clause (e) of Section 12 of the 1987 Act, a person who is subjected to ethnic violence, is entitled to legal services under the 1987 Act. The meaning of the adjective “ethnic” according to Merriam-Webster dictionary is “of or relating to large groups of people classed according to common racial, national, tribal, religious, linguistic, or cultural origin or background”. The term “ethnic” can be narrowly construed as including solely “linguistic” or “racial” groups. If it is given a broad meaning, it will include religion, tribe and caste in group distinction. Looking at the conclusions in the report of the Commission and the response to the recommendations of the State Government in the form of the Memorandum, there is no manner of doubt that communal disharmony between two religious groups was one of the main causes of the riots and violence. There are enough indications in both documents that there was tension between the two religious groups which is one of the major causes of the incidents of violence. Considering the object of the 1987 Act, a broad meaning will have to be assigned to the word “ethnic” for the purposes of considering the entitlement to grant of legal aid. Therefore, these incidents of December 1992 and January 1993 are the incidents of ethnic violence within the meaning of clause (e) of Sub-section (1) of Section 12 of the 1987 Act. Hence, on an application being made by the victims of the offence or their legal heirs, legal services could have been provided to them by appointing advocates, who could have assisted the Criminal Courts in terms of sub-Section (2) of Section 301 of the Code of Criminal Procedure, 1973 (for short, ‘Cr.P.C.’) during the course of trials. Legal services could have been provided to the victims to challenge the orders of acquittal. But we must remember that those were the early days of the Legal Services Authorities. With the passage of time, the Legal Services Authorities right from the Taluka level to national level, have expanded their activities for effectively rendering legal services. Now multiple activities are being conducted by the Legal Services Authorities at various levels. The scope of legal services has been considerably widened during the last few decades. During the pandemic of COVID 19, these authorities reached the poor and needy

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- A by providing assistance to them. We hope and trust that after 75 years of independence, riot-like situations will never arise. Unfortunately, if such situations arise, we are sure that the Legal Services Authorities at various levels will come to the rescue of the victims of violence and render legal services to them, keeping in mind the spirit of Section 12 of the 1987 Act. Now, it is too late in the day to direct the Legal Services Authorities to render legal aid to the victims of the 1992 and 1993 riots for challenging the orders of acquittal.

#### **Failure To Make Proper Investigation**

- 17. One of the grievances of the petitioner was that in large number of riots related offences, a proper investigation was not carried out and therefore, about 1371 cases were closed by classifying as 'A' Summary (true but undetected). The affidavit of Shri Amitabh Gupta notes that the State Government had appointed a Committee under the chairmanship of the Director General of Police to scrutinize all cases which were classified as 'A' Summary. In terms of the directions of the Committee, reinvestigation was carried out in 112 cases under the supervision of the Officers of the rank of Deputy Commissioner of Police. Out of the 112 cases, 104 were again classified as 'A' Summary. In the remaining eight cases, charge sheets were filed. Out of the eight cases, seven cases resulted in acquittal, and in one case, where the offence was compoundable, the case was compounded.
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#### **Recommendation on Police Reforms**

- 18. The Commission in its report has made several suggestions for reinforcing and improving Police Force. The recommendations are very wide and cover many aspects. The Commission recommended that professionalism needs to be introduced in the Police Force. The Commission has laid emphasis on the training and physical fitness of the members of the Police Force. The Commission suggested improvements in the weaponry held by the Police Force. The Commission also suggested vast improvements in the communication systems of the Police. There is also a recommendation made to stop political interference in the day-to-day functioning of the police. We may note here that with the passage of time and with the advancement of technology, there has been a considerable improvement in the communication systems used by the Police. The Commission's suggestion of setting up Rapid Action Squads has been implemented. The Commission suggested that various steps should be taken to boost the morale of the Police Force, such as providing
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proper housing facilities to them, reducing political interference in the day-to-day functioning of the Police Force, etc. The Memorandum of the Government records that most of these recommendations have been accepted by the State Government. But what remains is the implementation part. The State Government cannot ignore the recommendations made by the Commission for the improvement and modernization of the Police Force and the recommendations shall continue to guide the State Government.

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#### **Compensation to Victims**

19. That takes us to the crucial issue of payment of compensation to the victims of the riots. We have already noted that whether due to the violence or police firing, 900 people lost their lives and 2036 people got injured in December 1992 and January 1993.

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20. Article 21 of the Constitution of India confers a right on every citizen to live with human dignity. Article 21 encompasses into itself the right to live a meaningful and dignified life. All the aspects of life which make a person live with human dignity, are covered by the word 'life' used in Article 21 of the Constitution of India. If the citizens are forced to live in an atmosphere of communal tension, it affects their right to life guaranteed by Article 21. The violence witnessed by Mumbai in December 1992 and January 1993 adversely affected the right of the residents of the affected areas to lead dignified and meaningful life. It cannot be disputed that certain groups were responsible for the large-scale violence in December 1992 and January 1993. There was a failure on the part of the State Government to maintain law and order and to protect the rights of the people guaranteed under Article 21 of the Constitution of India. As noted earlier, 900 persons died and more than 2000 persons were injured. The houses, places of business and properties of the citizens were destroyed. These are all violations of their rights guaranteed under Article 21 of the Constitution of India. One of the root causes of their suffering was the failure of the State Government to maintain law and order. Therefore, the affected persons had a right to seek compensation from the State Government. Though belatedly, by a Government Resolution dated 8<sup>th</sup> July 1993 (the first Government Resolution), a decision was taken to give financial assistance to the persons affected due to riots in December 1992 and January 1993 as well as due to the serial bomb blasts in the city of Mumbai. Nearly five and a half years after the incidents of riots, the Government Resolution dated 22<sup>nd</sup> July 1998 (the second Government Resolution) was issued, providing for giving

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- A compensation of Rs.2 Lakhs to the legal heirs of the missing persons. The eligibility criteria and procedure for disbursement were laid down in the second Government Resolution.
21. The affidavit of Shri Amitabh Gupta dated 13<sup>th</sup> March 2020 notes that 900 persons died in the riots and 168 persons were reported missing. He claimed that compensation has been paid to the legal heirs of all 900 dead persons and family members of 60 missing persons. A direction was issued by this Court on 30<sup>th</sup> August 2022, directing the State Government to disclose the details of the compensation paid to the victims. It is necessary to quote the aforesaid order dated 30<sup>th</sup> August 2022 of this Court, which reads thus:
- C “....We have heard learned counsel for parties.
- In order to deal with all the aspects raised by learned counsel for the petitioner, more specifically the aspect of compensation, we require a better explanation of exhibit-B at page 26 of the affidavit filed by the State of Maharashtra dated 13.3.2020. We would require information as under:-
- (i) Whether the figure of 168 persons who are stated to be missing form a part of the 900 number of victims identified;
- (ii) Whether any compensation has been paid to the legal heirs of the persons who have been found missing;
- E (iii) What is the reference to the compensation paid to heirs of victims;
- (iv) Whether any compensation has been paid for loss of property;
- F (v) **When was these compensations paid i.e. the time lag between the date of the incident and the compensation being made.**
- An affidavit be filed in terms aforesaid within two weeks.
- Arguments concluded.
- Judgment reserved.”
- (emphasis added)
- G The State Government by the affidavit of Shri Mangesh Manjabhau Shinde, Joint Secretary of the Home Department purported to comply with the above directions. The response of the State Government in the affidavit of Shri Mangesh Manjabhau Shinde reads thus:
- H “(i) Whether the figure of 168 persons who are stated to be missing form a part of the 900 number of victims identified.

Reply – The total number of missing persons is 168 which is not A  
the part of total 900 victims.

(ii) Whether any compensation has been paid to the legal heirs of  
the persons who have been found missing;

**Reply-The total compensation Rs.1,19,00,000/- paid to the  
legal heirs of the 60 missing persons. The compensation  
to the legal heirs of the remaining missing persons has not  
yet been given for the reasons that the legal heirs were not  
found, residential addresses were not found, undertaking  
not submitted by the legal heirs, police case is registered  
against the missing person, etc.**

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(iii) What is the reference to the compensation paid to heirs of  
victims;

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Reply – The compensation to legal heirs of victims and the  
compensation for the loss of property is given with reference to  
the Government Resolution, dated 08.07.1993. A true copy of the  
Government Resolution dated 08.07.1993 is annexed herewith and  
marked as Annexure-R-2.

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The compensation paid to the legal heirs of missing persons is  
given with reference to the Government Resolution, dated  
22.07.1998. A true copy of the Government Resolution dated  
22.07.1998 is annexed herewith and marked as Annexure-R-3.

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(iv) Whether any compensation has been paid for loss of property;  
Reply – Compensation for Rs.3,31,92,658/- has been paid for loss  
of property. The bifurcation is as below :-

Sr. No.	Subject	Cases in which compensation paid	Total Compensation
1.	Houses/Stalls/ Huts	1575	Rs.73,50,000/-
2.	Houses found damaged	2502	Rs.95,75,000/-
3.	Stalls found damaged	3699	Rs.1,41,29,458/-
4.	Others	538	Rs.21,38,200/-
5.	Total	8314	Rs.3,31,92,658/-

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(v) When was these compensations paid i.e. the time lag between  
the date of the incident and the compensation being made.

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- A      **Reply – After the guidelines issued by GR dated 08/07/1993 and GR dated 22/07/1998, the compensation was paid for over the period from year 1992 to 2010 after thorough scrutiny of the cases of compensation as per the GR norms, from time to time.”**

B      (emphasis added)

C      22. Under Section 108 of the Indian Evidence Act, 1872, there is a presumption that if a person has not been heard of for seven years or more by those who would naturally have heard of him if he had been alive, such a person is presumed to be dead unless the contrary is proved

D      by the person who affirms it. It is in view of the statutory presumption that the State Government has come out with the scheme to pay compensation of Rs.2 lakhs to the legal heirs/family members of the missing persons. Now, coming to the missing persons, the family members of only 60 missing persons have been paid compensation. As regards the family members of remaining 108 missing persons, compensation was not paid for various reasons, such as, the persons concerned were not found, their residential addresses were not found, undertakings were not submitted by them etc. The State Government has not set out the efforts made to trace the family members of the missing persons and to make sure that they make compliance, such as the execution of the undertakings.

E      We propose to constitute a Committee headed by the Member Secretary of the Maharashtra State Legal Services Authority (for short, ‘MSLSA’), to look into the records relating to the remaining 108 missing persons. We propose to direct the State Government to nominate a Revenue Officer, not below the rank of Deputy Collector and a police officer not below the rank of Assistant Commissioner of Police as the other two members of the Committee. The Committee shall monitor the efforts made by the State Government to trace the family members of missing persons, whose addresses are not available and also to ensure that those eligible persons who have not made procedural compliances are assisted to make necessary compliance.

F      The Committee will have to also monitor compliance with the directions issued by this Court as regards payment of compensation to all categories of victims.

G      23. In the affidavit of the State Government, a stand has been taken that compensation has been paid to those whose houses/stalls/huts were damaged or destroyed. Reliance is placed on the first

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Government Resolution. The Resolution provided for giving following A assistance:

“Financial relief to the victims of bomb blasts in Mumbai city and Mumbai suburbs on and after 12<sup>th</sup> March 1993.

1. Distress relief: - Every destitute person Rs. 250/-.

2. Grant for reconstruction of hut: - For each house of destroyed hut: According to the extent of damage caused to the hut Rs.5000/- - whichever is less, grant should be given.

3. Renovation of houses: - For renovation of residential house, along with subsidy of Rs.5,000/- and loan of Rs.10,000/-, a maximum of Rs.15,000/- financial support.

4. Repair of Houses: - for the sake of house repairs, Rs.6000/- and Loan of Rs.5000/-, it means, grant of up to Rs.11000/- maximum.

5. For destroyed stall and shops: - for Destroyed stalls, amount should be given as subsidy equal to the cost of damage or a maximum of Rs.5000/-.

6. Assistance for ‘burnt carts’: - to the hand cart owners, whose carts have been destroyed by fire should be given a subsidy of Rs.2500/- each.

7. Compensation Amount of Rs.2 lakhs grant to relatives of deceased persons:

8. A grant of Rs.25,000/- to a person with permanent disability.

9. To give subsidy of Rs.10,000/-to a person with temporary physical disability.

10. Assistance of Rs.5000/- for admitted more than 24 hours in any private Hospital.

11. Medical aid for less than 24 hours hospitalization will be Rs.1000/- or the exact expresses of the hospital which will less, will be given as assistance.

12. Rs.25,000/- financial assistance to the Taxi owners whose vehicle is totally burnt.

13. To the surviving Rickshaw owners, Rs.13,000/- whose rickshaw is totally burnt.”

- A        24. In the earlier affidavit of compliance of Shri Amitabh Gupta, the State Government has not taken a stand that compensation in terms of the first Government Resolution was paid to all the victims of the 1992 and 1993 riots who were eligible to receive the same. The State Government was under an obligation to pay compensation to the eligible victims within a reasonable period which can be taken as period of six months from the dates of the respective Government Resolutions. Therefore, the Committee will have to peruse the records to ascertain whether compensation was paid to all eligible persons. The Committee shall ensure that compensation is paid in terms of the first Government Resolution to various categories of victims of the 1992 and 1993 riots.
- B        25. Even as regards the payment of compensation of Rs.2 lakhs to the legal heirs of 108 missing persons, the State Government will have to pay interest at the rate of 9% from the expiry of the period of six months from 22nd July 1998 when the second Government Resolution was issued.
- C        26. Though as per the order dated 30<sup>th</sup> August 2022, the State Government was expected to give details about the time lag between the date of the incident and the date of payment of compensation, the State Government has avoided to furnish the material particulars and only a vague statement has been made that compensation was paid in terms of both the Government Resolutions between 1992 and 2010. This statement shows that there was considerable delay in disbursing the compensation amount. The State Government will have to provide all the details expected to be furnished in terms of the order dated 30th August 2022 to the Committee. The Committee will find out the cases where there has been a delay of more than six months in making payment of compensation in terms of the first or the second Government Resolutions, as the case may be. Interest at the rate of 9% from the date of expiry of the period of six months from the dates of the relevant applicable Government Resolution till the date of actual payment will

have to be paid by the State Government. The Committee will have to decide the issue of entitlement to interest in terms of these directions. We cannot allow the victims to suffer only because there was a delay in the disposal of this writ petition. The Committee can always take the help of the Para Legal Volunteers to reach the persons who have been deprived of compensation and to render assistance to them to comply with the formalities.

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27. Shri Colin Gonsalves, the learned senior counsel made a fervent plea for enhancing the quantum of compensation on the ground that the same was inadequate. The quantum of compensation has been fixed way back in the years 1993 in the context of the then prevailing situation. There is no prayer made for enhancement of compensation in this writ petition of the year 2001. Therefore, it may not be appropriate to accede to the prayer for grant enhancement after such a long passage of time.

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28. Hence, we dispose of the petition by passing the following order.

- i. There shall be a Committee headed by the Member Secretary of MSLSA to monitor the implementation of the directions issued by this Judgment. The State Government shall appoint a Revenue Officer, not below the rank of Deputy Collector, and a Police Officer, not below the rank of Assistant Commissioner of Police, who shall be the other two members of the Committee;
- ii. The State Government shall submit to the Committee a report containing details of 168 missing persons including their names and addresses. The State Government will also place material regarding efforts made to trace family members of 108 missing persons who have been deprived of compensation in terms of the second Government Resolution. The State Government shall make all possible efforts to trace the legal heirs/family members of the missing persons. The Committee shall monitor this exercise. The Committee shall assist the legal representatives of the missing persons to complete the procedural formalities;
- iii. The State Government shall also submit to the Committee the record relating to compensation paid in terms of the Annexure to the First Government Resolution as well as in terms of the second Government Resolution by incorporating

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- A the specific dates on which the compensation was actually paid to the persons entitled to it. The State Government shall also provide a list of victims who have not been paid compensation in terms of both the Government Resolutions;
- B *iv.* The State Government shall pay compensation of Rs.2 lakhs to the legal heirs of the missing persons traced out hereafter, with interest at the rate of 9% per annum from 22<sup>nd</sup> January 1999 i.e. from the expiry of the period of six months from the date of the second Government Resolution, till actual payment;
- C *v.* The Committee consisting of the Secretary of MSLSA and the other two Government Officers appointed under this order, shall monitor the efforts of the State Government to trace other victims who were entitled to compensation in terms of the Annexure to the first Government Resolution but compensation was not paid to them. The victims identified hereafter shall also be paid the compensation with interest at the rate of 9% per annum from 8<sup>th</sup> January 1994 i.e. from the expiry of the period of six months from the date of the First Government Resolution, till actual payment;
- D *vi.* To those who were paid compensation after the expiry of the period of six months from the date of the applicable Government Resolution, the State Government shall pay interest at the rate of 9% per annum on the amount of the compensation payable from the expiry of the period of six months from the date of the applicable Government Resolution till the date of payment. This direction will apply to those who have received compensation before the date of this Judgment. The Committee, after examining the record, shall furnish to the State Government the details of the victims who are entitled to receive interest as above;
- E *vii.* The State Government shall comply with the requirement of submitting necessary details as aforesaid to the Committee within a period of two months from today. Appointment of the two officers, as directed above, shall be made within a period of one month from today. Both the Government Officers shall coordinate with concerned Departments and ensure that necessary details, as directed
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- by the Committee, are furnished to the Committee within A  
the specified time of two months;
- viii. The entire exercise of payment of compensation and/or interest shall be completed by the State Government within a period of nine months from today. The State Government shall report compliance made from time to time to the Committee. A detailed report containing details of the compliance of the directions as aforesaid shall be filed by the Secretary of MSLSA with this Court within a period of ten months from today; B
- ix. The Committee shall seek necessary guidance from the Executive Chairperson of MSLSA for implementation of the directions issued by this order. The Committee shall be entitled to seek the assistance of Para Legal volunteers; C
- x. The State Government shall provide details of the only pending riot related criminal case before the Sessions Court at Mumbai to the Registrar General of the Bombay High Court who shall bring it to the notice of the concerned Court that the case needs to be disposed of at the earliest; D
- xi. The State Government shall provide details of 97 cases on dormant files to the Registrar General of the Bombay High Court within one month from today. On receipt of the details, the High Court on the Administrative side shall issue necessary communication to the concerned Courts in which the cases are pending to take necessary steps to trace the accused. The State Government shall immediately constitute a Special Cell to trace the absconding /missing accused in these cases and to assist the concerned Courts so that the Trial can proceed against them; and E
- xii. The State Government shall expeditiously implement all the recommendations made by the Commission on the issue of reforms in the police force which were accepted by it. F
29. Writ Petition is disposed of with the above directions. A copy of this judgment shall be forwarded to the Member Secretary of MSLSA. G