Sanjay Gupta vs State Of Uttar Pradesh Through Its Chief ... on 12 April, 2022

Author: Hemant Gupta

Bench: V. Ramasubramanian, Hemant Gupta

REPORTA

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 338 OF 2006

SANJAY GUPTA & ORS. .....APPELLAN

VERSUS

STATE OF UTTAR PRADESH THROUGH ITS
CHIEF SECRETARY & ORS. .....RESPONDENT(

JUDGMENT

HEMANT GUPTA, J.

1. The present writ petition has been preferred by the victims of the fire tragedy which occurred on 10.4.2006 at about 5:40 p.m., the last day of the India Brand Consumer Show organized at Victoria Park, Meerut, Uttar Pradesh by Mrinal Events and Expositions who are being represented as Respondents 10 to 12 herein. For the sake of convenience, Respondents 10-12 are being collectively referred as “Organizers”. This unfortunate incident claimed the lives of 65 persons and left 161 or more with burn SWETA BALODI Date: 2022.04.12 16:35:16 IST Reason:

injuries.

2. The State of Uttar Pradesh appointed Hon’ble Mr. Justice O.P. Garg (Retired) in terms of provisions of the Commission of Inquiry Act, 1952 1 vide order dated 2.6.2006 with the following terms of reference:

“(1) To find out the facts, causes on account of which the aforesaid accident occurred;

(2) To decide the ways and means to keep up the situation in control;

(3) In respect of the aforesaid occurrence, determination of liability and the extent thereof;

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

3. The above appointed Commission submitted its report on 5.6.2007 wherein various witnesses and documents produced were examined. Such report was not found to be sustainable in the order dated 31.7.2014 reported as Sanjay Gupta & Ors. v. State of Uttar Pradesh & Ors. 2. This Court while rejecting the proceedings conducted by the Commission under the Inquiry Act, appointed Hon'ble Mr. Justice S.B. Sinha (Retired) as a one-man Commission as it was found that the Organizers were summoned after examination of almost 45 witnesses and were not afforded opportunity of cross-examination. It was held as under:

"11. In view of the aforesaid enunciation of law, it is difficult to sustain the report. We are obliged to state here that in course of hearing, we had asked the learned counsel for the parties that in 1 For short, the 'Inquiry Act' 2 (2015) 5 SCC 283 case the report of the Commission would be set aside, the Commission has to proceed after following the provisions of the Act.

The said position was acceded to. On a further suggestion being made, the learned counsel for the parties had fairly agreed for appointment of another retired Judge as Commission. The learned counsel for the parties had suggested certain names in sealed covers but there was no commonality. Regard being had to the gravity of the situation and the magnitude of the tragedy, on due deliberation we appoint Justice S.B. Sinha, formerly a Judge of this Court, as the one-man Commission. It is agreed by the learned counsel for the parties that the witnesses, who were examined by the previous Commission and not cross-examined by Respondents 10 to 12, their depositions shall be treated as examination-in-chief and they shall be made available for cross-examination by the respondent. It has also been conceded that the documents which have been marked as exhibits, unless there is a cavil over the same, they shall be treated as exhibited documents.

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

nature.

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24. Mr Shanti Bhushan, learned Senior Counsel, would submit that the liability cannot be fastened on the organisers under Article 32 of the Constitution as the grievance is not tenable against the private persons and, in any case, the organisers cannot vicariously be held liable for the act of the contractors.

25. We have noted these submissions but we are not intending to address these aspects in praesenti. Be it stated, with regard to the precise exact quantum, liability of the organisers, liability of the contractors and, if found liable by this Court, would depend upon the eventual verdict, regard being had to the report of the Commission. As stated hereinbefore, we have to see whether the State and its authorities prima facie are responsible to make them liable to pay the compensation. The issue of apportionment would come afterwards."

4. The Commission appointed by this Court had submitted the report on 29.6.2015. The findings of the Commission on reference nos. 1 and 3 are relevant at this stage which are reproduced hereunder:

> "XVII. FINDINGS
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> 479. In answer to Reference No.1, this Commission is of the opinion that the Organizers deliberately and intentionally suppressed material facts before the concerned authorities while applying for grant of permissions.
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> 480. They proceeded on the basis that upon mere asking, they would be granted permissions, by the college authorities/District Administration/Police Authorities/Fire Department. They enjoyed great clout with the concerned authorities.
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> 481. They have singularly failed to comply with the provisions of Section 54 of the Electricity Act, 2003, and Rule 47A of the Indian Electricity Rules, 1956.
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> 482. The Organizers had a complete control not only on the erection of structures, but also the materials used therefor, and even if the Contractor supplied inflammable materials or substandard wires and cables, and/or committed serious irregularities in the matter of electrical management, the Organizers were liable inasmuch as they have failed and/or neglected to comply with the mandatory provisions of the statutory provisions.
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> 483. Mr. Lakhan Tomar accepts that the Contractor has been sending the materials in trucks from 01.04.2006 along with his labourers and supervisors, that is, Mr. Pandey, Mr. Navin and Mr. Sudhakar.

> 484. The record clearly suggests that the Contractor had some contribution to make in the matter of organizing the event.

From the materials brought on record by the parties hereto, it is clear and evident that the Contractor had erected the pandals, made the stalls, etc. There is, however, no conclusive proof that. he had also arranged for the air conditioners or the generators, or had appointed some other contractor to lay the cables and wires.

485. Except ipse dixit on the part of the Organizers and a couple of their witnesses, who said that in case of any difficulty, they used to contact Mr. Pandey, etc. no other evidence has been brought on record to show that Shri Naresh Garg had any role to play in the matter of running the event. It is beyond any cavil of doubt that the entire event was under the direct control and supervision of the Organizers.

There are sufficient indications on record to show that the Contractor was not personally present during the period of erection of the pandals, or the decoration thereof, nor was he present on all or any of the days during the period of event i.e. between 06.04.2015 and 10.04.2015.

The contention of the Contractor that he had merely supplied the materials, however, does not appear to be correct.

486. The Organizers have furthermore misled the Police Authorities/Fire Safety Authorities, that the personnel of Marshal Security are trained in fire fighting and fire safety.

487. The Police Authorities furthermore failed to estimate the number of visitors who were expected to visit in the Exhibition. As they proceeded on the basis that having regard to the number of expected visitors crowd management may not be a problem.

488. The fire started from Hall 'B' and spread to Hall 'A' and Hall ‘C'. The cause of the fire was either short circuit or use of substandard wires and cables or overheating.

489. To this Commission it does not appear that there was any act of sabotage or mischief or that it is a case of “Vis Major”.

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VII. NEGLIGENCE

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947. In the present matter, moreover, it has been noticed hereto before that the Organizers were primarily liable to:-

a) obtain all permissions/NOCs from all concerned authorities including the Managing Committee of the Meerut College; and

b) they being in control of the event, would be deemed to be the occupier of the Exhibition premises, and thus had a special 'duty to care' having regard to the fact that large number of persons had-put up their stalls, and thousands of visitors had been visiting the Exhibition.

948. The Organizers, in the opinion of this Commission, were wholly negligent in so far as they organized the event without taking due care and caution without obtaining the requisite permissions and without complying with the relevant provisions of the statute." X. DETERMIANTION OF LIABILTY AND ITS EXTENT

968. The liabilities of the parties to the reference have been discussed heretobefore elaborately.

969. Laxity on the part of the authorities and the cavalier manner in which actions have been taken by them deserves severe criticism.

970. The Organizers, it will bear repetition to state, were not new in the field, apart from the fact that for all intent and purport, they are in the construction business.

971. The profession of the architects are governed by the Architects Act, 1972. It is expected that they would not commit any professional misconduct. Their ability and competence is not in dispute. In the said capacity they are required to advise the builders of the requirements of law which they are liable to comply with. If they could not be negligent in discharge of their professional duties, it was expected that they would not be negligent when they were themselves event managers.

972. A building (the height specified in Section 3 of the U.P. Fire Services Act, 2005 and the rules framed thereunder) may be inspected by the authority to see that adequate precautions for the purpose of fire prevention and fire safety have been undertaken. For the purpose of construction of high rise buildings, steps are required to be taken by the builders in this behalf, particularly having regard to the fact such incidents of fire take place very often in the country. In this context also the Architects and the Builders should have been aware of the provisions of 1944 Act and the 2005 Act.

973. It has been contended that the Organizers were not aware of the provisions of the Electricity Act, 2003, or the rules framed thereunder and the executive instructions issued in this behalf, which by itself does not give them any immunity.

It is wholly unlikely that the Organizers were not aware of the promulgation of the prohibitory order under Section 144 of the Code of Criminal Procedure.

It is also wholly unlikely that they were not aware of the Environmental laws governing the construction of the buildings.

974. It appears from the record that the Organizers for reasons best known to them even did not take recourse to due diligence.

975. In Chanderkant Bansal Vs. Rajender Singh Anand reported in (2008) 5 SCC 117, it is stated as under:-

> "16. The words "due diligence" have not been defined in the Code. According to Oxford Dictionary (Edn. 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (18th Edn.), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence"

means the diligence reasonably expected from, and ordinarily exercised by a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by DraiDyspnea (Permanent Edn. 13-A) "due-diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence, it means such diligence as a prudent man would exercise in the conduct of his own affairs."

976. Ignorance of different statutes and/or their relevant provisions has been pleaded by the responsible officers of the District Administration and Police Authorities, cannot be appreciated.

977. Mr. Ram Krishna, the District Magistrate was not even aware of the provisions of under Section 54 of the Electricity Act, 2003. Even Mr. Shirish Dubey or Mr. S.S. Yadav were not aware of the said provision. Mr. Ram Krishna could not plead ignorance of the said provisions particularly when he was a designated authority under Section 54 of the Electricity Act, 2003.

978. It appears that despite the fact that in terms of the 2005 Act, the officers of the Fire Safety Department are under the control of the Police Authorities, the requirements of law had not been followed by the police authorities.

979. The conduct on the part of the college authorities cannot also be lost sight of.

980. How and on what basis the Principal of the Meerut College, Meerut had accorded his approval in principle raises serious doubt in the mind of the Commission.

981. It has also been noticed hereinbefore that the Organizers are guilty of misrepresentation in regard thereto before the SSP Meerut, while filing an Application for grant of permission for organizing the exhibition.

982. With the aforementioned backdrop, the reference in question is required to be answered.

983. It has been noticed heretobefore that the manner in which things proceeded leave no manner of doubt that, at all material times, the Organizers were more than sure that the requisite

permissions would be granted to them on mere asking.

984. It has further been noticed heretobefore that no satisfactory explanation has been given by the Organizers as to why instead and in place of approaching the District Magistrate, Meerut at the first instance, they filed an application for grant of permission before the Senior Superintendent of Police, Meerut on 01.02.2006, having regard to the fact that even according to them, the Principal of Meerut College, Meerut, had asked them to obtain necessary permissions from both the District Magistrate, Meerut and Police Authorities.

985. Under the 2005 Act, the police authorities exercised over all control over the members of the fire services. Mr. Yadav, however, put the onus on the District Administration. The fact remains that in terms of the provisions of the Act, it was obligatory on the part of the concerned authorities, be it the District Administration or be it the Police Authorities to ask the fire department to cause inspection to be made and a report submitted. It is difficult to appreciate as to why such procedure was not followed either by the District Administration or by the Police Authorities.

986. It must also be reiterated once over again that the College Authorities granted formal permission and accepted the deposit of Rs.40,000/- from the Organizers only on lst April 2006. It is also a matter of some concern that he had allowed dumping of the materials on the site even prior thereto.

987. Emboldened by the grant of the No Objection Certificate and treating the same to be an order granting permission to hold the exhibition both by the District Administration and Police Authorities, the Organizers approached the Chief Fire Officer with a letter. It was more by way of information and not a request for inspection and issuance of permission to hold the exhibition, as stated by Mr. Lakhan Tomar.

988. A casual mention was made for deployment of-fire-fighting instruments but the amount prescribed therefor was not deposited. The manner in which the said application was dealt with by the Chief Fire Officer leaves much to desire. He asked the SFO to make an inquiry. The regular SSFO was on leave at that time, but he joined his duties on 04.04.2006.

989. Before the SFO submitted his joining report, Mr. Naresh Kumar Singh who was the SSFO made a purported inspection and submitted a report to the CFO evidently ignoring the procedure prescribed namely to forward the report through the SFO. According to Mr. Singh when the report was submitted both the CFO and the SFO were sitting together.

990. So many persons lost their lives and a large number of persons suffered serious injuries to their person and property because of the acts, omissions and commissions on the part of the statutory authorities of the State.

991. The State of Uttar Pradesh no doubt is liable to pay due compensation to the kin of the victims, as also the injured persons, because of acts of omission and commission on the part of its officers.

However, as such omissions led to the benefit of the Organizers and they had also organized the Exhibition in violation of the legal provisions, they are also liable for their act of gross negligence. Having considered the facts and circumstances of the case and the conduct of the Organizers and those of the public servants, this Commission is of the opinion that the liability of the Organizers was to the extent of 60% and that of the State was 40%."

5. Later, on 26.4.2017, a copy of the report was handed over to the learned counsel for the State so that the report could be sent to the competent authority of the State which shall apprise the Court about its view on the report of the Commission. The objections filed by the Organizers on 14.10.2015 to the said report were also handed over to the learned counsel for the State to enable the State to file affidavit with regard to its view and the action it intends to take. An amount of Rs.30 lakhs deposited by the Organizers in terms of the order dated 31.7.2014 was sent to the District Judge, Meerut for pro-rata distribution amongst the victims.

6. In pursuance of the said order, the State had filed its affidavit disclosing inter alia the action taken against the responsible officials including lodging of First Information Report and initiation of disciplinary proceedings.

7. Mr. Shanti Bhushan, learned senior counsel appearing for the Organizers has raised preliminary objection about the entertainment of the writ petition by this Court in respect of private law liability of the Organizers and contended that such liability does not fall within the scope of Article 32 of the Constitution of India. To support such contention, reliance was placed upon Nilabati Behera (Smt.) alias Lalita Behera v. State of Orissa & Ors. 3, Sube Singh v. State of Haryana & Ors. 4, Shri Sohan 3 (1993) 2 SCC 746 4 (2006) 3 SCC 178 Lal v. Union of India & Anr. 5, Radhey Shyam & Anr. v. Chhabi Nath & Ors. 6, Radhey Shyam & Anr. v. Chhabi Nath & Ors.7, Praga Tools Corporation v. Shri C.A. Imanual & Ors. 8 and Shalini Shyam Shetty & Anr. v. Rajendra Shankar Patil 9.

8. Nilabati Behera and Sube Singh are the cases involving high handedness on behalf of a public servant and vicarious liability of the State. Such cases would stand on a different footing. Radhey Shyam-I is a case of a writ petition arising out of a purely civil dispute relating to property and when the civil suit was pending before the Civil Court. In Shalini Shyam Shetty, an order passed by the Bombay High Court was challenged in a writ petition under Article 226 of the Constitution. Such writ petition was dismissed in view of concurrent findings of the Trial Court and the First Appellate Court arising out of a suit for eviction. Radhey Shyam-II is a three-Judge Bench judgment examining the question as to whether an order of the Civil Court was amenable to the writ jurisdiction under Article 226 of the Constitution. The issues arising in the aforesaid cases have no semblance with the facts of the present case and are thus not applicable. 5 AIR 1957 SC 529 6 (2009) 5 SCC 616- (Radhey Shyam I) 7 (2015) 5 SCC 423- (Radhey Shyam II) 8 (1969) 1 SCC 585 9 (2010) 8 SCC 329

9. The findings in Shri Sohan Lal are not relevant in the present case as such judgment of this Court arose in respect of restoration of possession of a house, the title over which was disputed. One of the claimants had approached the High Court in a petition under Article 226 of the Constitution. Therefore, purely civil dispute in relation to title to the property was sought to be raised in a writ

petition. In Praga Tools Corporation, a writ petition was filed claiming writ of Mandamus against a company and not against the conciliation officer in respect of any public or statutory duty imposed upon him by the Act. Hence, it does not provide any assistance in the present matter wherein the rights of the victims are emanating from Article 21 of the Constitution of India. This Court held as under:

> "7. The company being a non-statutory body and one incorporated under the Companies Act there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a mandamus, nor was there in its workmen any corresponding legal right for enforcement of any such statutory or public duty. The High Court, therefore, was right in holding that no writ petition for a mandamus or an order in the nature of mandamus could lie against the company."

10. Mr. Vikas Pahwa, learned senior counsel appearing for the writ petitioners, has referred to the judgment of this Court reported as M.C. Mehta & Anr. v. Union of India & Ors. 10 wherein, in case of oleum gas 10 (1987) 1 SCC 395 leakage from the factory premises of Shriram Foods and Fertiliser Industries, a writ petition under Article 32 of the Constitution of India was entertained and the negligence was fixed. It was only in respect of quantum of compensation, the matter was referred to the Delhi Legal Aid and Advice Board. Para 30 of the order reads thus:

> "30. Before we part with this topic, we may point out that this Court has throughout the last few years expanded the horizon of Article 12 primarily to inject respect for human rights and social conscience in our corporate structure. The purpose of expansion has not been to destroy the raiso d'etre of creating corporations but to advance the human rights jurisprudence. Prima facie we are not inclined to accept the apprehensions of learned counsel for Shriram as well founded when he says that our including within the ambit of Article 12 and thus subjecting to the discipline of Article 21, those private corporations whose activities have the potential of affecting the life and health of the people, would deal a death blow to the policy of encouraging and permitting private entrepreneurial activity. Whenever a new advance is made in the field of human rights, apprehension is always expressed by the status quoists that it will create enormous difficulties in the way of smooth functioning of the system and affect its stability. Similar apprehension was voiced when this Court in R.D. Shetty case [(1979) 3 SCC 489 : AIR 1979 SC 1628 : (1979) 3 SCR 1014] brought public sector corporations within the scope and ambit of Article 12 and subjected them to the discipline of fundamental rights. Such apprehension expressed by those who may be affected by any new and innovative expansion of human rights need not deter the court from widening the scope of human rights and expanding their reach and ambit, if otherwise it is possible to do so without doing violence to the language of the constitutional provision. It is through creative interpretation and bold innovation that the human rights jurisprudence has been developed in our country to a remarkable extent and this forward march of the human rights movement cannot be allowed to be halted by unfounded apprehensions expressed by status quoists. But

> we do not propose to decide finally at the present stage whether a private corporation like Shriram would fall within the scope and ambit of Article 12, because we have not had sufficient time to consider and reflect on this question in depth. The hearing of this case before us concluded only on December 15, 1986 and we are called upon to deliver our judgment within a period of four days, on December 19, 1986. We are therefore, of the view that this is not a question on which we must make any definite pronouncement at this stage. But we would leave it for a proper and detailed consideration at a later stage if it becomes necessary to do so." (Emphasis Supplied)

11. Mr. Pahwa also referred to an order passed by the Delhi High Court in a writ petition under Article 226 of the Constitution in a judgment reported as Association of Victims of Uphaar Tragedy v. Union of India & Ors. 11. The claim was of compensation for the victims against the respondents for showing callous disregard to their statutory obligations and to the fundamental and indefeasible rights guaranteed under Article 21 of the Constitution of India of the public in failing to provide safe premises, free from hazards that could reasonably be foreseen. In that case, a fire broke out at Uphaar Theatre, New Delhi in the evening of 13.6.1997. The High Court after examining the various precedents held as under:

> "102. On this law it cannot be said, at this stage that the petition is not maintainable. Even otherwise we find that this is not a matter in which highly disputed question of fact arise. This appears to be a matter in which facts could be ascertained very easily. The Rules and Regulation are clear and unambiguous. Everybody knows them or should know them. It cannot seriously be disputed that the private respondents, who were or are owners of Uphaar Cinema were (as are all cinema owners) bound to 11 2000 SCC OnLine Del 216 strictly comply with them. It cannot be seriously disputed that the Government agencies are entrusted with duty to ensure that the Rules and Regulations were complied with. It cannot be seriously disputed that a theatre is one place where a large number of people have to sit in an enclosed area for a fairly long period of time. There is a potential threat to life and safety if fire, leakages of gas, etc. take place. This potential threat has to be guarded against. At the stage, therefore, it cannot be said that the cinema owners/employees (past/present) cannot be held to be under an obligation to provide and maintain all standards of safety and/or that they are not liable to compensate for loss of fundamental right guaranteed under Article 21 if harm has arisen by virtue of their not guarding against such hazard. Prima facie it appears that under the doctrine of strict liability on Public Law (as set out above) the liability would be then even if there is no negligence on their part. The Government and its agencies would also be liable for not having ensured strict compliance with Rules and Regulations which have been created to ensure safety. At this stage it appears to us that this is the case in which there can hardly be any dispute. The Rules and Regulations are clear and known. The affidavits of the public authorities support petitioners and admit that there was non-compliance. In fact, Mr. Rawal's arguments have necessarily been that Rules and Regulations were not complied with. Mr. Rawal sought to justify the lapse of not ensuring compliance by blaming it on the Orders of the High Court. At this stage, it appears to us that Orders

of this Court only stayed the suspension of licence for four days and/or the Order of the Lt. Governor. It prima facie appears that the Orders of the High Court did not justify grant of temporary permits for such a long period of time. Admittedly, the fire took place on 13th June, 1997. Admittedly, a number of people have been killed and/or injured. Admittedly, fire fighting equipments and/or ambulances arrived on scene late. Admittedly at that time and even now the CATS Centre which was to have been created as far back as 1986 has not yet been established. There also does not appear to be much dispute on fact that number of seats had been increased, size of gangway reduced, one exit closed by creating a private viewing box, etc. It can easily be ascertained whether there have been unauthorised deviations. The building is still standing. These are matters which can easily be verified by the Court by appointment of Commissioners. The Commissioners, who would be responsible persons, knowledgeable in the field would visit the site in presence of all parties and ascertain facts. The Report of the Commissioner would show whether Rules and Regulations were complied and whether there have been deviations or not. It is clarified that Court is not giving any findings at this stage and is not holding that there have been breach of Rules and/or Regulations and/or unauthorised deviations and/or failure to enforce. All that the Court is saying is that at this stage it cannot conclude that the petition is not maintainable."

12. The High Court further in the above matter also directed the Court Commissioners to visit the site and submit a report as to whether or not all Rules, Regulations and statutory provisions were complied with and if not, to what extent. Such order was challenged by some of the victims in a judgment reported as Green Park Theatres Associated (P) Ltd.

v. Association of Victims of Uphaar Tragedy & Ors. 12 but the appeal was dismissed.

13. It was thereafter, the Division Bench of the Delhi High Court in a judgment reported as Assn. of Victims of Uphaar Tragedy & Ors. v. Union of India & Ors. 13 noticed the deviations in the building plans of the theater. The High Court considered a similar argument as was raised on behalf of the Organizers herein and held as under:

"47. Dr.Rajeev Dhawan, Senior Advocate, argued on behalf of the respondents that the public law remedies by way of writ petitions are normally limited to giving directions, providing interim and final injunctive reliefs and quashing decisions which are violative of the fundamental rights or violation of law. He submits that the scope of providing damages in public law is limited to specific situations and 12 (2001) 6 SCC 663 circumstances where the State deliberately deprives a person of his personal liberty in cases such as causing death, grievous injury, custodial violence and the like. He submits that the judgments already cited by this Court in its earlier judgment dated 21st February, 2000, namely, Sebastian M.Hongray Vs. Union of India, 1984 (3) SCC 82;

Rudul Sah Vs. State of Bihar, (1983) 4 SCC 141, Bhim Singh Vs. State of J&K, (1985) 4 SCC 677 M.L.A.; PUDR Vs. State of Bihar and Ors., (1987) 1 SCC 265, PUDR Vs. Police Commissioner, Delhi, (1989) 4 SCC 730, Saheli Vs. Commissioner of Police, (1990) 1 SCC 422,Nilabati Behara Vs. State of Orissa, (1993) 2 SCC 746, Arvinder Singh Bagga Vs.State of U.P., (1994) 6 SCC 585, Inder Singh Vs. State of Punjab, (1995) 3 S 702, Punjab & Haryana High Court Bar Association v. State of Punjab, (1996) 4 SCC 742, Ajaib Singh and Anr. Vs. State of U.P. and Ors., 2000(3) SCC 521 related to cases where the State had deliberately deprived a person of his personal liberty or related to cases of causing death, grievous injury, custodial violence, etc. by the public authorities. It is submitted by him that the remedy of damages in public law is not available for each and every transgression of fundamental rights and thus even if there is an error arising out of an arbitrary action or denial of permission which may result in damages of crores or there is a transgression of freedom of religion or any other fundamental right, the remedy of damages is not available. It is submitted that ultra vires acts by themselves did not give rise to damages and for this he relied upon the judgments of the Supreme Court in D.K.Basu Vs. State of West Bengal, (1997) 4 SCC

416.

48. In D.K. Basu Vs.State of West Bengal (Supra) it was held that the claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit. Dr.Dhawan also relied upon the judgment reported as M.C. Mehta Vs.Union of India, 1987 (1)

Supreme Court Cases 395, to contend that to justify the award of compensation, the requirement is that infringement must be gross, patent, incontrovertible and ex facie glaring. It is also his submission that the remedy of damages was an extra ordinary remedy where there was gross violation arising out of deliberate action or malicious action resulting in deprivation of personal liberty. It is submitted that the exemplary damages in public law were not to be confused with damages in private law for which private law remedies were available. The damages available for constitutional wrongs were by very nature exemplary and have a limited meaning and were not intended to be compensatory in nature. In support of his contentions, he refers to the judgments of the Supreme Court in Nilabati Behara Vs.State of Orissa, 1993 (2) Supreme Court Cases 746 and Indian Council for Enviro Legal Action and Others Vs.Union of India and Others, 1996 (3) Supreme Court Cases 212. In Nilabati Behara Vs.State of Orissa(Supra), it was held by the Supreme Court that it would, however, be appropriate to spell out clearly the principle on which the liability of the State arises in such cases for payment of compensation and the distinction between this liability and the liability in private law for payment of compensation in an action on tort. It may be mentioned straightway that award of compensation in a proceeding under Article 32 by the Supreme Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defense in private law in an action based on tort. This is a distinction between the two remedies to be borne in mind which also indicates the basis on which compensation is awarded in such proceedings. We shall now refer to the earlier decisions of this court as well as some other decisions before further discussion of this principle. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach to its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

49. In Indian Council for Enviro Legal Action and Others Vs.Union of India and others (Supra), the Supreme Court had held that even if it is assumed that the Court cannot award damages against the respondents in proceedings under Article 32 of the Constitution of India that would not mean that the Court could not direct the Central Government to determine and recover the cost of remedial measures from the respondents. It was held that Section 3 of the Environment (Protection) Act, 1986 expressly empowered the Central Government to made all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment. The right to claim damages was left by institution of suits in appropriate Civil Courts and it was held that if such suits were filed in forma pauperis, the State of Rajasthan shall not oppose those applications for leave to sue in forma pauperis.

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52. We have given our thoughtful consideration to the arguments advanced by Dr.Rajeev Dhawan that public law remedies by way of writ petition are normally limited to giving directions, providing interim and final injunctive reliefs and quashing decisions which are violative of the fundamental rights or violation of law and that the remedy of damages in public law is not available for each and every transgression of fundamental rights nor ultra vires acts by themselves give rise to damages

and that where the disputes questions of fact involved, the party should be left to the normal course of getting the matter decided by a Civil Court but we have not been able to make ourselves agreeable with Dr.Rajeev Dhawan. We have already held in our judgment dated 29th February, 2000 that the petition for claiming damages in public law by filing a petition under Article 226 of the Constitution of India was maintainable. We have also already held that it was not a matter in which highly disputed questions of fact arose and it appears to be a matter in which facts could be ascertained very easily. The earlier observations of the Court, in our view, are relevant to quote at this stage as under :-

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53. It is in view of these observations that we have to examine as to how the fire was caused and what is the complicity of the parties in the same. Besides examining the causation of fire, this Court is also required to go into the question as to whether a party even if not responsible for causation of fire was still responsible for spreading the smoke so as to make it liable for compensation. This Court is also to examine, if it is ultimately held as to how the fire was caused, who was responsible for the same and who was responsible for spread of smoke to the upper floors and what were the deviations in the building, seating arrangement including provision of gangways and exit doors, etc., what were the defects in installation and maintenance of the transformer and how all this has contributed to the spreading of smoke and fire in the building and how the compensation, if any, is to be apportioned amongst the parties to this petition".

(Emphasis Supplied)

14. An appeal against the said order was partly allowed in Municipal Corporation of Delhi, Delhi v. Uphaar Tragedy Victims Association & Ors. 14 wherein this Court held as under:

> "60. The contention of the licensee is what could be awarded as a public law remedy is only a nominal interim or palliative compensation and if any claimants (legal heirs of the deceased or 14 (2011) 14 SCC 481 any injured) wanted a higher compensation, they should file a suit for recovery thereof. It was contended that as what was awarded was an interim or palliative compensation, the High Court could not have assumed the monthly income of each adult who died as being not less than Rs 15,000 and then determining the compensation by applying the multiplier of 15 was improper. This gives rise to the following question : whether the income and multiplier method adopted to finally determine compensation can be arrived at while awarding tentative or palliative compensation by way of a public law remedy under Article 226 or 32 of the Constitution?
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> 64. Therefore, what can be awarded as compensation by way of public law remedy need not only be a nominal palliative amount, but something more. It can be by way of making monetary amounts for the wrong done or by way of exemplary damages,

> exclusive of any amount recoverable in a civil action based on tortious liability.. .....
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> 67. Insofar as death cases are concerned the principle of determining compensation is streamlined by several decisions of this Court. (See for example Sarla Verma v. DTC [(2009) 6 SCC 121 : (2009) 2 SCC (Cri) 1002 : (2009) 2 SCC (Civ) 770] .) If three factors are available the compensation can be determined.

The first is the age of the deceased, the second is the income of the deceased and the third is number of dependents (to determine the percentage of deduction for personal expenses). For convenience the third factor can also be excluded by adopting a standard deduction of one-third towards personal expenses. Therefore just two factors are required to be ascertained to determine the compensation in 59 individual cases. First is the annual income of the deceased, two-thirds of which becomes the annual loss of dependency; and second, the age of the deceased which will furnish the multiplier in terms of Sarla Verma [(2009) 6 SCC 121 : (2009) 2 SCC (Cri) 1002 : (2009) 2 SCC (Civ) 770] . The annual loss of dependency multiplied by the multiplier will give the compensation. As this is a comparatively simple exercise, we direct the Registrar General of the Delhi High Court to receive applications in regard to death cases, from the claimants (legal heirs of the deceased) who want a compensation in excess of what has been awarded, that is, Rs 10 lakhs/Rs 7.5 lakhs. Such applications should be filed within three months from today. He shall hold a summary inquiry and determine the compensation. Any amount awarded in excess of what is hereby awarded as compensation shall be borne exclusively by the theatre owner. To expedite the process the claimants concerned and the licensee with their respective counsel shall appear before the Registrar without further notice. For this purpose the claimants and the theatre owner may appear before the Registrar on 10-1-2012 and take further orders in the matter. The hearing and determination of compensation may be assigned to any Registrar or other Senior Judge nominated by the learned Chief Justice/Acting Chief Justice of the Delhi High Court.

xx xx xx 76.4. The licensee (appellant in CA No. 6748 of 2004) and the Delhi Vidyut Board are held jointly and severally liable to compensate the victims of the Uphaar fire tragedy. Though their liability is joint and several, as between them, the liability shall be 85% on the part of the licensee and 15% on the part of the DVB."

15. In a separate order, Hon'ble Mr. Justice K.S.P. Radhakrishnan held as under:

> "78. Private law causes of action, generally enforced by the claimants against public bodies and individuals, are negligence, breach of statutory duty, misfeasance in public office, etc. Negligence as a tort is a breach of legal duty to take care which results in damage or injury to another. Breach of statutory duty is conceptually separate and independent from other related torts such as negligence though an action for negligence can also arise as a result of cursory and mala fide exercise of statutory powers. Right of an aggrieved person to sue in ordinary civil courts against

> the State and its officials and private persons through an action in tort and the principles to be followed in considering such claims are well settled and require no further elucidation.
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> 80. We are primarily concerned with the powers of the constitutional courts in entertaining such monetary claims raised by the victims against the violation of statutory provisions by the licensing authorities, licensees, and others affecting the fundamental rights guaranteed to them under the Constitution.

The constitutional courts in such situations are expected to vindicate the parties constitutionally, compensate them for the resulting harm and also to deter future misconduct. The constitutional courts seldom exercise their constitutional powers to examine a claim for compensation merely due to violation of some statutory provisions resulting in monetary loss to the claimants. Most of the cases in which courts have exercised their constitutional powers are when there is intense serious violation of personal liberty, right to life or violation of human rights.

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93. Liability to compensate for infringement of fundamental rights guaranteed under Article 21 was successfully raised in Khatri (2) v. State of Bihar [(1981) 1 SCC 627 : 1981 SCC (Cri) 228] (Bhagalpur Blinded Prisoners case).

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96. Courts have held that due to the action or inaction of the State or its officers, if the fundamental rights of a citizen are infringed then the liability of the State, its officials and instrumentalities, is strict. The claim raised for compensation in such a case is not a private law claim for damages, under which the damages recoverable are large. The claim made for compensation in public law is for compensating the claimants for deprivation of life and personal liberty which has nothing to do with a claim in a private law claim in tort in an ordinary civil court.

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98. But, in a case, where life and personal liberty have been violated, the absence of any statutory provision for compensation in the statute is of no consequence. Right to life guaranteed under Article 21 of the Constitution of India is the most sacred right preserved and protected under the Constitution, violation of which is always actionable and there is no necessity of statutory provision as such for preserving that right. Article 21 of the Constitution of India has to be read into all public safety statutes, since the prime object of public safety legislation is to protect the individual and to compensate him for the loss suffered. Duty of care expected from State or its officials functioning under the public safety legislation is, therefore, very high, compared to the statutory powers and supervision expected from the officers functioning under the statutes like the Companies Act, the

Cooperative Societies Act and such similar legislations. When we look at the various provisions of the Cinematograph Act, 1952 and the Rules made thereunder, the Delhi Building Regulations and the Electricity laws the duty of care on officials was high and liabilities strict." (Emphasis Supplied)

16. We find the precedents for payment of compensation in a writ petition under Article 32 of the Constitution fall under three categories of cases. First category is where the acts of commission or omission are attributed to the State or its officers such as Nilabati Behera, Sube Singh, Rudul Sah v. State of Bihar & Anr.15, Bhim Singh, MLA v. State of J & K & Ors. 16 and D.K. Basu v. State of W.B. 17.

17. The second category of cases is where compensation has been awarded against a corporate entity which is engaged in an activity having the potential to affect the life and health of people such as M.C. Mehta wherein the Court held as under:

> 15 (1983) 4 SCC 141 16 (1985) 4 SCC 677 17 (1997) 1 SCC 416 "31. ..... We would therefore hold that where in enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher [(1868) LR 3 HL 330 : 19 LT 220 : (1861-73) All ER Rep 1]."
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> 18. The third category comprises of the cases where the liability for payment of compensation has been apportioned between the State and the Organizers of the function. In Dabwali Fire Tragedy Victims Association v. Union of India & Ors. 18 wherein in a fire accident, 446 persons died and many others received burn injuries. The High Court in a writ petition under Article 226 of the Constitution held that the school which organized the function and respondent No. 8, the owner of the venue, would be jointly and severally liable to pay 55% of the compensation, remaining liability was to be borne out by the State.
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> 19. An appeal was filed by the school disputing the liability of payment of compensation. This Court did not interfere with the percentage of liability reduced to 55% by the High Court from 80% held by the Inquiry Commission in a judgment reported as DAV Managing Committee & Anr. v. Dabwali Fire Tragedy Victims Association & Ors. 19.

18 2009 SCC OnLine P&H 10273 19 (2013) 10 SCC 494

20. In another case, the liability of negligence was only fixed upon the school which organized excursion for the students such as M.S. Grewal & Anr. v. Deep Chand Sood & Ors. 20, whereby the school management was held guilty of drowning of 14 young kids resulting in untimely and

unfortunate death.

21. The contentions raised by Mr. Bhushan are substantially same as were raised before Delhi High Court in Assn. of Victims of Uphaar Tragedy, which were not accepted. This Court in appeal had accepted the view of the High Court except to the extent of the finding of negligence against certain respondents. We are in complete agreement with the findings recorded by this Court in appeal that "where life and personal liberty have been violated, the absence of any statutory provision for compensation in the statute is of no consequence. Right to life guaranteed under Article 21 of the Constitution of India is the most sacred right preserved and protected under the Constitution, violation of which is always actionable and there is no necessity of statutory provision as such for preserving that right. Article 21 of the Constitution of India has to be read into all public safety statutes, since the prime object of public safety legislation is to protect the individual and to compensate him for the loss suffered. Duty of care expected from State 20 (2001) 8 SCC 151 or its officials functioning under the public safety legislation is, therefore, very high".

22. Keeping in view the judgments referred to by this Court in its order dated 31.7.2014, as also the judgments referred to above, we find that infringement of Article 21 may be an individual case such as by the State or its functionaries; or by the Organizers and the State; or by the Organizers themselves have been subject matter of consideration before this Court in a writ petition under Article 32 or before the High Court under Article 226 such as Uphaar Tragedy or Dabwali Fire Tragedy. Similar arguments have not found favour with the Delhi High Court and in appeal by this Court. The view taken therein does not warrant any interference and we respectfully endorse the same.

23. In the present case, the Organizers took permission from the college authorities for organizing the exhibition after payment of Rs.40,000/- as license fee. Such exhibition was organized by the same organizers after the success of "Build-in-Style" exhibition at Meerut, held on 24, 25 and 26.12.2005 with an object that various brands in the segment of construction materials could get a platform where they could launch or expose their merchandise to a considerable segment or gather information on the prevailing market demographics or even assess and display the acceptability for certain trends.

24. The Organizers have produced a letter dated 9.3.2006, appointing Mr. Naresh Garg for the proposed construction of the exhibition infrastructure. It is to be noted that there is no clause in such work order that the contractor has to provide for fire safety measures as well. The relevant extract from the work order reads thus:

> "1. Total Area 125mx24m=3000 Sq. Mt. covered area duly structured using specified hangers, well covered for water proofing & inner ceiling for grace all neatly done with hard surface, wall-to-wall carpet flooring and Air Conditioned unit adequate capacity for the rides shall be well covered with proper material for ensuring both safety and reasonable light blockade general lighting and the circulation area in an exhibition like manner and ensuring both uniform and adequate illumination of the structured area and supported by the public address system shall be provided. It however

follows without mention that the actual area incorporated at site may considerably vary from what showed here in and for the purpose of eventual evaluation/payment etc. The actual area as built on site shall be taken into consideration and that no claim in this regard shall be tenable.

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12. Providing & fixing all finishing material as may be deemed and required as per the general trade practice but not hereto mentioned in the description as above for the same in for guidance and reference only and not to be construed as on exhaustive account of all scope and specifications of work covered. The responsibility to address to all such stipulations / standard business and workmanship practices shell be the role & exclusive prerogation (sic prerogative) and ultimate responsibility of M/ s Standard only."

25. The argument of Mr. Bhushan was that the word 'safety' used in the work order would also include safety from fire as well. Therefore, the responsibility of providing fire safety measures was upon the Contractor.

It was further submitted that 25 fire extinguishers were provided by the Organizers in view of the request made by the Contractor as he was not locally available and therefore, the same was procured from Meerut with the payment being made by the Organizers to his account.

26. We do not find any merit in the said argument raised. The word 'safety' appearing in the work order cannot be read in isolation but has to be read in the context in which the word has been used. The term 'safety' was used for the rides to be provided by the Contractor with proper material for ensuring both safety and reasonable light blockade general lighting. Therefore, the expression safety used in Para 1 of the work order does not lead to any inference that fire safety measures were to be adopted by the Contractor. Still further, the advance rental for the fire extinguishers was paid by the Organizers vide receipt dated 06.04.2006 and 07.04.2006. Shri N.K. Singh, Fire Station Second Office (FSSO) was asked the question by the Organizers as to whether 25 fire extinguishers were shown to him by Mr. Pandey, a representative of the Contractor. He has responded that 25 fire extinguishers were lying there and were shown to him by Lakhan Tomar, one of the Organizers. Therefore, to say the fire extinguishers were provided at the asking of the Contractor appears to be far-fetched as the invoices were raised on 06/07.04.2006. The exhibition was to start from 06.04.2006, therefore, it is unbelievable that the Contractor would not be available at Meerut as the exhibition was just around the corner. Our attention has not been drawn to any assertion or the question put to the Contractor that these fire extinguishers were provided at his asking, which were to be paid by the him subsequently.

27. It was argued that the Organizers had given a turn-key project to the Contractor on 9.3.2006 and the consequences of the tragedy had to be borne by him. It was argued that the report has not given any finding regarding negligence of the Organizers, therefore, the apportionment of liability on them is an unjust conclusion drawn by the Commission. The reliance is placed upon Halsbury's Laws of

India 21, American Jurisprudence 22, Haseldine v. C.A. Daw and Son Limited & Ors.23 and Green v. Fibreglass Ltd. 24.

28. The Organizers had submitted a request for providing temporary firefighting on 1.4.2006 representing that they have taken permission from the administration for using the premises and conducting the event. After submitting such request, the Organizers paid an advance rental for Fire Extinguishers to one Uni Fire Systems on 6.4.2006 and for certain Fire Extinguishers on returnable basis on 7.4.2006. Though the Commission has found that the Contractor was not an independent 21 Vol. 29 (1) Pg. 285.093 (pg 91) 22 Vol. 41 (2d) page-774/777 Pr. 24 23 (1941) 3 All. E. R. 156 (C.A.) Pg. 159, 168 & 169 24 (1958) 2 All. E. R. 521 (pg 523 bottom to 524-H/525-B) contractor and there is interpolation in the work order issued, but the said aspect is not necessary to be examined as admittedly, the work order issued on 9.3.2006 by the Organizers does not contemplate any duty on the Contractor to provide for fire safety measures as well. Still further, the victims or the visitors to the exhibition have no privity of contract with the Contractor. The ticket proceeds were collected by the Organizers. It is the responsibility of the Organizers, having collected the entry fee, to ensure the safety and well-being of the visitors. The Organizers have failed in that duty causing loss of life of the innocent victims who came to see the exhibition, which was purely a commercial event with an intention to earn profit by the organizers.

29. The Court Commissioner found that the contract with the Contractor was neither a turn-key project nor was he appointed as an independent contractor. Therefore, the argument of the Organizers that they are not liable for the acts of omission or commission on the part of the contractor was rejected by the Commission. Even otherwise, the Organizers were vicariously liable for the alleged acts of negligence on the part of the contractor. The Contractor was only responsible for executing work as assigned to him by the Organizers.

30. Mr. Bhushan has relied on Halsbury's Laws of India in the context of negligence on the part of independent contractor. However, it is to be noted that the inter-se relationship between the Organizers and the Contractor is not the subject matter of examination in the present proceedings. The question is as to the liability of the Organizers qua the visitors who had paid for the tickets to visit the exhibition. Even if the Contractor who has provided services be an independent contractor, but that will not absolve the Organizers from their responsibility as there was no privity of contract of the visitors with the Contractor who was providing services to the Organizers alone and not to the visitors.

31. The reliance of Mr. Bhushan on American Jurisprudence refers to preliminary examination for filing of an information charging a misdemeanor. The said text book is not relevant to the issues raised in the present proceedings.

32. In Haseldine, a visitor to a flat availed the service of a lift to reach the flat located on fifth floor. However, the lift collapsed and the visitor suffered spinal injury. Though, the landlord was found to be permitting the visitor to the flat let out but the responsibility of maintenance of the lift was passed on to the engineer who was entrusted with the task of maintenance of lift. We do not find that the said judgment in any way supports the argument raised. It was held that the landlord could

not have been expected to have the technical knowledge, but which is not the case in the present matter.

33. In Green, the occupiers had employed independent contractors to rewire their office. Due to negligence of one of the contractor's workmen, a fire broke out. In an attempt to clean the fire, the plaintiff received severe electrical burns and thus sued the occupiers for breach of their duty to use reasonable care to prevent damage. It was found that the occupier was not responsible for the defaults of the independent contractor. We find that the present case is not applicable in the light of facts and circumstances in the present dispute as the Organizers herein cannot be absolved from their duty of providing safety, even though the Contractor was engaged for providing certain services. These services were also to be performed for the Organizers and not for the victims/visitors.

34. The U.P. Fire Service Act, 1944, though is more concerned with the duties and responsibilities of the fire officers, also talks about liability of the property owners to pay compensation. Section 16 of the said Act contemplates that any person whose property catches fire on account of any act of his own or of his agent done deliberately or negligently shall be liable to pay compensation to any other person suffering damage to his property. The Organizers were the persons responsible for organizing the exhibition and informing people to visit such exhibition after purchase of the ticket. Therefore, the property of the Organizers has caught fire on account of their negligence and hence are liable to pay compensation.

35. The Uttar Pradesh Fire Prevention and Fire Safety Act, 2005 was enacted to make more effective provisions for fire prevention and fire safety measures in certain buildings and premises in the State of Uttar Pradesh. The occupier as defined in Section 2(g) of the said Act includes any person who for the time being is paying or is liable to pay to the owner rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable. The Organizers have paid Rs.40,000/- for obtaining permission to conduct exhibition in the lawns of the college, therefore, the Organizers are occupiers within the meaning of Section 2(g) of the said Act. Sub-section (1) of Section 3 of the said Act permits the nominated authority to enter and inspect the building or premises at any time for ascertaining the adequacy or contravention of fire prevention and fire safety measures. Sub-section (2) of Section 3 further contemplates assistance by the owner or occupier to the nominated authority for carrying out the inspection under sub-section (1) of Section

3. The nominated authority has to give a report of any inspection made by it under Section 3 to the District Magistrate. Sections 3 and 4 of the said Act read thus:

> "3.(1) The nominated authority may, after giving three hours notice to the occupier or, if there be no occupier, to the owner of any building having such height as may be prescribed or premises, enter and inspect the said building or premises at any time between sunrise and sunset where such inspection appears necessary for ascertaining the adequacy or contravention of fire prevention and fire safety measures:

> Provided that the nominated authority may enter into and inspect any building or premises at any time if it appears to it to be expedient and necessary to do so in order to ensure safety of life and property.
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> (2) the nominated authority shall be provided with all possible assistance by the owner or occupier, as the case may be, of the building or premises for carrying out the inspection under sub-

section (1).

(3) When any building or premises used as a human dwelling is entered under sub-section (1) due regard shall be paid to the social and religious sentiments of the occupiers; and before any apartment in the actual occupancy of any woman, who according to the custom does not appear in public, is entered under sub- section (1), notice shall be given to her that she is at liberty to withdraw, and every reasonable facility shall be afforded to her for withdrawing.

4.(1) The nominated authority shall, after the completion of the inspection of the building or premises under section 3, record its views on the deviations from, or the contraventions of, the building bye-laws with regard to the fire prevention and fire safety measures and inadequacy of such measures provided therein with reference to the height of the building or the nature of activities carried on in such building or premises and issue a notice to the owner or occupier of such building or premises directing him to undertake such measures as may be specified in the notice. (2) The nominated authority shall also give a report of any inspection made by it under section 3 to the District Magistrate."

36. The Organisers have not applied for permission under the said Act nor had the nominated authority caused the inspection, therefore, the Organizers and the State have been rightly saddled with liability for not taking precautions as mandated by the statute.

37. Mr. Bhushan also argued that Section 133 of the Code of Criminal Procedure does not provide for any permission, whereas the Organizers have obtained permission to organize exhibition in terms of Section 144 of the Code. Section 133 of the Code reads thus:

> "133. Conditional order for removal of nuisance- Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers-
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> (a) xxx xxx
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> (d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is

necessary; or

(e) xxx xxx, such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order-

(i) xxx xxx

(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or

(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or

(v) xxx xxx

(vi) xxx xxx or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

(2) No order duly made by a Magistrate under this Section shall be called in question in any Civil Court.

Explanation- A "public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes."

38. Though the power is to remove any building, tent or structure, or any tree which is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighborhood, such power could be exercised only after the structure is raised. Thus, in case any structure is raised without the permission of the civil administration, the Organizers could be directed to remove such tent or structure. Therefore, it was a pre-requisite condition for the Organizers to inform the civil administration about the structure which they are putting up for the purpose of exhibition so that the civil administration does not pass an order subsequently for removal of such structure so as to avoid any disruption on account of order which may be passed by civil administration.

39. It has also come on record that Section 144 was promulgated on or about 28.02.2006 by the then Additional District Magistrate, Meerut City. The order was operative from midnight of 28.02.2006 till the midnight of 15.04.2006 for the purposes of maintenance of public safety.

40. The argument of Mr. Bhushan is that since permission under Section 144 of the Code was granted, therefore, no separate permission under Section 133 of the Code was required. Reliance is placed upon the order dated 31.03.2006 wherein the order passed by the Sub-Divisional Magistrate shows that the District Administration has conveyed its no- objection in organization of the events from 06.04.2006 to 10.04.2006 on the basis of the report of Superintendent of Police, City Meerut dated 13.03.2006. However, the Organizers were to ensure maintenance of peace and order under Section 144 of the Code. Therefore, the permission under Section 144 was for the organization of the event by ensuring maintenance of peace and order whereas no approval of the structure raised was sought under Section 133 of the Code. The promulgation was to maintain peace in the city area, therefore, the permission was granted to allow gathering of people for the purpose of exhibition only. The permission under Section 144 of the Code is to allow gathering of people in relaxation of the promulgation, whereas, Section 133 permission was required to ensure that structure put by the organizers is safe so as to not to endanger the life of the visitors.

41. The Court Commissioner has further found that the Organizers are liable for not taking permission under the provision of Section 54 of the Electricity Act, 2003 25 and Rule 47A of the Indian Electricity Rules, 1956 26. It was however argued that the onus of seeking permission was on the installer of generators and that the Organizers were not the suppliers of generators. Thus, the liability has been wrongly fixed on the Organizers. Section 54 of the Electricity Act and Rule 47A of the Electricity Rules read as thus:

> "54. Control of transmission and use of electricity- (1) Save as otherwise exempted under this Act, no person other than the Central Transmission Utility or a State Transmission Utility, or a licensee shall transmit or use electricity at a rate exceeding two hundred and fifty watts and one hundred volts-
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> (a) in any street, or
>
> (b) in any place,-
>
> (i) in which one hundred or more persons are ordinarily likely to be assembled; or
>
> (ii) which is a factory within the meaning of the Factories Act, 1948 (63 of 1948) or a mine within the meaning of the Mines Act, 1952 (35 of 1952); or
>
> (iii) to which the State Government, by general or special order, declares the provisions of this sub-section to apply, without giving, before the commencement of transmission or use of electricity, not less than seven days' notice in writing of his intention to the Electrical Inspector and to the District Magistrate or the Commissioner of Police, as the case may be, containing particulars of the electrical installation and plant, if any, the nature and the purpose of supply and complying with such of the provisions of Part XVII of this Act, as may be applicable:

> Provided that nothing in this section shall apply to electricity used for the public carriage of passengers, animals or goods, on, or for the lighting or ventilation of the rolling stock of any railway or tramway subject to the provisions of the Railways Act, 1989 (24 of 1989).
>
> 25 For short, the 'Electricity Act' 26 For short, the 'Electricity Rules' (2) Where any difference or dispute arises as to whether a place is or is not one in which one hundred or more persons are ordinarily likely to be assembled, the matter shall be referred to the State Government, and the decision of the State Government thereon shall be final.

(3) The provisions of this section shall be binding on the Government.

47A. Installation and Testing of Generating Units- Where any consumer or occupier installs a generating plant, he shall give a thirty days' notice of his intention to commission the plant to the supplier as well as the Inspector:

> Provided that no consumer or occupier shall commission his generating plant of a capacity exceeding 10 KW without the approval in writing of the Inspector."

42. The Contractor was working on behalf of the Organizers in terms of the work order issued. Therefore, whatsoever may be the relationship between the two, the Organizers cannot be absolutely absolved of their liability. All permissions were required to be sought and were in fact sought by the Organizers. Even the permission to use the generators was obtained by the Organizers themselves. Moreover, when the application made by the Organizers for grant of load of 1540 KVA was not sanctioned by the Power Corporation, they themselves met the additional electricity requirement from the generators alone. Thus, the Court Commissioner has rightly fixed the liability on the Organizers to the extent of 60%, and on account of negligence in performing statutory duties by the officers of the State, the State has been burdened with 40% of the total liability. We do not find such distribution of liability suffers from any illegality which may warrant interference by this Court.

43. We find that the Court Commissioner has examined each issue pertaining to the incident extremely minutely. Thus, the judgments referred to by Mr. Bhushan are not helpful to hold that the Organizers were not responsible for the violation of fundamental right to life of the victims under Article 21 of the Constitution of India.

44. Furthermore, Mr. Bhushan has referred to judgments reported as Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar & Ors. 27, T.T. Antony v. State of Kerala & Ors. 28, Sham Kant v. State of Maharashtra 29 to contend that the report of the Commissioner 30 cannot be made basis of any action against the Organizers as it is merely recommendations submitted to the State. The argument is that the Commissioner appointed by this Court is to substitute the Commissioner appointed by the State, therefore, the Commissioner appointed by this Court would only be a Commissioner under the Inquiry Act.

45. Such argument has been rebutted by Mr. Pahwa to contend that the appointment of the Court Commissioner by this Court was not made 27 AIR 1958 SC 538 28 (2001) 6 SCC 181 29 1992 Supp (2) SCC 521 30 Court Commissioner under the Inquiry Act as appointment under the said Act has to be made by the State Government. The appointment of the Court Commissioner was that of a Judicial Commission to make inquiry into the factual aspects leading to the fire tragedy and the persons responsible for its cause.

46. The appointment of an Inquiry Commission is contemplated under Section 3 of the Inquiry Act i.e. by an appropriate Government or in pursuance of resolution passed by each House of the Parliament or, as the case may be, the Legislature of the State. The appropriate Government is defined in Section 2(a) of the Inquiry Act to mean the Central Government for any matter relatable to any of the entries enumerated in List I, II or III in the Seventh Schedule to the Constitution and the State Government in relation to make an inquiry into any matter relatable to any of the entries enumerated in List II or List III in the Seventh Schedule. Therefore, the Commission under the Act shall be appointed either by the Executive or by the Legislature but not by the Judiciary in terms of the provisions of Inquiry Act.

47. The judgment in Shri Ram Krishna Dalmia arises out of a writ petition filed by an aggrieved person against appointment of a commission under the Inquiry Act inter alia on the ground that the action of the Government in appointing an inquiry commission is malafide and amounts to abuse of power. The appeals filed by the aggrieved persons were dismissed. State of Karnataka v. Union of India & Anr. 31 arises out of an original suit filed by the State of Karnataka against Government of India appointing an inquiry commission under the Inquiry Act inter alia on the ground that Inquiry Act does not authorize the Central Government to constitute a Commission of Inquiry in regard to matters falling exclusively within the sphere of the State's legislative and executive power. On the other hand, the State also appointed an Inquiry Commission. The appointment of the Commission by the Central Government was not interfered with. This Court found that the two notifications authorize the enquiries into the matters which are substantially different in nature and object and the Inquiry Commission appointed by the Government of India cannot be said to be barred in view of the notifications issued by the State Government.

48. In T.T. Antony, this Court held that the civil or criminal courts are not bound by the report or findings of the Commission of Inquiry as they have to arrive at their own decision on the evidence placed before them in accordance with law. The investigating agency may with advantage make use of the report of the Commission in its onerous task of investigation bearing in the mind that it does not preclude the investigating agency from forming a different opinion under Sections 31 (1977) 4 SCC 608 169/170 of Criminal Procedure Code if the evidence obtained by it supports such a conclusion. In Sham Kant, for convicting an accused in a criminal trial, reliance was sought on the report of the Commission under the Inquiry Act. This Court held that the report of the Commission is not relevant to determine the commission of offence tried by the Criminal Court. Each of the cases referred to above are on a different factual background. Thus, none of the judgments relied upon by Mr. Bhushan supports his argument that the Court Commissioner was a Commission under the Inquiry Act or that the report of the Commission cannot form a basis for proceeding against the organizers or the State.

49. Still further, none of the judgments have laid down that the report of the Commission is not relevant. In respect of criminal charges, an accused can be tried by a Court of law and not merely on the basis of the report of the Commissioner under the Inquiry Act. Such report is not conclusive and an independent action has to be taken by the State or by the victims against the Organizers before the competent court of law to prove the criminal offences said to be committed by certain accused.

50. We find that the appointment of the Court Commissioner was though to substitute the Commissioner appointed under the Inquiry Act, but under the Inquiry Act, the Court could not appoint a Commissioner. Such power is conferred only on the executive and the legislature. Thus, the jurisdiction exercised in appointing Hon'ble Mr. Justice S.B. Sinha (Retd.) was vesting with this Court under Article 142 of the Constitution. It was a Court Commission to find out the factual positions on the questions of reference. We do not find any merit in the argument that the appointment of the Court Commissioner was as a Commissioner of Inquiry under the Inquiry Act and the same is made out from the fact that this Court has sought comments from the State on the basis of the report so furnished.

51. The victims or their families visited exhibition on the invitation of the Organizers and not that of the Contractor. The Organizers were supposed to make arrangements for putting up the exhibition hall, providing electricity and water and also the food stalls for the facility of the victims/visitors. They cannot now take shelter on the ground that the Contractor who was given work order on 9.3.2006 was an independent contractor and the victims should seek remedy from him. As observed earlier, the contractor has worked for the Organizers and not for the victims. Hence, the Organizers alone are responsible to protect the life and liberty of the victims.

52. The argument of Mr. Bhushan that the Court Commissioner has not given any conclusive finding on the cause of the fire is not relevant in determining the civil liability. The maxim res ipsa loquitur would be applicable as organizing an exhibition of such substantial magnitude without proper and adequate safety factors which may endanger the life of the visitors, has been rightly found by the Court Commissioner, an act of negligence including negligence of the officers of the State.

53. In Shyam Sunder & Ors. v. State of Rajasthan 32, this Court observed that the maxim res ipsa loquitor is resorted to when an accident is shown to have occurred and the cause of the accident is primarily within the knowledge of the defendant. The mere fact that the cause of the accident is unknown does not prevent the plaintiff from recovering the damages, if proper inference to be drawn from the circumstances which are known is that it was caused by the negligence of the defendant. It was observed as thus:

> "9. The main point for consideration in this appeal is, whether the fact that the truck caught fire is evidence of negligence on the part of the driver in the course of his employment. The maxim res ipsa loquitur is resorted to when an accident is shown to have occurred and the cause of the accident is primarily within the knowledge of the defendant. The mere fact that the cause of the accident is unknown does not prevent the plaintiff from recovering the damages, if the proper inference to be drawn from the circumstances which are known is that it was caused by the negligence of the

> defendant. The fact of the accident may, sometimes, constitute evidence of negligence and then the maxim res ipsa loquitur applies.
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> 10. The maxim is stated in its classic form by Erle, C.J.:
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> [Scott v. London & St. Katherine Docks, (1865) 3 H&C 596, 601] (1974) 1 SCC 690 "... where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care." The maxim does not embody any rule of substantive law nor a rule of evidence. It is perhaps not a rule of any kind but simply the caption to an argument on the evidence. Lord Shaw remarked that if the phrase had not been in Latin, nobody would have called it a principle [Ballard v. North British Railway Co., 1923 SC (HL) 43] . The maxim is only a convenient label to apply to a set of circumstances in which the plaintiff proves a case so as to call for a rebuttal from the defendant, without having to allege and prove any specific act or omission on the part of the defendant. The principal function of the maxim is to prevent injustice which would result if a plaintiff were invariably compelled to prove the precise cause of the accident and the defendant responsible for it even when the facts bearing on these matters are at the outset unknown to him and often within the knowledge of the defendant.

But though the parties' relative access to evidence is an influential factor, it is not controlling. Thus, the fact that the defendant is as much at a loss to explain the accident or himself died in it, does not preclude an adverse inference against him, if the odds otherwise point to his negligence (see John G. Fleming, The Law of Torts, 4th Edn., p. 264). The mere happening of the accident may be more consistent with the negligence on the part of the defendant than with other causes. The maxim is based as commonsense and its purpose is to do justice when the facts bearing on causation and on the care exercised by defendant are at the outset unknown to the plaintiff and are or ought to be within the knowledge of the defendant (see Barkway v. S. Wales Transo [(1950) 1 All ER 392, 399]).

11. The plaintiff merely proves a result, not any particular act or omission producing the result. If the result, in the circumstances in which he proves it, makes it more probable than not that it was caused by the negligence of the defendants, the doctrine of res ipsa loquitur is said to apply, and the plaintiff will be entitled to succeed unless the defendant by evidence rebuts that probability."

54. Further, this Court in Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. Pvt. Ltd. & Anr. 33 held that where the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant, such hardship is sought to be avoided by applying the principle of res ipsa loquitor. It was observed thus:

> "6. The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused

> it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purport of the words res ipsa loquitur is that the accident "speaks for itself' or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Salmond on the Law of Torts (15th Edn.) at p. 306 states: "The maxim res ipsa loquitur applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused". In Halsbury's Laws of England, 3rd Edn., Vol. 28, at p. 77, the position is stated thus: "An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged a; negligence 'tells it own story' of negligence on the part of the defendant, the story so told being clear and unambiguous". Where the maxim is applied the burden is on the defendant to show either that in fact he was not (1977) 2 SCC 745 negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part."

55. The said aspect of res ipsa loquitor has also been commented upon by the Court Commissioner holding the Organizers and the State liable to apportion the liability. Thus, we are of the opinion that the report of the one-man Commission is not suffering from any infirmity so as to absolve the Organizers from their responsibility of organizing the exhibition.

56. In terms of the order passed, as mentioned above, the Commission has submitted its report and apportioned the liability between the Organizers and the State as 60:40. No dispute was raised regarding percentage of liability determined by any of the party to the present proceedings. Therefore, what remains to be seen now, is the question of compensation payable to the victims and/or their families.

57. The State has paid Rs.2 lakhs each as ex-gratia compensation to the families of the deceased, Rs.1 lakh each for the persons who suffered serious injuries and Rs.50,000/- each for the persons suffering from minor injuries whereas the Union of India has paid ex-gratia compensation of Rs.1 lakh each for the deceased and Rs.50,000/- each for those with serious injuries. In terms of the order of this Court, the State has paid Rs.5 lakhs each to the deceased, Rs.2 lakhs each to the victims suffering serious injuries and Rs. 75,000/- each to the victims suffering minor injuries, apart from the amount paid by the Union of India.

58. The list of deceased and injured persons has been produced by the learned counsel for the petitioners. The amount of compensation payable to each of the victim including the families of the deceased have not been computed and such amount is required to be computed in accordance with the principles of just compensation as in the case of accident under the Motor Vehicle Act, 1988 by

the Motor Accidents Claims Tribunal.

59. We, therefore, request the Hon'ble Chief Justice of the Allahabad High Court to entrust the work of determination of compensation to a Judicial Officer in the rank of District Judge/Additional District Judge at Meerut within two weeks of the order of this Court to work exclusively on the question of determination of the compensation on day-to-day basis. The High Court shall provide all necessary infrastructure to enable the Officer to discharge his duties. The nominated Judicial Officer may permit the parties to lead such evidence as may be permissible. We hope that the nominated Judicial Officer shall calculate the amount of compensation and forward the report to this Court for consideration in respect of compensation in accordance with law. The amount paid by the State and a sum of Rs.30 Lakhs deposited by the Organizers has been disbursed to the victims. The said amount, excluding the ex-gratia payments made, be taken into consideration while determination of the amount payable by the Organizers and the State.

List after four months.

.....J. (HEMANT GUPTA) .....J. (V. RAMASUBRAMANIAN) NEW DELHI;

APRIL 12, 2022.