K.Jayaraman vs The District Collector on 28 July, 2017

Author: R.Suresh Kumar

Bench: R.Suresh Kumar

ORDER RESERVED ON :02.12.2016
ORDER DELIVERED ON: 28.07.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2017

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.Nos.6609 to 6640 of 2010

W.P.No.6609 of 2010
K.Jayaraman ... Petitioner

Vs.

1.The District Collector,
Thiruvallur District.

2. The Government of Tamil Nadu,
Rep. by the Chief Secretary,
Fort St.George, Chennai.

3. Anandakumar

4. Jaishankar
(R3 & R4 impleaded as respondents as per order
dated 19.4.2010 in M.P.No.1/10 in W.P.No.6609/10)
... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance

For Petitioner (in all Wps) : Mr.S.Udayakumar
For R1 & R2 : Mr. S.T.S.Murthy AAG for
For R3 : Mr.Karthikeyan for
For R4 : Mr. V.S.Siva Sundaram

COMMON ORDER

All these writ petitions in this batch of cases have been laid, seeking for a writ of mandamus directing the respondents to pay a lumpsum compensation of Rs.25,00,000/- to each of the petitioners.

2. It was a terrific and tragic evening. On the fateful day of 16.10.2009, on the eve of Deepavali festival, there were festive activities in the town of Pallipat, Thiruvallur District in TamilNadu. More than 30 people had been in busy commercial activity of purchasing crackers from the crackers shop located at Door No. 94, Sholinghur Road, Pallipat, where, a retail / wholesale crackers shop had been located, by the third respondent.

3. At about 6.30 p.m, on the said fateful day, there was a huge explosion followed by heavy fire broken in the entire crackers shop, with the result 32 innocent lives were gutted to flames.

4. This shocking fire accident in the crackers shop, was taken by the District Administration, in an usual and routine manner, as at about 11 p.m., on the said day, the concerned Village Administrative Officer (VAO) seems to have given a complaint to the police to register an FIR at D5, Pallipat Police Station in FIR.No.427 of 2009. The next day, i.e., on 17.10.2009, a team of scientists from Forensic Science Department had visited the scene of crime, and the said team had given a SOC report dated 05.11.2009.

5. The State Government, also appointed a District Revenue Officer of the District concerned as an Enquiry Officer to submit a report to the Government. The said District Revenue Officer also, after conducting the enquiry, submitted a report to the District Administration on 05.02.2010. The State Government, though claimed that it was an accident taken place due to the unlicensed crackers shop run by the 3rd respondent in a place belonging to the 4th respondent, and it is not because of any alleged negligent activity on the part of the State or its instrumentalities, as well as the official and staff, had come forward to pay a solatium of Rs.1 lakh each to the next kith and kin of all the 32 victims, from the Chief Minister Relief Fund. Since 27 out of the 32 victims belong to the state of Andhra Pradesh, it is also informed that, the state of Andhra Pradesh had paid a sum of Rs.1 lakh as solatium to each of the 27 victims belonging to the said State. Under this back ground, the legal heirs or next kith and kin of all the 32 victims, after having failed to get any adequate compensation from the State Government, have come forward to file these batch of cases by each of the individual legal heir / next kith and kin of the victims concerned, seeking a lumpsum compensation, as stated supra.

6. It is the case of the petitioners that, on the fateful day, when these 32 victims along with others, had been in the business of purchasing crackers at the crackers shop of the third respondent, there was a sudden explosion and fire accident. Since the intensity of the explosion as well as fire accident was huge and since large quantities of crackers were stored in the shop, none of the victim could escape from the premises and within a span of few minutes, the entire shop was surrounded by fire and heavy smoke, with a result all the 32 victims died on the spot, as none was able to escape or could be recovered alive.

7. It is the case of the petitioners that, the shop, where there were large quantities of crackers stored for sale, is not a licensed premises. Inspite of the fact that it is not a licensed premises, the District Administration allowed the shop owners to conduct the crackers business, thereby it is a clear case of dereliction of duty on the part of the administrative side of the District concerned, therefore, the State is vicariously liable to pay compensation to the families of the innocent victims.

8. However, rebutting the said case set out by the petitioners, the official respondents have projected a case that the premises where the crackers were stored is not a licensed premises. Without the license, no one could be permitted to run a crackers shop and had permission been obtained, the District Administration would have taken all precautionary measures to face any such untoward incident, if taken place, like the one taken place in the case on hand, and in the absence of the license, the District Administration could not have a chance of countering such an issue, as the owners of the crackers shop seem to have run the shop in a clandestine manner, without the knowledge of the authorities.

9. In this regard, the first respondent / District Collector has filed a counter affidavit dated 03.09.2015 stating that based on the complaint given by the VAO, FIR was registered under Sections 286, 337, 338, 304 of IPC and under Sections 9(B)(1) and under Sections 3 and 4 of Explosives Substances Act, 1908. A criminal case was registered against 3rd and 4th respondents and three others. All the five were arrested and remanded to judicial custody and were also detained under Tamil Nadu Act 14 of 1982.

10. The counter affidavit of the first respondent would further state that the incident occurred was purely due to the selfish activities of respondents 3 and 4. It was a rice godown of the 4th respondent which was given to the 3rd respondent, on lease to run the crackers shop or to store the crackers in large quantities.

11. It is further stated in the said counter affidavit of the first respondent that, due to the said incident all the officials of Police Department and Revenue Department, who were on duty, were suspended, subsequently, their suspensions were revoked after enquiry, as per the proceedings of the Principal Secretary and Commissioner of Land Reforms and Director of Land Reforms, dated 27.4.2012.

12. The counter further states that there is no scheme at the Government to give any compensation or solatium other than to an injured or victim because of murder, or in case of grievous injury or in death cases due to communal clashes, police torture and police firing. Though under G.O.Ms.No.491 dated 18.5.2010 and G.O.Ms.No.153 dated 31.1.1998, there are some provisions or scheme at the Government to part away some money towards compensation or solatium, these kinds of victims of fire accident in a crackers shop, run by private individuals, without having any valid license, are not entitled to get any compensation or solatium from the Government, as there is no such scheme available with the Government to meet these kinds of victims.

13. The counter further proceeds to say that, however, as a humanitarian gesture, purely on sympathetic ground, though 27 out of 32 victims were not belonging to the State of TamilNadu, the

State Government had magnanimously come forward to pay solatium of Rs.1 lakh each, from the Chief Minister's Relief Fund. Therefore, the case of the official respondents, as projected through the counter affidavit filed by the first respondent / Collector is that, the State machinery had nothing to do with the said accident, as there was no dereliction of duty on the part of any of the officials or staff of the State Government and because of the pure personal act on the part of the 3rd and 4th respondents, this unpleasant, untoward accident had taken place on the fateful day and therefore, for the same, no blame can be put against the State machinery and accordingly, they plead that, no compensation can be expected from the State Government for the legal heirs or kith and kin of the victims.

14. The case of the 3rd respondent is that, it is true that he was running a crackers shop in a godown at Pallipat - Sholinghur road. The said godown was out of the town limit. It is the further case of the 3rd respondent that it was false to state that he was running a crackers shop without proper license and other stipulated safety measures. He claimed that he had applied for the license for running the crackers shop in the said premises, which was taken out for lease from the 4th respondent. Though all necessary and appropriate documents along with the application was filed before the authorities concerned to get the license, and the said application was in process, since it was quite customary in the business of crackers to run the shop in anticipation of the license, the 3rd respondent claimed that, he was running the said shop. The 3rd respondent has further stated that, since the crackers business is highly a seasonal one and the business will have to be carried out only during the Deepavali season, as such, if any one waits for the grant of license and if there is any further delay in granting the license and on that reason if the business is deferred till the receipt of the license, the owner of the crackers shop would suffer the loss of business. This is the reason submitted by the 3rd respondent to justify his action of running the crackers shop in an unlicensed premises.

15. The 3rd respondent would further state that the fire accident broke out very unfortunately and it was not an expected one. All his workers fought to contain the fire at the risk of their life, and there was no criminal intention on his part, and it went beyond the control and capacity and the accident was not triggered by the negligence or callousness of the 3rd respondent or his employees. With these averments the 3rd respondent has countered or rebutted the case of the petitioners.

16. The 4th respondent being the owner of the premises, who let out the said premises in the year 2008 to the 3rd respondent by way of an unregistered rental agreement dated 17.9.2008, has projected the case before this Court that the said premises was originally a rice mill godown and since the same was kept idle for sometime, it was approached by the 3rd respondent to let the premises to run a crackers shop for retail as well as wholesale business of crackers. Therefore, an agreement was entered into between the 3rd and 4th respondents to let out the premises for the said purpose of running a retail and wholesale crackers shop as well as godown and a monthly rent of Rs.5,000/- was fixed and the rental period was between 17.9.2008 and 17.12.2010.

17. The 4th respondent has further submitted that, it was specifically mentioned in the rental agreement that, the 3rd respondent had to get necessary license from the authorities concerned to run the crackers business. It was also insisted in the said agreement that if any accident took place, out of which if any compensation has to be paid, it shall be borne out only by the 3rd respondent,

which means that, the 4th respondent would be in no way responsible or liable to pay any compensation, in case any accident took place.

18. So, all the stake holders of these batch of cases ,i.e., the petitioners on the one side, the State machinery on the other side and the 3rd and 4th respondents being the owner of the crackers shop and the owner of premises are in yet another side, have projected their respective cases in the manner, as narrated above.

19. Mr.S. Udayakumar, the learned counsel appearing for the petitioners, has advanced the arguments, stating that the crackers shop, admittedly, had been located in a large premises in the main road on the town of Pallipat, in Tiruvallur District. The said main road namely, Pallipat-Sholingur main road, is a busy area, and the crackers shop is located on the very main road. Naturally, during festival season, large number of people would go and purchase crackers, both in small as well as bulk quantities, depending upon their need.

20. He would further submit that on the fateful day, because it was evening hours, there was busy activity in Deepavali sales and business. Like that, number of persons had gone there, to purchase Deepavali crackers at the shop of the 3rd respondent. When the sales and business took place in a busy manner, there was a sudden explosion and fire accident and as per the on-lookers and the eye witnesses report and hearsay, which almost have been confirmed by all other authorities, including the State machinery, that almost all the persons, who were in the premises, who transacted the business, have been trapped completely and gutted as the fire engulfed the precious life of 32 innocent persons.

21. The learned counsel would further submit that the Government machinery, has claimed that, it is an unlicensed premises where crackers shop business went on. Therefore, the State machinery is not responsible for the said accident and with the result, they were also not responsible to compensate to these victims and its families. In this regard, the learned counsel for the petitioner would submit that there are number of provisions available in The Explosives Act, 1884 (in short, 'Explosives Act). According to the learned counsel, the following provisions of the Explosives Act, 1884 are relevant. Section 4 -D, 5, 6-B, 6-C, 8, 9, 9-B and 17-A. By relying upon these provisions, the learned counsel would submit that under the Rule making power, Explosives Rules, 2008 has been framed, where exhaustive provisions have been given as to how license has to be given, and what are all the quantities and which type of explosives are to be categorised, for issuance of different types of licenses.

22. According to the learned counsel for the petitioners, Part I, Schedule IV under Rule 99 of the Explosives Rules, 2008 speaks about the type of licenses and licensing authorities. According to the learned counsel, clause 5 (a) and (b) of the Schedule IV speaks about the license to possess and sell from a shop, at any one time, not exceeding 25 kilogrammes of small-arms of nitro-compound as well as license to possess and sell from a shop, at any one time, not exceeding 100 kilogrammes of manufactured fireworks of Class 7, Division 2, sub-division 2; and 500 kilogrammes of chinese crackers or sparklers. This is the common license to be given to retail crackers shop owners and these licenses are called LEμ licenses, which means, the license will be in the form of LE-5.

According to the schedule, the District Magistrate is the license issuing authority. Since the District Collector is the District Magistrate, he is the responsible person to give license to crackers shop, who wants to sell crackers of minimum quantity.

23. Under Rule 106, license can be given for various duration according to which, it may be for six months or one month or five financial years or thirty days. Rule 106(4) states that thirty days license is for temporary fire works shops. The learned counsel would submit that these temporary fire works shops license for thirty days would be given normally, to sell crackers for Deepavali festival. The learned counsel for the petitioners would submit that even as per the admitted case of the 3rd respondent, who is the owner of the crackers shop, he has applied for license to the Revenue authorities and based on such application, it was on process only and no license was given to him. When that being so, if at all any crackers shop owner running the shop for Deepavali business, it is the duty of the Revenue authorities to check up whether such shops are located in the premises where license is given by the authorities concerned, under the Explosives Act and the Rule made thereunder.

24. The learned counsel would submit that since this crackers shop, as has been admitted by the 3rd respondent, was run by him during the Deepavali season of the year 2009 without license, as he was expecting license to be given by the authorities on his application which was under process. The 3rd respondent, therefore, admittedly, had been running the said shop for the whole season of Deepavali for that year. When that being so, it is argued by the learned counsel for the petitioners that, when these kinds of shops are run to sell crackers for retail as well as wholesale, the lower level officers or the staff of the Revenue Department, as well as the Police Department of the District Administration, had to necessarily have a vigil over this kind of unlicensed crackers shop and they must have ensured that these type of shops should not have been opened without the license and also should have ensured that even other licensed shops have strictly adhered to the license conditions, such as various safety measures provided therein, as well as under the Act and Rules made thereunder.

25. Therefore, the learned counsel for the petitioners would submit that it is a prime duty on the part of the District Administration to oversee these kinds of unlicensed crackers business during the Deepavali time, as most of the shops are located in busy commercial area, where large number of people would have to encounter with their Deepavali festival activities for purchasing various items which are not necessarily to be crackers and also other items, such as cloth, grocery, cosmetics, sweets, savouries and various other items which are mainly utilized for celebrating the Deepavali festival.

26. Therefore, the learned counsel for the petitioners would submit that viewing from the overall angle of these issues, the State machinery cannot escape from the clutches of responsibility vest in them to oversee and monitor and to have a quick review on the running of the shops, especially, the crackers shop, as they are very vulnerable to these kinds of untoward fire accidents.

27. The learned counsel for the petitioners would also submit that when these responsibilities have been fixed on the shoulders of the State machinery, especially on the District Administration, which

they have failed in toto. This would certainly amount to dereliction of duty cast upon them. With a result, the State, being a welfare State and if there is violation of the duty cast upon them, then certainly, it would amount to the case of vicarious liability on the part of the State and therefore, the State is very much liable to compensate adequately to the victims' family and therefore, the compensation sought for herein by all these petitioners, who are legal heirs and next kith and kin of the innocent victims, have to be given or extended to.

28. In this regard, the learned counsel for the petitioners would rely upon the following decisions:

> 1993 (2) SCC 746 [Nilabati Behera (Smt) alias Lalita Behera Vs. State of Orissa and others] 2008 (9) SCC 527 [Union of India v. Prabhakaran Vijaya Kumar] 2000(5) SCC 712 [State of A.P. v. Challa Ramkrishna Reddy] 1996 (2) SCC 634 [Achutrao Haribhau Khodwa v. State of Maharashtra] 1994 (6) SCC 205 [N. Nagendra Rao & Co. v. State of A.P.,]

29. Per contra, Mr.S.T.S.Murthy, the learned Additional Advocate General appearing for the official respondents / State would make the following submissions to substantiate the stand taken by the State in these batch of cases:

> (i) It is an admitted case of the 3rd respondent himself that he had run the business of crackers shop without getting the license. The claim of the 3rd respondent was that, though he had made an application to get the license, the same was under the process with the authorities concerned, and since it was not given before the Deepavali season, and the crackers business being a seasonal one, he cannot wait for getting the license and therefore, he started the business and running it without license. When the 3rd respondent has adamantly started and running crackers business, knowing fully well that he did not have the license to do so, it is the selfish action on the part of the 3rd respondent, which led to the fire accident and therefore, the State is, in no way responsible for such an incident, which was inflicted only by virtue of the unlawful act on the part of the 3rd respondent, for his business motive.
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> (ii) The learned Additional Advocate General would further submit that, on getting report from the field level revenue staff about the said accident, immediate SOS activities were taken place and the fire was brought under control. Since the degree of accident was extensive in nature as very huge quantities of crackers were stored in the premises, it was within a few minutes, the entire premises was engulfed with fire and smoke with a result almost all the members of the public, who were in the activities of business of fire crackers at that time, became innocent victims. So none of the public, who were trapped in the fire accident could be rescued, by the fire service team.
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> (iii) The learned Additional Advocate General would further submit that on the very next day i.e., 17.10.2009, a team of scientists of the Forensic Science Department of the Government, was deputed to have a on the spot observation and enquiry and to

file a report to that effect. Accordingly, the team had filed SOC report on the scene of crime on 05.11.2009. In this regard, the learned Additional Advocate General has taken this Court to the following observations made by the said scientist team in its SOC report. The relevant portion of the report, as cited by the learned Additional Advocate General, are reproduced hereunder:

. History of the case in brief:

A large quantity of fire crackers stored in the Old Rice Mill of Mr.Jayasankar at No.94, Sholingar Pallipattu Road, Pallipattu was said to be deflagrated at about 18.30 hrs on 16.10.2009. During the time of occurrence more than 35 people were said to be in side the premises to purchase the fire crackers in addition to the owner of the fire crackers Mr.Anandakumar. Once the deflagration started, Mr.Anandakumar and few others fled from the scene and the remaining members were found charred dead.

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3.3. The said rice mill was taken on lease by Mr.Ananthakumar for the purpose of storing and selling fire crackers in the above premises. It was understood that Mr.Ananthakumar has not holding any valid license to store and sell the fire crackers in the premises. Moreover, no safety measures prescribed by the Fire and Rescue Department were found to have been installed in the said premises.
.....

3.6. Room[2]: This room (20' x 27') has one window [W3], one rolling shutter [S1] on the northern side wall, one cement jolly[J2], one rolling shutter[S4] & two ventilators [V1, V2] on the southern side of the wall and one rolling shutter [S3] on the eastern side. The pattern of burnt stains indicates that the rolling shutter [S4] & wooden window [W3] might have been fully closed, rolling shutter [S3] might have been fully opened, rolling shutter [S1] might have partially opened. The cement jolly [J2] was heavily damaged than jolly [J1]. On close examination of rolling shutter [S1], it was found defective and the rolling door was not moving freely due to damage/ dent on the steel frame or groove of the rolling shutter. It was not so easy to close and open this rolling shutter. The seller of the fire crackers has said to be directed the customers to use the entrance [S1] alone for entry and exit from the hall and closed all other entrances for exit. Due to heavy heat the ceiling fan also got fully damaged and the leaves of ceiling fan got truncated from their position. The quantum of damages due to fire, the pattern of soot deposit, the maximum damages found even there was main entrance [S1] clearly indicated that this might be the seat of explosion.

.....

4.8. Now the question before us is; due to deflagration of fire crackers in a small place, where so many number of windows and entrances are available to escape from the scene, how could it caused the death of 32 members. Normally when a huge quantity of fire crackers burnt, dense dark smoke will emanate. If any lives are near or present in this atmosphere it will mask the vision and obstruct the respiration followed by the unconscious. In this case the size of the rooms are 20' x 24' and 20' x 27'. The quantity of fire crackers were said to be heavy, which was confirmed by the presence of remnants of fire crackers found in the SOC. The number of persons present during the time of occurrence was more than 35. The windows and the rolling shutters found in the entrance might have been kept under closed condition as explained earlier. The rolling shutter[S1] was in a defective condition. In case of emergency it could not be opened easily. Under these condition, the persons inside the SOC could not escape when the explosion taken place. Hence, the 32 persons trapped in side the SOC were dead.

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5. Conclusion:

a) Accidental introduction of burning match stick or cigar or beedi might have been the cause of ignition of fire crackers.

b) Accumulation of heat & the enormous gas produced during the burst of crackers and the reduction of atmospheric level of oxygen could have lead to cause of suffocation, unconscious leads to Asphyxia followed by charring of 32 dead bodies in the heat.

(c) The available exits might have been under closed condition at the time of occurrence which results the death of 32 members.

(iv) By relying on the said report of the SOC, the learned Additional Advocate General would submit that the scientific experts team's report would clearly reveal that, the explosion and the fire accident was not due to impact or friction or also not due to electrical short circuit, not due to chemical reaction also, not due to the possbility of any sabotage. However, the team has categorically stated the explosion and fire accident might have been based on the accidental introduction of burning match stick or beedi.

(v) By quoting these passages, the learned Additional Advocate General would submit that, normally, the reason for this kind of accident would be a careless and reckless act of any one of the public or an insider, who might have been in the act of business during the relevant point of time at the godown or premises. Therefore, the Additional Advocate General would submit that there is no scientific support to attribute any reason or motive on the part of the Government machinery for their dereliction of duty.

(vi) The Additional Advocate General would further take this court's attention to the report filed by the DRO concerned on 05.02.2010. The Additional Advocate General after having taken through the said report of DRO, has relied upon the following passages which are infact the concluding remarks of the DRO, in the said report:

,jidj;jtpu tprhuiz bra;ag;gl;l egh;fspy; ahUk; ,t;tpgj;J vt;thW nehpl;lJ vd;W Fwpg;ghf bjhptpf;ftpy;iy/ ,t;tpgj;jpy; ,we;J tpl;l 32 egh;fspd; gpnuj';fis ghpnrhjid bra;j kUj;Jth;fshy; jPf;fha';fshy; ,e;j kuzk; nehpl;ljhf bjhptpf;fg;gl;Ls;sJ/ rk;gtk; ele;j ,lj;jpy; gl;lhR fil elj;Jtjw;F chpkk; nfhhp tpz;zg;gpf;fg;gl;L ,Ug;gpDk; ,Jtiu chpkk; tH';fg;gltpy;iy/ ,Ug;gpDk; ,e;j ,lj;jpy; fle;j 2008k; Mz;L vt;tpj mDkjpa[k; ,d;wp gl;lhR ,Ug;g[itf;fg;gl;Ls;sJ/ mjidj; bjhlh;e;J 2009k; Mz;oYk; gl;lhR ,Ug;g[itf;fg;gl;Ls;sJ/ ,jdhnyna ,e;j Jaur; rk;gtk; nehpl;Ls;sJ/ vdnt ,e;j Jaur; rk;gtj;jpw;F chpa chpkk; ,d;wp gl;lhRfis ,Ug;g[itj;Jk; btokUe;Jfis chpa Kiwapy; ghJfhg;gpd;wp ifahStjw;F mDkjpj;j filapd; chpikahsh; Mde;j Fkhh; j/b/Fg;iga;ah brl;o vd;gtnu KGf; fhuzk; vd;w Kotpw;F tUfpd;nwd;/ ,j;Jld; tprhuiz fl;Lfs; ,izj;Js;nsd;/ j';fs; cz;ika[s;s.

khtl;l tUtha; mYtyh;

jpUts;S:h; khtl;lk;

(vii) By relying on these two reports, i.e., the report of SOC from the Forensic Science Department as well as the report of the DRO, the learned Additional Advocate General would submit that, there was no finger showing against any of the Government machinery or its official or staff concerned, as the root cause of the said incident. After having conducted thorough enquiry by the DRO concerned and also by the scientific experts of the Forensic Science Department, it was unassailably concluded that these accidents are not due to the lack of duty or dereliction of duty on the part of the State machinery nor it was because of any sabotage or impact or friction or chemical reaction etc.,

(viii) The learned Additional Advocate General would also submit that, though under the Explosives Act and the Rules made thereunder, the District Magistrate or its authorised authority is the licensing authority to give license of crackers shop of retail business, no such license, admittedly, has been given to the 3rd respondent to run the crackers shop. Moreover, it is an admitted case of the 3rd respondent that, since the crackers shop is a seasonal one of Deepavali festival period, the owner of the crackers shop could not wait for getting a license and therefore, he was, admittedly, running the shop without any license and he had tried to justify his action of running the shop without license. When that being so, the learned Additional Advocate General would submit that, the Government authorities or its machinery cannot be blamed.

(ix) The learned Additional Advocate General would also submit that, out of the enquiry conducted by the DRO or the report submitted by the Forensic Science Department, if anything noted or observed that the said incident taken place because

of any dereliction of duty or lack of vigil on the part of the Government authorities, certainly, the Government would have acted upon accordingly. In this regard, the learned Additional Advocate General would submit that, though initially, immediate action was initiated against the officials of Revenue as well as Police Department by suspending them, subsequently, after due enquiry, since no dereliction on the part of any of the Government staff or official, had been pointed out, the Government had decided to revoke the suspension made against the said officials / staffs, and in this regard, the learned Additional Advocate General would rely upon the following communication of the Principal Secretary / Commissioner of Revenue Administration to the Government i.e., the Principal Secretary to Government, Home Department, in LR.No. R.A.V(3)/33427/2010, 12.6.2012. The relevant portion of the said letter is extracted hereunder:

I invite kind attention to the references cited, and wish to state that the enquiry report, under Indian Explosive Act of 1854 for the explosive accident which occurred on 16.10.2008 at Kesavarayapuram Village, Pallipattu Taluk, Thiruvallur District have already been sent to the Secretary to Government, Home (Police 12) Department.

2) Now the Government in their letter third cited have requested to send remarks in this regard to Government.

3) In this connection, I wish to state that the enquiry officer has not held any Government Official responsible for this accident.

4) I therefore request you to take necessary action in this regard.

Yours faithfully, sd/- M.Jayaraman Joint Commissioner (DMM) (i/c) for Principal Secretary / Commissioner of Revenue Administration.

(x) The learned Additional Advocate General would further submit that based on the said report submitted to the Government, since no action was necessitated against any of the staff or official of the Government, the disciplinary proceedings initiated against them were dropped.

(xi) The learned Additional Advocate General would submit that inspite of these factors, where absolutely no reasons could be attributable towards the Government machinery, for the said fateful fire accident which had taken the lives of 32 innocents, the State Government had come forward to give solatium of Rs.1 lakh each to the family of the victims. This is inspite of the factor that, 27 out of 32 victims do not belong to this State. It is also pointed out by the learned Additional Advocate General that apart from Rs. 1 lakh solatium given to the victims family, since 27 out of the 32 victims belong to the State of Andhra Pradesh, the said State Government also had given a solatium for each of the 27 victim families, a sum of Rs. 1 lakh.

(xii) Therefore, the learned Additional Advocate General would submit that even though the State is no way responsible to give any compensation, it had come forward to pay the said solatium for all the victims' families, only as a humanitarian gesture or on sympathetic ground.

(xiii) Therefore, the learned Additional Advocate General would submit that the prayer now sought for in these batch of cases seeking such a lumpsum compensation from the State Administration, is completely bereft of any merit and therefore, the learned Additional Advocate General would submit that the prayers are liable to be rejected.

(xiv) The learned Additional Advocate General in support of his contentions has relied upon the following decision:

> 2011 AIR SCW 6418=2011 (14) SCC 481 [Municipal Corporation of Delhi V. Association of Victims of Uphaar Tragedy & Ors.]
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> 30. On the otherhand, Mr. Karthikeyan, the learned counsel appearing on behalf of the 3rd respondent would heavily rely upon the SOC report filed by the Forensic Sciences Department, and has submitted, that the accident was due to the introduction of burning match sticks or cigar or beedis, and that alone had been the cause of ignition of fire crackers.
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> 31. When that being the reason, it was scientifically found out by the Forensic Science Department team in its detailed SOC report filed in this regard, that it cannot be said that because of the running of crackers shop in the premises which was not given license at that time, this fateful accident has taken place.
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> 32. The learned counsel would further submit that, the 3rd respondent, had in fact, submitted the application well in advance by paying the necessary fee as on 16.3.2009 itself, and thereafter, the Fire Service Department, having inspected the premises, had given its No Objection Certificate on 23.3.2009, stating that from the point of view of the Fire Service Department, there is no objection for them to consider the application of the petitioner to grant of license.
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> 33. The learned counsel would further submit that, thereafter, the Health Department also, based on the report of the Block Health Supervisor, Government Primary Health Centre, had conveyed its no objection, through the No Objection Certificate issued by the Deputy Director of Health Services on 27.05.2009. Thereafter, the Tahsildar concerned, after having inspected the premises, had infact directed the 3rd respondent to rectify certain requirements already pointed out, and based on which, those pointed out had been since rectified and thereafter, again an inspection was conducted by the Tahsildar on 11.09.2009 and after having completed the spot inspection and on satisfaction of such compliances made by the 3rd respondent in response to the inadequacy pointed out by the Tahsildar, he had given his recommendation that the 3rd respondent can be given the license, and it was in

fact conveyed to the DRO on 11.9.2009 itself. By quoting all these proceedings and communications from various authorities of the State, which all uniformly have recommended to the licensing authority to grant license to the 3rd respondent's crackers shop, the learned counsel would submit that, inspite of the no objection having been given by the department concerned, and the recommendation been made by the Revenue Department, the licensing authority was sitting over in those recommendations and NOCs submitted and the application of the petitioner was not decided or disposed of.

34. The learned counsel would submit that since all the authorities have either given NOCs or made recommendations to the licensing authority to give license to the 3rd respondent, it was under fond hope and expectation that any time the necessary license would be issued by the licensing authority and only in anticipation of the same, as it has only become a formality to get the license, since every authority have recommended or not objected as stated supra, the 3rd respondent had started running the business of selling the crackers in the premises, where it was stored.

35. The learned counsel would further submit that, all necessary precautionary measures, as suggested by the Tahsildar concerned had been complied with, and the same has been verified and accepted by the Tahsildar concerned. Like that, the Fire Service Department also after having visited the premises had expressed its no objection and the Health Department also from their point of view, had conveyed their no objection. The learned counsel in this regard would further submit that, since all these authorities have given in one voice their support or recommendation or no objection to the 3rd respondent towards granting of license, no special reason could be attributed to the 3rd respondent holding him responsible for the fateful incident. The learned counsel would further submit that as per the SOC report submitted by the Forensic Department, it was due to the reasoning of ignition due to the carelessness of one of the persons, who might have thrown some match stick, cigar or beedi, the accident had taken place. Since all other reasons have been scientifically ruled out by the SOC report, which may be, in the normal circumstances, possible reasons attributing negligence on the part of the owner of the premises or shop owner of a crackers shop, there can be no blame put against the 3rd respondent for such an accident.

36. It was also submitted by the learned counsel that the father of the 3rd respondent since was in very serious condition, as he was admitted in the hospital during the relevant dates, the 3rd respondent, in fact had not been running the business regularly during the Deepavali season of that year. In fact the father of the 3rd respondent died on 15.10.2009, i.e., one day prior to the fateful accident. Therefore, inspite of the said bereavement, the 3rd respondent had taken all possible effort, available under his command, to rescue the victims, but due to the heavy fire and smoke, none of them could be rescued either by the 3rd respondent or his employees or even by the Fire Service persons. With the result, all the 32 had been the victim of

the fateful accident, which according to the 3rd respondent, had occurred because of the reason cited by the SOC report or under the Act of God. Therefore, the learned counsel would submit that at any rate, the 3rd respondent cannot be blamed or no responsibility can be rest on the shoulder of the 3rd respondent for the said accident.

37. The learned counsel would further submit that actually in these batch of writ petitions only the official respondents, namely, respondents 1 and 2 had been originally arrayed as party respondents and in fact, these lumpsum compensation have been sought for only from the State machinery. Only subsequently, respondents 3 and 4 have been impleaded as party respondents and inorder to put the facts straight, this respondent being the owner of the crackers shop, where this accident had taken place, had taken all efforts by placing the materials available before it, for substantiating the case claimed by the 3rd respondent before this Court. Therefore, the learned counsel would submit that the prayer sought for in these writ petitions, if at all is to be considered for any plausible reason, that can be only against the official respondents and not against the 3rd respondent.

38. Mr.V.S.Sivasundaram, learned counsel appearing for the 4th respondent has made his brief submission that, the 4th respondent is the owner of the premises and in the year 2008 itself, since the same was required by the 3th respondent to run the crackers shop for selling of crackers by way of retail as well as wholesale business and also to store the crackers by using the part of the godown, a rental agreement was entered into between the 3rd and 4th respondents on 17.9.2008. According to the said rental agreement, the premises was let out to the 3rd respondent for running a crackers shop for the purpose of retail as well as wholesale business of crackers and also to stock the crackers, for a monthly rent of Rs.5000/-. The rental period was two years and three months between 17.9.2008 to 17.12.2010. In the said agreement itself, it was specifically mentioned that the 3rd respondent must obtain the necessary license to run the crackers shop in the premises let out by the 4th respondent. It has also been specifically mentioned in the said agreement that, if any untoward incident or accident taken place, due to which, any compensation to be paid, only the 3rd respondent shall be responsible to pay the compensation.

39. In this regard, the learned counsel appearing for the 4th respondent would rely upon the following recital of the said rental agreement which reads thus:

nkYk; 1 tJ egh; nkw;go gl;lhR fil tpahghuk; bra;tjw;fhf chpkk; bgw;Wf; bfhs;s 2 tJ egh; rk;kjpf;fpwhh;/ .....

nkYk; nkw;go fil U:kpy; 1tJ egh; bra;a[k; bjhHpyhy; tpgj;Jfs; Vw;god; mjw;F KG fhuzk; kw;Wk; ec&;l <L midj;Jk; 1tJ egiu rhh;e;jJ/

40. By relying upon the aforesaid recital found place in the said rental agreement, the learned counsel for the 4th respondent would submit that, since it is the

responsibility of the 3rd respondent to get necessary license from the authorities concerned to run the crackers shop, by taking all precautionary measures to meet out any such contingencies / accident as the one that has occurred on the fateful day, if at all any lacuna or dereliction in this regard, it is attributable only because of the dereliction or inaction on the part of the 3rd respondent or vicariously on the part of the official respondents, who are the licensing authorities and authorities to oversee and vigil over the crackers shop business being run by anyone much less the 3rd respondent and not by this 4th respondent. Therefore, the learned counsel would submit that the 4th respondent would no way responsible for the said accident except to the fact that he is the owner of the premises, who let out the premises, under a valid rental agreement, to run the crackers shop, to the 3rd respondent, of course subject to the conditions of getting license etc. Hence, he submits that, the prayer sought for in these batch of cases, cannot be made against or put against the 4th respondent.

41. I have considered the rival submissions made by the learned counsel appearing for the parties as well as the learned Additional Advocate General for the State and I have also given my anxious consideration to the issue raised in these batch of writ petitions and the citations quoted by the learned counsel appearing for both sides.

42. Before dwelling into the factual matrix as well as the applicability of the law on the given facts and circumstances, I propose to traverse the relevant provisions of The Explosives Act and the Rules made thereunder, as and by which only, the license for crackers shop are issued.

43.(i) Under the Explosives Act, the term explosive has been defined under Section 4 (d). Though a number of items such as Gun Powder, Nitroglycerin, etc., have been included under the term explosive, the word, 'Fire Works' is also included, within the meaning of explosive under Section 4 (d) of the Act. Under Section 5 of the Act rule has been framed called The Explosives Rules and in superstition of erstwhile Explosives Rules 1983, new Explosive Rules called the Explosives Rules 2008 (hereinafter referred to as Explosives Rules / Rules) have been framed.

(ii). Under Rule 2(24) of the Rules, the term 'fireworks' has been defined which reads thus:

fireworks means low hazard explosive comprising of any composition or device manufactured with a view to produce coloured fire or flame, light effect, sound effect, smoke effect (coloured or natural), or combination of such effects and includes fog-signals,fuses, rockets, shells, percussion caps;

(iii). Section 6B of the Act speaks about grant of license and Section 6C is enabling the authority to refuse license for the reasons recorded by such authority. In case of any violation or contravention of the Rule made under Section 5, or the conditions of that license, granted under the said Rules, the violator or contravener can be

punished under Section 9B. The power exercisable by the Central Government can, by notification in the official gazette, be delegated to be exercised by such officer or authority subordinate to the Central Government, or such State Government or such officer or authority subordinate to the State Government, under Section 17 A of the Act.

(iv) So, under the scheme of the Act, the license for explosive including fireworks has to be given under the procedure established in the Rules, which were framed under Section 5 of the Act.

(v) The various licensing authorities has been prescribed under the Rules, which has already been dealt with herein above. In so far as the grant of license to the third respondent or his crackers shop is concerned, it is the District Magistrate, who has been the licensing authority under Schedule IV to Rule 99, has to give license.

(vi) It may be noted that Rule 88 of the Rule reads thus:

88.Fireworks to be sold from licensed premises only.- No person shall sell fireworks from any premises other than those licensed under these rules.

(vii) So, no person can sell any fireworks from any premises except the premises licensed under the Act under the Rule made thereunder. What are all the procedures to be followed by the applicant, who seeks license, have also been given under the Rules. The application has to be filed by paying necessary fees under Rule 100, thereafter, NOC to be obtained from the authorities concerned. What are all the documents required to be filed by the person, who seeks license, has been provided under Rule 113.

(viii) If, under these Rules, an application is filed, it is for the licensing authority to take a decision, and accordingly, either a license can be given or refused under Section 6B or 6C respectively.

44. Here in the case in hand, it is the claim of the 3rd respondent that he has made an application to the licensing authority on 16.3.2009. It may be pertinent to note here that it is not the 3rd respondent, who directly made an application, seeking license, as the application was made in the name of the wife of the 3rd respondent, namely one Mrs. V. Vani.

45. The said application seems to have been forwarded to the DRO Thiruvallur District, who in turn seems to have written to the Fire Service Department on 19.3.2009 and in response to the said communication, the Fire Service Department after having visited the premises, where the license is sought for, had conveyed its no objection, by their proceeding in Na.Ka.No.3264/a/2009 dated 23.3.2009.

46. It may be pertinent to note that in the said NOC, the Fire Service Department has stated that the premises was inspected by the concerned officer, from the point of view of the Fire Service

Department, there can be no objection to have a retail crackers shop to sell crackers up to 20 Kgms. The relevant portion of the said NOC is extracted hereunder for better understanding:

> ghh;itapy; fz;l j';fsJ fojj;jpy; Fwpg;gpl;Ls;s S.No.15/2B, Door No.94 at Pallipattu Sholinghur Rg.Karvarajapuram Vill.Ramachandrapuram, Pallipattu Taluk vd;w ,lj;ij 20/03/09 md;W cjtp nfhl;l mYtyh;. jPaizg;g[kPl;g[gzp?jpUts;S:h; mYtyuhy; Ma;t[bra;ag;gl;lJ/ mt;tplj;jpy; rpy;yiw tpiyapy; gl;lhR tpw;gid bra;;a 20kg jpUkjp/V. thzp vd;gtUf;F jPaizg;g[?kPl;g[g;gzp Jiw nehf;fpypUe;J ahbjhU jila[k; ,y;iy vd bjhptpf;fyhfpwJ/

47. It also seems that on 19.3.2009, the DRO also had written to the Deputy Director of Health Services, Thiruvallur for the issuance of necessary certificate, from the point of view of the Health Department, for consideration of the grant of license to the 3rd respondent. In response to the same, the Deputy Director of Health Services, Thiruvallur, by their communication dated 27.6.2009, had conveyed their no objection to the DRO, and the relevant portion of the NOC is reproduced hereunder for better understanding:

> As per the reference 2nd cited above and based on the report of Block Health Supervisor, Govt Primary Health Centre, Athimanjerpet, 'No Objection Certificate' from the Public Health point of view is hereby issued for the possession and sale of crackers at Door No.44, Bazaar Street, Pallipet, Pallipet Taluk, Thiruvallur District by Tmt.V.Vani subject to the following conditions for further action.

48. Thereafter,in response to the very same proceedings of the DRO dated 19.3.2009, the Tahsildar, Pallipat, has conveyed his recommendation for grant of license to the 3rd respondent and the relevant communication dated 11.9.2009 of the Tahsildar is reproduced hereunder for easy understanding:

> jpUts;S:h; khtl;lk;. gs;spg;gl;L tl;lk;/. vz;/44. g$hh; bjUtpy; trpf;Fk; jpUkjp/tp/thzp f/bg/Mde;jFkhh; vd;gth; rpy;yiu tpiyapy; gl;lhR tpw;gid bra;a chpkk; nfhhpa kD bjhlh;ghf. 18/08/2009 md;W jpUj;jzp tUtha; nfhl;lhl;rpah; mth;fs; nkw;bfhz;l g[yj;jzpf;ifapd; nghJ fPH;f;fhdqk; Fiwfis epth;j;jp bra;a mwpt[Wj;jpajpd; nghpy; ,d;W (11/09/2009) kPz;Lk; g[yj;jzpf;if nkw;bfhs;sg;gl;ljpy; Rl;of;fhl;lg;gl;l Fiwfs; epth;j;jp bra;ag;gl;Ls;sd vd;gij gzpt[ld; bjhptpj;Jf;bfhs;fpnwd;/
>
> 1) Fnlhdpy; g!; lah;. kur;rhkhd;fs; kw;Wk; K:l;ilfs; mfw;wg;gl;ld
>
> 2) jw;nghJ kzy; K:l;ilfs; K:d;Wk; kzy; gf;bfl;Lfs; ,uz;Lk; itf;fg;gl;Ls;sd/
>
> 3) jw;nghJ K:d;W jz;zPh; gf;bfl;Lfs; itf;fg;gl;Ls;sd/ nkw;fhdqk; Fiwfs; midj;Jk; epth;j;jp bra;ag;gl;Ls;sJ/ vdnt. kDjhuh; nfhhpa gl;lhR chpkk; tH';fyhk; vd;gij gzpt[ld; bjhptpj;Jf;bfhs;fpnwd;.

49. Only on the strength of these documents from Fire Service Department, Health Department as well as the Revenue Department, i.e., concerned Tahsildar, it was argued by the learned counsel appearing for the third respondent that, though the application was submitted well in advance, seeking for a license, to the licensing authority, and the necessary NOCs despite having been conveyed by the respective authorities, the licensing authority was sitting over on those NOCs and recommendations and still they had not cleared the license. Therefore, the learned counsel submitted that as the crackers business is a seasonal business on the eve of Deepavali festival, as all other authorities had conveyed their NOCs or recommendations, getting a license is only a formality from the licensing authorities, the 3rd respondent thought of running the business for sale of crackers for Deepavali of the year 2009.

50. In this regard, it may be pertinent to be noted that the 3rd respondent, in fact in the name of the wife of the third respondent, had entered into an agreement with the 4th respondent as early as on 17.9.2008 itself. As per the said agreement, 3rd respondent in the name of his wife will run the crackers shop for retail as well as wholesale sale and also store the crackers.

51. It has been specifically recorded by the DRO, who conducted the enquiry subsequent to the accident, in his report dated 05.02.2010 that, the 3rd respondent had been running the crackers shop even during the year 2008, without a valid license, and he continued to run the same during the year 2009 also.

52. Therefore, the 3rd respondent without a license had run the crackers business in the year 2008 itself. Only thereafter, on 16.3.2009, the 3rd respondent, in his wife's name, had made an application, and when the said application had been sent for necessary comments/ NOC from various departments such as Fire Service Department, Health Department as well as the Revenue Department, the aforementioned communications have been issued by the officials concerned of the concerned department.

53. It is also to be noted that, in the NOC issued by the Fire Service Department dated 23.3.2009, it has been specifically mentioned that NOC is issued for consideration of grant of license for crackers shop, to sell crackers on retail basis with a maximum storage of 20 Kg. Like that, NOC issued by the Health Department dated 27.6.2009 has mentioned that, "NOC from the public health point of view is hereby issued for the possession and sale of crackers at Door No.44, Bazaar Street, Pallipat Taluk, Thiruvallur District by Tmt.V.Vani . Therefore, the Health Department has conveyed the NOC only in respect of the premises at Door No. 44, Bazaar Street, Pallipat. The fact remains that the said address mentioned in the Health Department NOC is the residential address of the third respondent or some other business premises belongs to the third respondent or his family. Since the subject premises, where the fire accident takes place, is not the one at Door No. 44, Bazaar Street, Pallipat, it is not known under what basis, the Health Department has conveyed its NOC by quoting the said address of No. 44, Bazaar Street for grant of license to the third respondent instead of the actual address, that is the subject premises at No.94, Sholinghur - Pallipat road. Therefore, it is highly doubtful that, whether the Health Department had conveyed the NOC only after inspecting the premises or without inspecting the same.

54. Like that the Tahsildar, Pallipat on 11.9.2009 has conveyed his recommendation and the extract of the same has already been extracted hereinabove.

55. In the said recommendatory proceeding, the Tahsildar has stated that, already on 18.8.2009, the RDO had inspected the subject premises and out of the said inspection, certain deficiencies were pointed out to be complied with by the 3rd respondent and on the basis of the compliance, again the Tahsildar had visited an 11.9.2009 at the premises, where, after inspection, it was claimed by the Tahsildar, that he found that all the deficiencies pointed out earlier, were complied with.

56. According to the Tahsildar, three such compliances were specifically mentioned. They are as follows:

(i) the tyre and wooden articles and gunny bags were removed from the godowns;

(ii) sand bags and sand filled bucket two in numbers have been placed;

(iii) three number of water buckets have also been placed;

According to the Tahsildar, these are all the deficiencies which were pointed out earlier and since the 3rd respondent have fulfilled these requirements and compliance to that effect has been verified by the Tahsildar, he had conveyed his recommendation to the DRO that license to third respondent can be granted.

57. It is pertinent to be noted here that, at the time of making inspection, whether or not the Tahsildar has verified the location of the building and the inner area i.e., the rooms available in the building where actually, the crackers were stored and also the ingress and egress of the premises, through which the public in case of any accident, can escape freely or can be rescued immediately. Whether these aspects had been noted by the Tahsildar, has not been spelt out in the said communication dated 11.09.2009.

58. In fact in the SOC report dated 05.11.2009, submitted by the Forensic Science Department, it is specifically mentioned at para 3.6 about the rolling shutters etc., fixed in the premises and the said findings of the SOC is extracted hereunder for easy understanding:

> On close examination of rolling shutter [S1], it was found defective and the rolling door was not moving freely due to damage/dent on the steel frame of groove of the rolling shutter. It was not so easy to close and open this rolling shutter. The seller of the fire crackers has said to be directed the customers to use the entrance [S1] alone for entry and exit from the hall and closed all other entrances for exit.

59. If these aspects of the premises had been thoroughly checked up and a detailed report to that effect has been sent by the Tahsildar, then it would be appreciable that the concerned authority of the Revenue Department has thoroughly checked up, the preparedness and the precautionary measures taken by the person, who seeks license. However, the RDO and the Tahsildar concerned,

seems to have very simply dealt with the matter, by merely stating that some water buckets and sand buckets have been placed and therefore, the deficiencies were rectified by the third respondent and accordingly, license can be given to him. These kind of recommendatory proceedings, in the opinion of this court, can only be considered as either dereliction of duty or careless or callous act of the Government machinery or its officials.

60. It is an admitted case that license was not given to the 3rd respondent either to himself or to his wife and inspite of the said factor, it is the claim of the 3rd respondent that getting license for a crackers shop during the Deepavali season is a routine one and therefore, in normal business course of action, in anticipation of the license to be given by the authorities concerned, business would be commenced, as the crackers business is highly seasonal on the eve of Deepavali festival.

61. It is also a factor that the premises was actually a rice mill godown and the same has been let out by the 4th respondent to the 3rd respondent for running this crackers business. Even assuming recommendations have been made by the authorities to grant license that must be the license for storing crackers for a very small quantity i.e., either upto 25 Kgs or 100 Kgs. Even according to the NOC conveyed by the Fire Service Department, it was recommended only for 25 Kgs of fireworks. Even the maximum quantity of fireworks that can be stored under any LE-5 license is only 100 Kgs or 500 Kgs of Chinese crackers or sparklers.

62. Since it is also the claim of the 3rd and 4th respondents that it is for a retail sale of crackers, the premises was made ready. Therefore, if at all it is only meant for retail sale of crackers, it must be within the meaning of LE- 5 license of either for 25 Kgs of crackers or at the most 100 Kgs of crackers.

63. However, paragraph 4.8 of SOC report specifically states that the quantity of fire crackers were said to be heavy, which was confirmed by the presence of remnants of fire crackers found in the SOC. Therefore, a large quantity of fireworks/crackers could have been stored by the 3rd respondent in the premises which is a flagrant violation of the Rules as well as license conditions. Even if the license was granted by the authority, pursuant to the recommendations and NOC conveyed by the various organs of the State, that license would have been given in respect of selling of crackers on retail basis by way of LE-5 license to the maximum extent of either for 25 Kgs of crackers or at the most 100 Kgs of crackers. However, the fact remains that a huge quantity of crackers had been stored in the premises and that is the reason why the intensity of the fire was very huge and in the result, all the 32 persons, who had been trapped in the fire, have lost their lives. These factors have been confirmed by the report of the SOC and therefore, it is obvious that very huge quantities of crackers have been stored in the premises, where the business of crackers' sale went on busy on the fateful day.

64. As referred to above, under Rule 88 of the Explosive Rules, it is a prohibition that no sale of fireworks would be permitted from any premises without a valid license under the Rules.

65. If the 3rd respondent run the business by busily selling the crackers, both by way of retail sale as well as bulk sale and this had happened even in the previous year, i.e., in the year 2008, as large

number of people would have come for buying the crackers, certainly, the premises was one of the known location for selling of fire crackers and therefore, the Government machinery cannot take a shelter that the 3rd respondent had run the business of crackers without license and therefore, they can lay off the hand from the issue.

66. The Police Department is having their presence in that area, the Revenue people are also having their presence in that area and the Fire Service people are also having their presence in that area. Atleast, the Fire Service, Revenue and Health Department have claimed that they have visited the premises and on satisfaction they have conveyed their NOCs or recommendations for grant of license.

67. Therefore, the authorities had every knowledge that the premises in question is to be dumped with crackers during the Deepavali season, where business would be undertaken, and when that being so, these authorities must have had a vigil over, not only the crackers shop of the 3rd respondent, but every such crackers shop located in the busy commercial area within their jurisdiction and to verify as to whether they have been running with valid license and even if they are running with valid license whether all precautionary safety measures have been taken to safeguard the public in case of any emergency.

68. This duty cast upon the Police Department, the Revenue Department and the Fire Service Department and any other allied Department, cannot be shrinked by the concerned authorities, by merely saying that, the business was run by the individual for his selfish motive without a license.

69. In this regard, the law is well settled, as the personal liberty under Article 21 can be extended to safety and security of the citizen.

70. It is also to be noted that whether the 3rd respondent crackers shop is a licensed one or not, cannot be verified by a general public before he or she venture it to do business of buying crackers for Deepavali festival. Wherever a shop is open in a commercial area that too on the main road, it is quite natural that every public, who have access over the place, can very well throng into those commercial areas and would be busy in their buying items to celebrate the Deepavali. Therefore, no blame can be put against the innocent persons, who had visited the shop of the 3rd respondent on the fateful day to buy their requirements i.e, crackers.

71. Therefore, in this context, neither the Government machinery, nor the owner of the shop, cannot escape from the responsibility of providing secured atmosphere to the public to transact their business, as the commodity being sold in the shop is highly inflammable and vulnerable for any such untoward incident.

72. Since under the Act as well as the Explosive Rules, the District Magistrate is the licensing authority, it is for him, either to grant license or refuse license. Here in the case in hand, though application had been made and some NOCs and recommendations have been conveyed by the respective Departments to the DRO, the license was not given. Under Section 6 B, license can very well be refused by the authorities for the reasons to be recorded in writing. Had such action taken by

refusing the license to the 3rd respondent, probably, the 3rd respondent might have closed his business and might have shifted the crackers to some other premises where license is given to some of the relatives and family members, as he has claimed before the DRO during the enquiry.

73. Because the application for license was not decided and inspite of the recommendations having been made and NOCs having been conveyed, the licensing authority was sitting over the application, the 3rd respondent taking advantage of the situation, had conducted his business.

74. Assuming that license had been given in the case of the 3rd respondent well before this accident date, even that would not have altered the situation, as the license, even had been given, would not have avoided this accident, as the people, who transacted the business at the time of accident would find no way to escape. In this regard, the SOC report of Forensic Science Department can be taken into account, where, they have specifically stated that some of the important doors, rolling shutters were not in usable condition. In other words, some of the outer doors, through which people can move away to come out quickly, were not functioning and the said factor had not at all been noted by any of the authorities, who had visited the premises and had conveyed NOCs or recommendations.

75. Therefore, from the said factor of the case in hand, in either way, i.e., if license was granted to the 3rd respondent or not granted, as the one situation we are facing, would not alter the situation, as at any rate, had this accident been taken place, merely because license had been given, that would not have averted this unfortunate event.

76. Therefore, this factual matrix would clearly establish that both the Government machinery as well as the owners of the crackers shop are liable for the accident, which had taken away 32 innocent lives.

77. With these factual matrix, the legal submissions made by the learned respective counsels can be dwelt with.

78. Insofar as the claim made by these petitioners in this batch of cases, for a higher compensation under Public Law Remedy is acceptable or not, is a prime question, which, according to the learned Additional Advocate General appearing for the State, may not be possible for the petitioners to seek higher compensation from the State, when the State is no way responsible for the said accident, which claimed the lives of the members of the petitioners' family.

79. In this regard, the Additional Advocate General would submit that, admittedly, the license was not given to the 3rd respondent and the accident taken place due to the selfish attitude on the part of the 3rd respondent to run the crackers shop without getting a license, by thus without taking any precautionary measures, which are form part of the licence conditions.

80. Therefore, the learned Additional Advocate General would submit that the question of vicarious liability does not arise in this case.

81. He would also argue that even in respect of providing some solatium to the families of kith and kin, who lost their lives or got injured severely, under Public Law remedy, the Government is having two schemes under G.O.Ms.No.491, Home Police 12 Department dated 18.5.2010 and G.O.Ms.No.153, Law and Order-B dated 31.1.1998. The learned Additional Advocate General submits that even under these two Government orders, the quantum of relief to be awarded was fixed only in cases where death occurred due to murder or in case of grievous injury, death occurred due to caste or communal clashes, police torture or police firing. Even this kind of eventualities, the solatium, as per the said scheme, provided under the two Government Orders referred to above, are for death only for a maximum of Rs.1 lakh and injured will get Rs.10,000/-. Therefore, apart from the said two schemes available with the Government, no other scheme the Government is having to give any ex-gratia or compensation de-hors any Rule as a Public Law Remedy. Therefore, in this context, the learned Additional Advocate General would submit that here in the case in hand, these 32 persons lives have been taken away, which, though a very unfortunate event, no responsibility since can be fastened on the shoulders of the State machinery, as no specific omission or commission on the part of the State authorities have ever been pointed out by any authority including the two reports, namely, the SOC report of the Forensic Science Department as well as the report of the enquiry of the DRO. Therefore, Public Law Remedy, insofar these cases are concerned, is very remote and if at all any compensation to be given to the families of the victims, which shall be borne out only by the 3rd respondent, who is the main cause and because of his selfish action, the accident had taken place and therefore, the entire responsibility should be fastened on him.

82. In support of the said contention, the learned Additional Advocate General would heavily rely upon the Judgment of the Hon'ble Apex Court in Delhi Cinema Theatre Fire Case reported in 2011 AIR SCW 6418= 2011 (14) SCC 481 (cited supra). According to the facts of the said case, there was a huge fire accident in a cinema theatre at New Delhi on 13.6.1997, resulting in the death of 59 patrons and injuries to 103 patrons. The Hon'ble Apex Court after having analysed various pros and cons of the issue, has ultimately, concluded that, the responsibility cannot be fastened on either the Delhi Municipal Corporation or the licensing authority of the Delhi Government, who gave license to the cinema hall. However, the responsibility was fixed on the owner of the cinema hall to the extent of 85% and on the Delhi Vidyuth Board, (in short, 'the DVB') for the remaining 15%.

83. In this context the learned Additional Advocate General would rely upon the following passages of the said Judgment of the Delhi Cinema Theatre Case of the Hon'ble Supreme Court which are extracted here under:

> 1. In Rabindra Nath Ghosal Vs. University of Calcutta and Ors. - (2002) 7 SCC 478 : (AIR 2002 SC 3560 : 2002 AIR SCW 4174) this Court held:
>
> "The Courts having the obligation to satisfy the social aspiration of the citizens have to apply the tool and grant compensation as damages in a public law proceedings. Consequently when the Court moulds the relief in proceedings under Articles 32 and 226 of the Constitution seeking enforcement or protection of fundamental rights and grants compensation, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed

in its public duty to protect the fundamental rights of the citizens. But it would not be correct to assume that every minor infraction of public duty by every public officer would commend the Court to grant compensation in a petition under Articles 226 and 32 by applying the principle of public law proceeding. The Court in exercise of extraordinary power under Articles 226 and 32 of the Constitution, therefore, would not award damages against public authorities merely because they have made some order which turns out to be ultra vires, or there has been some inaction in the performance of the duties unless there is malice or conscious abuse. Before exemplary damages can be awarded it must be shown that some fundamental right under Article 21 has been infringed by arbitrary or capricious action on the part of the public functionaries and that the sufferer was a helpless victim of that act." (Emphasis supplied) This Court in Rajkot Municipal Corporation v. M.J. Nakum(1997) 9 SCC 552 dealing with a case seeking damages under law of torts for negligence by municipality, held as follows:

"The conditions in India have not developed to such an extent that a Corporation can keep constant vigil by testing the healthy condition of the trees in the public places, road-side, highway frequented by passers-by. There is no duty to maintain regular supervision thereof, though the local authority/other authority/owner of a property is under a duty to plant and maintain the- tree. The causation for accident is too remote. Consequently, there would be no Common Law right to file suit for tort of negligence. It would not be just and proper to fasten duty of care and liability for omission thereof. It would be difficult for the local authority etc. to foresee such an occurrence. Under these circumstances, it would be difficult to conclude that the appellant has been negligent in the maintenance of the trees planted by it on the road-sides."

.....

32. It is evident from the decision of this Court as also the decisions of the English and Canadian Courts that it is not proper to award damages against public authorities merely because there has been some inaction in the performance of their statutory duties or because the action taken by them is ultimately found to be without authority of law. In regard to performance of statutory functions and duties, the courts will not award damages unless there is malice or conscious abuse. The cases where damages have been awarded for direct negligence on the part of the statutory authority or cases involving doctrine of strict liability cannot be relied upon in this case to fasten liability against MCD or the Licensing Authority. The position of DVB is different, as direct negligence on its part was established and it was a proximate cause for the injuries to and death of victims. It can be said that in so far as the licensee and DVB are concerned, there was contributory negligence. The position of licensing authority and MCD is different. They were not the owners of the cinema theatre. The cause of the fire was not attributable to them or anything done by them. Their actions/omissions were not the proximate cause for the deaths and injuries. The Licensing Authority and MCD were merely discharging their statutory functions (that is granting licence in the case of licensing authority and submitting an inspection report or issuing a NOC by the MCD). In such

circumstances, merely on the ground that the Licensing Authority and MCD could have performed their duties better or more efficiently, they cannot be made liable to pay compensation to the victims of the tragedy. There is no close or direct proximity to the acts of the Licensing Authority and MCD on the one hand and the fire accident and the death/injuries of the victims. But there was close and direct proximity between the acts of the Licensee and DVB on the one hand and the fire accident resultant deaths/injuries of victims. In view of the well settled principles in regard to public law liability, in regard to discharge of statutory duties by public authorities, which do not involve malafides or abuse, the High Court committed a serious error in making the licensing authority and the MCD liable to pay compensation to the victims jointly and severally with the Licensee and DVB.

33. We make it clear that the exoneration is only in regard to monetary liability to the victims. We do not disagree with the observations of the High Court that the performance of duties by the licensing authority and by MCD (in its limited sphere) was mechanical, casual and lackadaisical. There is a tendency on the part of these authorities to deal with the files coming before them as requiring mere paper work to dispose it. They fail to recognize the object of the law or rules, the reason why they are required to do certain acts and the consequences of non-application of mind or mechanical disposal of the application/requests which come to them. As rightly observed by Naresh Kumar's report, there is a lack of safety culture and lack of the will to improve performance. The compliance with the procedure and rules is mechanical. We affirm the observations of the High Court in regard to the shortcoming in the performance of their functions and duties by the licensing authority and to a limited extent by MCD. But that does not lead to monetary liability.

.....

43. What has been awarded is not exactly punitive damages with reference to the magnitude or capacity of the enterprise. All that the High Court pointed out was that the Licensee has installed additional seats illegally. That illegality contributed to the cause for the death and injuries, as they slowed down the exiting of the occupant's balcony. If people could have got out faster (which they could have if the gangway was wider as before, and if there had been two exits as before, instead of only one) many would not have died of asphyxiation. Therefore the Licensee is not only liable to pay compensation for the death and injuries, but should, in the least be denied the profits/benefits out of their illegal acts. In that sense it is not really punitive, but a kind of negative restitution. We therefore uphold in principle the liability of the Licensee to return and reimburse the profits from the illegally installed seats, but reduce it from Rs.2.5 crores to Rs.25 lakhs for the reasons stated in the earlier para. The award of the said sum, as additional punitive damages, covers two aspects. The first is because the wrongdoing is outrageous in utter disregard of the safety of the patrons of the theatre. The second is the gravity of the breach requiring a deterrent to prevent similar further breaches.

.....

46. In view of the foregoing, we dispose of the appeals as follows:

(i) CA Nos.7114-15 of 2003 filed by the Municipal Corporation of Delhi is allowed and that part of the order dated 24.4.2003 of the Delhi High Court holding MCD jointly and severally liable to pay compensation to the victims of the Uphaar Fire tragedy, is set aside.

(ii) CA No.7116 of 2003 filed by the Licensing Authority is allowed and that part of the order dated 24.4.2003 of the Delhi High Court holding the Licensing Authority jointly and severally liable to pay compensation to the victims of the Uphaar Fire tragedy, is set aside.

(iii) The writ petition filed by the Victims Association on behalf of the victims, to the extent it seeks compensation from MCD and Licensing Authority is rejected.

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

84. By relying upon the said Judgment, especially, the aforesaid paragraphs of the said Judgment, the learned Additional Advocate General would argue that it may not be proper to award damages against public authorities, merely because there has been some inaction in the performance of their statutory duties or because the action taken by them is ultimately found to be not in accordance with law.

85. The learned Additional Advocate General would also argue that here in the case in hand, the licensing authority has not granted license to run the shop to the 3rd respondent or his wife / nominee. Since it is a case of the 3rd respondent that, knowing well that he did not have license, he had run the business, which factor clearly exposed the selfish and reckless attitude on the part of the 3rd respondent to make money at the risk of life of innocent people. These factors would certainly go to show that no public authority had been in dereliction of duty, nor they have omitted to act in accordance with law.

86. Therefore, the learned Additional Advocate General argues that in the absence of any failure on the responsibility fixed on the public authorities, they cannot be blamed and responsibility cannot be fixed or fastened on the Government machinery or its officials or staff.

87. The learned Additional Advocate General would also submit that inspite of the fact that the State is not responsible to compensate anywhere to these victims or their families, as a humanitarian gesture, the State had come forward to give a substantial amount of Rs.1 lakh each to every victims' family, as a instant solatium from the Chief Minister's Relief Fund. The said solatium is not necessarily be a compensation, as it has to be treated only as a humanitarian gesture of a Welfare State. Therefore, the

learned Additional Advocate General would submit that no responsibility can be fixed on the authorities or instrumentalities of the State.

88. Therefore, the liability to pay compensation certainly, will not lie on the shoulders of the State Administration. The responsibility cannot be fastened on the shoulders of the State machinery in the absence of any dereliction of duty on their part.

89. However, Mr.S.Udayakumar, the learned counsel appearing for the petitioners have relied upon the following Judgments to substantiate his contentions that Public Law Remedy can very well be applicable to the present case under Article 226 of the Constitution of India and therefore, these petitioners, being the kith and kin of the innocent victims, are very well entitled to claim adequate compensation from the State under Public Law Remedy. In support of his contention, the learned counsel would rely upon a number of Judgments and some of them have been quoted hereinabove.

90. The learned counsel would rely upon paragraphs 17 of the Judgment in 1993(2) SCC 746 (cited supra) which reads thus:

7. It follows that a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is distinct from, and in addition to, the remedy in private law for damages for the tort resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

18. A useful discussion on this topic which brings out the distinction between the remedy in public law based on strict liability for violation of a fundamental right enabling award of compensation, to which the defence of sovereign immunity is inapplicable, and the private law remedy, wherein vicarious liability of the State in tort may arise, is to be found in Ratanlal & Dhirajlal's Law of Torts, 22nd Edition,

1992, by Justice G.P. Singh, at pages 44 to 48.

19.This view finds support from the decisions of this Court in the Bhagalpur Blinding cases: Khatri (II) v. State of Bihar [(1981) 1 SCC 627 : 1981 SCC (Cri) 228] and Khatri (IV) v. State of Bihar [(1981) 2 SCC 493 : 1981 SCC (Cri) 503] wherein it was said that the court is not helpless to grant relief in a case of violation of the right to life and personal liberty, and it should be prepared to forge new tools and devise new remedies for the purpose of vindicating these precious fundamental rights. It was also indicated that the procedure suitable in the facts of the case must be adopted for conducting the inquiry, needed to ascertain the necessary facts, for granting the relief, as the available mode of redress, for enforcement of the guaranteed fundamental rights. More recently in Union Carbide Corpn. v. Union of India [(1991) 4 SCC 584] Misra, CJ. stated that we have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future there is no reason why we should hesitate to evolve such principle of liability . To the same effect are the observations of Venkatachaliah, J. (as he then was), who rendered the leading judgment in the Bhopal gas case [(1991) 4 SCC 584] with regard to the court's power to grant relief.

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

90.a. He would rely upon paragraphs 43 to 47 and 52 of the Judgment in 2008 (9) SCC 527 (cited supra).

3.In India, Article 38(1) of the Constitution states the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life . Thus, it is the duty of the State under our Constitution to function as a Welfare State, and look after the welfare of all its citizens.

44.In various social welfare statutes the principle of strict liability has been provided to give insurance to people against death and injuries, irrespective of fault.

45.Thus, Section 3 of the Workmen's Compensation Act, 1923 provides for compensation for injuries arising out of and in the course of employment, and this compensation is not for negligence on the part of the employer but is a sort of insurance to workmen against certain risks of accidents.

46.Similarly, Section 124-A of the Railways Act, 1989, Sections 140 and 163-A of the Motor Vehicles Act, 1988, the Public Liability Insurance Act, 1991, etc. incorporate the principle of strict liability.

47.However, apart from the principle of strict liability in Section 124-A of the Railways Act and other statutes, we can and should develop the law of strict liability dehors statutory provisions in view of the Constitution Bench decision of this Court in M.C. Mehta case[(1987) 1 SCC 395 : 1987 SCC (L&S) 37 : AIR 1987 SC 1086] . In our opinion, we have to develop new principles for fixing liability in cases like the present one.

.....

52.In view of the above, we are of the opinion that the submission of learned counsel for the appellant that there was no fault on the part of the Railways, or that there was contributory negligence, is based on a total misconception and hence has to be rejected.

90.b. The learned counsel would also rely upon paragraph 32 of the Judgment reported in 2000(5) SCC 712 (cited supra).

2. Moreover, these decisions, as for example, Nilabati Behera v. State of Orissa[(1993) 2 SCC 746 : 1993 SCC (Cri) 527 : (1993) 2 SCR 581 : AIR 1993 SC 1960] , Death of Sawinder Singh Grower, In re[1995 Supp (4) SCC 450 : 1994 SCC (Cri) 1464 : JT (1992) 6 SC 271 : (1992) 3 Scale 34] and D.K. Basu v. State of W.B. [(1997) 1 SCC 416 : 1997 SCC (Cri) 92 : AIR 1997 SC 610] would indicate that so far as fundamental rights and human rights or human dignity are concerned, the law has marched ahead like a Pegasus but the government attitude continues to be conservative and it tries to defend its action or the tortious action of its officers by

raising the plea of immunity for sovereign acts or acts of the State, which must fail.

90.c. The learned counsel would also rely upon the para 11 of the Judgment in 1996 (2) SCC 634(cited supra) which reads as thus:

1. The High Court observed that the Government cannot be held liable in tort for tortious acts committed in a hospital maintained by it because it considered that maintaining and running a hospital was an exercise of the State's sovereign power. We do not think that this conclusion is correct. Running a hospital is a welfare activity undertaken by the Government but it is not an exclusive function or activity of the Government so as to be classified as one which could be regarded as being in exercise of its sovereign power. In Kasturi Lal case [AIR 1965 SC 1039] itself, in the passage which has been quoted hereinabove, this Court noticed that in pursuit of the welfare ideal the Government may enter into many commercial and other activities which have no relation to the traditional concept of governmental activity in exercise of sovereign power. Just as running of passenger buses for the benefit of general public is not a sovereign function, similarly the running of a hospital, where the members of the general public can come for treatment, cannot also be regarded as being an activity having a sovereign character. This being so, the State would be vicariously liable for the damages which may become payable on account of negligence of its doctors or other employees. 90 d. The learned counsel would also rely upon paragraphs 13 and 15 of the Judgment reported in 1994(6) SCC 205 (cited supra).

13. Sovereign immunity as a defence was, thus, never available where the State was involved in commercial or private undertaking nor it is available where its officers are guilty of interfering with life and liberty of a citizen not warranted by law. In both such infringements the State is vicariously liable and bound, constitutionally, legally and morally, to compensate and indemnify the wronged person. But the shadow of sovereign immunity still haunts the private law, primarily, because of absence of any legislation even though this Court in Kasturi Lal [AIR 1965 SC 1039 : (1965) 1 SCR 375] had expressed dissatisfaction on the prevailing state of affairs in which a citizen has no remedy against negligence of the officers of the State and observed : (SCR pp. 391-92 : AIR p. 1049, para 30) In dealing with the present appeal, we have ourselves been disturbed by the thought that a citizen whose property was seized by process of law, has to be told when he seeks a remedy in a court of law on the ground that his property has not been returned to him, that he can make no claim against the State. That, we think, is not a very satisfactory position in law. The remedy to cure this position, however, lies in the hands of the Legislature. .....

15. That apart, the doctrine of sovereign immunity has no relevance in the present-day context when the concept of sovereignty itself has undergone drastic change. Further, whether there was any sovereign in the traditional sense during

British rule of our country was not examined by the Bench in Kasturi Lal [AIR 1965 SC 1039 : (1965) 1 SCR 375] though it seems it was imperative to do so, as the Bench in Vidhyawati [AIR 1962 SC 933 : 1962 Supp (2) SCR 989] had not only examined the scope of Article 300 of the Constitution, but after examining the legislative history had observed : (SCR p. 997 : AIR p. 937, para 7) It will thus be seen that by the chain of enactments beginning with the Act of 1858 and ending with the Constitution, the words shall and may have and take the same suits, remedies and proceedings in Section 65 above, by incorporation, apply to the Government of a State to the same extent as they applied to the East India Company.

91. If we analyse the aforesaid Judgments cited by both sides, one can easily find that the Public Law Remedy is always available to the citizen if his fundamental right is violated especially in the context of Article 21 of the Constitution of India. It is also the tortuous liability on the part of the State, if the instrumentalities of the State is in failure, cannot be ruled out.

92. It can also be said that if the State machinery or its Administration, i.e., officials and staff, either failed in their duty or have been in dereliction of duty or not acted upon in accordance with law, certainly, the responsibility to pay compensation under Public Law Remedy, can very well be fastened upon the State.

92 a. On the issue of granting adequate monetary compensation under Public Law Remedy by the High Court invoking Article 226 of the Constitution of India for the State's failure in protecting the life and interest of the citizens guaranteed under Article 21 of the Constitution, this Court would like to take a precedent of two recent Judgments of which, one is by a Division Bench of this Court and another one is by a learned single Judge.

92.b. In the Division Bench Judgement in (2017) 1 MLJ 650 in the matter of Commissioner, Corporation of Chennai, Rippon Buildings, Chennai Vs. State of TamilNadu Rep. by its Secretary to Government, Municipal Administration and Water Supply Department and another, after having exhaustively dealt with these issues, has ultimately concluded that, under Public Law Remedy, compensation can be awarded and the plea that, it is the Act of God, by the State, was also rejected by the Division Bench. In this regard, the following passages of the said Division Bench Judgement are usefully extracted hereunder:

37. Summarising from the judgments, extracted supra and texts, 'Act of God' means, an unexpected occurrence of nature, such as severe gale, snowstorms, hurricanes, cyclones and the like. But every unexpected wind and storm does not operate as an excuse from liability, if there is a reasonable possibility of anticipating their happening. 'Act of God' provides no excuse, unless so it is unexpected that no reasonable human foresight would be presumed to anticipate the occurrence having regard to the conditions of time and place known to be prevailing at. An 'Act of God'

is an occurrence, which no human foresight can provide against and of which human prudence is bound to recognise the possibility. 'Act of God' is an inevitable accident, which happens not only without the concurrence of the will of the man, but in spite of all efforts, on his part to prevent it. It means, an accident physically unavoidable something which cannot be prevented by human skill or foresight. An 'Act of God' is an inevitable or unavoidable accident without the intervention of man; some casualty which the human foresight could not discern and from the consequence of which no human protection could be provided. It should be an incident, due to an unexpected operation of natural forces free from human intervention, which no reasonable human foresight could be presumed to anticipate its occurrence or to 86 prevent it. It should be a direct violent, sudden and irresistible act of nature as could not, by any amount of ability, have been foreseen, or if foreseen, could not by any amount of human care and skill have been resisted. If the act in its origin either in the whole or in part is due to the agency of man, whether in acts of commission or omission, of nonfeasance or of misfeasance, or in any other cause independent of the agency of natural forces, it will not be a case for 'Act of God'.

40. On the contention that the compensation awarded to the second respondent, is a windfall, and that, even the Motor Accident Claims Tribunal would not have awarded such quantum of compensation as done by the writ court, perusal of the order impugned shows that while estimating the loss of income, love and affection and such other factors to be taken into consideration, the writ court has held as follows:

"18. There is no codified law for arriving at the quantum of compensation in cases of this type. The enactments like Motor Vehicles Act, 1988; Workmen Compensation Act, 1948; and Fatal Accidents Act, 1855 may be applied for arriving at the just compensation. In the decision reported in (1969) 3 SCC 64 the Supreme Court held that there is no exact uniform rule for measuring the value of human life and the measure of damages cannot be arrived at precisely. In the decision reported in (2001) 8 SCC 151 (M.S.Grewal v. Deep Chand Sood) the Supreme Court held that multiplier 88 method may be adopted to arrive at the just compensation. The age of the deceased can also be taken for arriving at a correct multiplier as per the judgment of the Supreme Court reported in 2011 (5) LW 408 (P.S.Somanathan & Others v. District Insurance Officer & Another).

19. How the Court should decide the cases of this nature is emphasised by the Supreme Court in the decision reported in (2011) 10 SCC 634 (Ibrahim v. Raju). In para 9 it is held thus, "9. This Court has time and again emphasised that the officers, who preside over the Tribunals adopt a proactive approach and ensure that the claims filed under the Act are disposed of with required urgency and compensation is awarded to the victims of the accident and/or their legal representatives in adequate measure keeping in view the relevant factors. Unfortunately, despite repeated pronouncements of this Court in which guiding principles have been laid down for determination of the compensation payable to the victims of road accidents and/or

their families, the Tribunals and even the High Courts do not pay serious attention to the imperative of awarding just compensation to the claimants." In (2009) 13 SCC 422 (Reshma Kumari v. Madan Mohan) the Supreme Court pointed out the need of giving just compensation to the victim. In paragraphs 26 and 27 it is held thus, "26. The compensation which is required to be determined must be just. While the claimants are required 89 to be compensated for the loss of their dependency, the same should not be considered to be a windfall. Unjust enrichment should be discouraged. This Court cannot also lose sight of the fact that in given cases, as for example death of the only son to a mother, she can never be compensated in monetary terms."

92.c. Also in the Judgment of a learned single Judge reported in 2016-4-LW 902, [S.Krishnaswamy Vs. The State of Tamilnadu and others], the learned Judge while dealing with a similar issue of giving lumpsum montetary compensation to the victim/injured by way of Public Law Remedy, has held as follows:

5. In Union Carbide Corporation v. Union of India [(1991) 4 SCC 584], the scope of grant of relief of monetary compensation under Article 32 by the Hon'ble Supreme Court and under Article 226 by the High Court came up for consideration and it is relevant to extract the following portion of the said judgment:

4. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in 20 proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting compensation in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making monetary amends under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of exemplary damages awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

26. In Sube Singh v. State of Haryana and Others [(2006) 3 SCC 178], while dealing with grant of compensation in a public law remedy, the Hon'ble Supreme Court of India held as follows: It is thus now well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The 21 quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 of the Code of Criminal Procedure. Thus, it is the duty of the State to maintain law and order and it is also under obligation to protect the life and property of the citizens and when life and property is taken away under the guise of Hartal/Bandh by any individual/organization, the State is under mandate to compensate the victim by granting adequate and reasonable compensation. A presumption arise on the leader of the State to protect the life and property of the citizens as and when it is taken away .

93. Under these broad principles, if the claim made by these petitioners in these batch of cases are examined, certainly, the arguments advanced on behalf of the State cannot be considered to be either convincing or appealing. The reason being that, the District Magistrate (Collector) is a licensing authority under the Rule. It is the case of the 3rd respondent that application had been filed and based on which process had been taken place and at least three wings of the District Administration, i.e., the Fire Service Department, Health Department and Revenue Department, had sent their NOCs or recommendations to the licensing authority for consideration. However, the licensing authority, for the reasons best known to him, had kept the application pending, as the authority neither granted the license nor rejected the same, as contemplated under the Act as well as the Rules made thereunder.

94. It is also pertinent to note that pursuant to the agreement entered into between the wife of the 3rd respondent and the 4th respondent, the subject premises was taken on lease in the year 2008 itself, where, it was claimed that, the crackers were stored and sold during the Deepavali seasons of 2008 itself. Only thereafter, the application for the year 2009 was made by the 3rd respondent in the name of his wife in the month of March 2009. Immediately, in quick process, Fire Department issued NOC on 23.3.2009, Health Department issued NOC on 27.05.2009 and Revenue Department also conveyed its recommendation on 11.9.2009. Though these proceedings of NOCs or recommendations having been submitted by the respective officials of the departments concerned, the licensing authority till the date of accident had not issued the license. It is also a fact that the application for license was not even rejected by the licensing authority.

95. If we have a close reading of the proceedings issued by these departments by way of NOCs or recommendations, certainly, it would reveal that there is absolutely no co-ordination between these authorities, before, either granting NOC or making recommendation. The Fire Service Department merely says NOC is given to have the shop of retail crackers up to the storage of 20 Kgs. Health Department says that no objection is conveyed for the applicant for the premises located at No.44, Bazaar Street, Pallipat. Tahsildar infact has given his recommendation on 11.9.2009 stating that, the deficiencies already pointed out have been rectified. According to the Tahsildar, the deficiencies are that some unwanted things stored in the premises had been removed, three gunny bags and two buckets of sand were placed and two buckets of water have been placed. This Court is wondering whether these materials are enough to meet the challenge of any untoward incident of explosion of fire accident as the premises is being utilised for storing and selling of fire crackers which are vulnerable of such accident at any point of time. Therefore, on what basis the recommendations had been made by the Tahsildar concerned, is quite suspicious.

96. That apart, the Health Department NOC merely says that NOC hereby issued for the possession and sale of crackers at Door No. 44, Bazaar Street, Pallipat. However, the license was sought for at No.94, Sholingur - Pallipat road, where actually this accident premises is located. The Fire Service Department's NOC merely says that NOC for locating the retail crackers shop for having 20 Kgs of crackers.

97. Of these proceedings, if we have a close reading, would reveal that none of the authorities, who are authors of these proceedings, have acted upon in accordance with law by really having an on the spot inspection of the premises and after having verified the safety and security measures as well as precautionary preparedness to meet the eventualities, in case of any accident.

98. Assuming that merely because of such doubtful NOCs or recommendations having been made by the respective departments, the licensing authority had not issued the license, the said defence cannot be taken by the State as there was no such order passed by the licensing authority rejecting or refusing the request of the 3rd respondent for getting license of his shop in the name of his wife. As Section 6 C of the Act contemplates that if the licensing authority is not satisfied with the requirements under the Act and the Rules made thereunder, it can very well reject the same for the reasons to be recorded in writing. No such rejection since had admittedly been made in this regard, it can only be presumed that the licensing authority neither has taken care of disposing the said application either way nor has had been in vigilant to oversee / verify whether the recommendations made by the authorities concerned for grant of license are genuine.

99. When a statute confers certain power on the authority of the State to do a particular thing in a particular manner and the same is not done in accordance with the said manner provided under the statute, then certainly such act would be in

violation of law and thereby, it would be termed as unlawful.

100. Here in the case in hand, the licensing authority neither acted upon in accordance with law in granting or refusing license nor had acted upon by giving directives to the respective authorities to have a vigilant / oversee, the running of such unlicensed crackers shop, like the one run by the 3rd respondent.

101. The proper course should have been adopted in the case of the 3rd respondent for grant of license is concerned, on the part of the licensing authority is, either the license should have been granted or the same should have been rejected. Had the licensing authority felt that the 3rd respondent or his wife was not entitled to get license within the meaning of Explosives Act and the Rules made thereunder as they have not fulfilled the requirements strictly, certainly, the application could have been rejected.

102. Had the application been rejected, the 3rd respondent might have closed the business or shifted the business to some other premises where license is given. Inspite of the application had been rejected, still had the 3rd respondent continued his business, even then a part of the responsibility certainly, will lie on the shoulders of the State machinery, as it is the duty of them to oversee or supervise whether any unlicensed business of crackers is taken place within their jurisdiction. This responsibility is always lying on the shoulder of the State machinery and its officials and staffs which they cannot shrink or disown.

103. Therefore, this Court has no other option except to come to the irresistible conclusion that the State machinery certainly failed in these aspects and therefore, it can very well be construed either as a dereliction of duty or in violation of their responsibility within the meaning of law governing the field. Therefore, the State machinery can very well be put under liability to pay compensation, and in this regard, absolutely, there is no impediment in fastening the responsibility on the shoulders of the State and its instrumentalities.

104. While fixing the responsibility on the State as discussed above, yet another point to be considered in the given facts and circumstances of these cases is, whether the entire responsibility should be fastened on the State machinery or the 3rd respondent should also be held responsible to shoulder and share the responsibility. In this regard, it is an admitted fact of the 3rd respondent that he had conducted the business of crackers shop unmindful of the fact that the license was not given. In this regard, the averment made by the 3rd respondent in his counter affidavit, especially at paragraph 4 can very well be taken into account. The 3rd respondent in his said counter has stated that it is quite customary in the business of crackers to run a shop in anticipation of the license.

105. He has further stated that since the crackers business is highly seasonal one and the business will have to be carried out only during Deepavali and as such if anyone waits for the grant of license and if the grant of license would get delayed, to defer the inception of the business till the receipt of the license, that would lead to loss of business.

106. This position taken by the 3rd respondent to justify his action of running the business of crackers without any license, is highly deplorable besides unlawful. Though in this regard, punitive action was initiated against the 3rd respondent and others under the provisions of the Explosives Act and the Rules made thereunder, that punitive action, whether, it is ended against the 3rd respondent or otherwise, would not absolve him from taking or shouldering the responsibility of paying compensation to the innocent victims.

107. In this regard, it is pertinent to note here that the premises in question was admittedly a rice mill godown which was kept unused for sometime. Atleast on taking lease of the premises, the 3rd respondent must have made necessary alterations and arrangements so as to enable the customers to move away quickly from the business premises in case of any emergency. In this regard, the SOC report would clearly reveal the fact that the doors and shutters were not in workable conditions and that would also cause the reason of this major accident where all the 32 persons, who were trapped in the fire were gutted to flame. It is also pertinent to note that the 3rd respondent, who claimed to be there in the premises at the time of accident was managed to escape unhurt. Though he claimed that he had taken all necessary steps with the help of his employees at his command to rescue the customers, absolutely, there is no evidence to accept the said claim made by the 3rd respondent.

108. In this regard, it is also pertinent to be noted that the concerned Village Administrative Officer, who gave the complaint which was reduced in writing by way of FIR, makes the following statement:

ma;ah ehd; btspafuk;. gs;spg;gl;L tl;lk;. fpuhk eph;thf mYtyfuhf Rkhh; 2 1-2 tUl';fshf gzp bra;fpd;nwd;/ ,d;W 16/10/2009e; njjp khiy Rkhh; 6/30 kzpf;F gs;spg;gl;L T.O.nrhsp';fh; nuhl;oy; cs;s b$a; r';fh;. j-bg/mz;zhkiyr; brl;o vd;gtUf;F brhe;jkhd fjt[vz;/94 vd;w ,lj;jpy; gs;spg;gl;ilr; nrh;e;j Fg;iga;ah brl;o vd;gthpd; kfd; Mde;jFkhh; vd;gth; gl;lhRfis ,Ug;gpy; itj;Jf; bfhz;L. btspf; fjit g{l;of; bfhz;oUe;j ntisapy; EiHt[thapy; mUfpy; jpObud;W gl;lhR btof;f Muk;gpj;jt[ld; cs;ns gl;lhRfs; th';fp bfhz;oUe;j gyh; btspna nghf Koahky; fpHf;F gf;fkpUe;J nkw;F gf;fk; mth;fs; btspna tuKoahky; g[if kz;lyj;jpy; rpf;f jtpj;J cs;sdh;/ FnlhdpypUe;j bkhj;j gl;lhRfSk; jPg;gpoj;J bjhlh;e;J ,uz;L kzp neuk; btoj;J ahUk; btspna tuKoahky; bghpa mstpy; jPg;gw;wpf; bfhz;L bfhGe;Jtpl;L vhpe;jJ jfty; rpy kzp neuk; nghuho kw;Wk; jPaizg;g[gilapdh; jPia mizj;J rpykzp neuk; nghuho jPaizj;jgpd; cs;ns brd;W ghh;j;j nghJ bkhj;jk; 32 nghpd; rly';fs; vhpe;J gpzkhf fple;jJ/ mjpy; xUth; kl;Lk; bgz; vd;W bjhpe;jJ kPjk; ngh;fspd; milahsk; bjhpatpy;iy/

109. The aforesaid statement of the Village Administrative Officer would reveal the fact that the said Village Administrative Officer had been the Village Administrative Officer of the said jurisdiction for the past 2 = years prior to the incident. He had also made the statement that at that time when the 3rd respondent was locking the main gate sudden burst of crackers took place inside the premises. Therefore, those, who had been in the business of buying crackers could not escape from the premises as they were suffocating because of huge flame and smoke.

110. If we look into this statement given by the Village Administrative Officer, which was the first statement after the incident had taken place, we would notice that the said Village Administrative Officer had been in the same station for 2 = years prior to the incident. Had he been there for 2 = years continuously, he would have noticed the running of unlicensed crackers shop in that premises as it was the case of the State that even in the year 2008, the 3rd respondent was running the said shop without license.

111. The Village Administrative Officer being the field level / officer of the Revenue Department, certainly would have had the knowledge of running the unlicensed crackers shop of the 3rd respondent and therefore, he could have very well informed the same to the higher officials to take stringent action against the 3rd respondent. However, it is a complete failure on the part of the Village Administrative Officer, who has not reported the unlicensed running the crackers shop prior to the incident.

112. Moreover, according to the Village Administrative Officer's statement, as mentioned in the FIR that, at the time the 3rd respondent was locking the main gate, the fireworks were bursted. However, it was the claim of the 3rd respondent, who was also inside the premises that he had tried to rescue those customers, who were trapped inside the premises, but his attempt went in vain because of heavy fire and smoke. This statement of the Village Administrative Officer as well as the 3rd respondent is completely contrary to each other.

113. At any rate, it is the failure or dereliction not only on the part of the State machinery and its officials and staff, but also on the part of the 3rd respondent.

114. Moreover, the DRO report dated 05.02.2010 did not reveal any new or useful factor to find out as to what was the actual reason for this accident and whether the same could have been avoided or atleast some of the victims could have been rescued alive. The DRO report merely says the reason for the accident is because of the running of the crackers shop by the 3rd respondent without license. In this regard, this Court as referred to above, wants to once again point out that, if the license had been given to the 3rd respondent, whether the accident could have been avoided, or even in case of such accident, could these victims be rescued alive. This question has not been considered and answered by the DRO, who conducted the enquiry and filed a report.

115. As has been found in the earlier discussions of this order, even if license had been given to the 3rd respondent to run the shop, that would not have saved the lives of these people as the very premises itself, since it was utilised only as a rice mill godown for sometime, was not meant for storing for crackers and for selling of the same. The precautionary measures, which could have been taken for or pressed into service at the time of accident broken out, since had not been taken, even if license had been given, it is highly doubtful that the lives of the innocents could have been saved.

116. Therefore, this Court is not inclined to accept the said reasoning given by the DRO in his report that merely because the business was running in the unlicensed premises, the accident had taken place. Why this Court comes to such conclusion is that as referred above in detail, all the authorities, like the Fire Service Department, Health Department and the Revenue Department claimed that after having inspected the premises, they, on satisfaction, conveyed their NOCs or recommendations to the licensing authority to grant license to the 3rd respondent. Therefore, all these factors would go to show combinedly and coherently that in every aspect the State machinery had failed as none of the department, who are involved in this process before granting of license, have acted upon with due diligence and care. Therefore, the responsibility can very well be fixed also on the 3rd respondent for his admitted violation of law and his carelessness and also on the State Administration.

117. If responsibility is fixed for both sides i.e., on the State as well as the 3rd respondent, then certainly, it could be subjected under the theory of contributory negligence . In this regard, the Hon'ble Apex Court has held about the contributory negligence, in the Judgment reported in 2002 (6) SCC 455 in the matter of Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak, The following passages of the said Judgment can usefully be referred to hereunder:

8.We do not think that these two reasons given by the High Court fully justify the accepted principles of contributory negligence. The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as negligence . Negligence ordinarily means breach of a legal duty to care, but when used in the expression contributory negligence it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an author of his own wrong .

118. Following the said Judgment, the Hon'ble Apex Court in yet another case in 2009 (13) SCC 654 in the matter of Raj Rani v. Oriental Insurance Co. Ltd., has held that contributory negligence, if it is found can very well be fastened on both sides. Though the said Judgment of course, is in the matter of Motor Accidents Claim, the principle laid down therein and followed by the Hon'ble Supreme Court in the said

Judgment can also be usefully applied here in the facts of this case.

Para 17 & 18 of the said Judgment is extracted hereunder :

7. So far as the issue of contributory negligence is concerned, we may notice that the Tribunal has deducted 1/3rd from the total compensation on the ground that deceased had contributed to the accident. The same, we find, has been upheld by the High Court. This Court in Usha Rajkhowa v. Paramount Industries [(2009) 14 SCC 71] discussed the issue of contributory negligence noticing, inter alia, earlier decisions on the same topic. It was held that: (SCC p. 75, para 20) 0. The question of contributory negligence on the part of the driver in case of collision was considered by this Court in Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak [(2002) 6 SCC 455 : 2002 SCC (Cri) 1355] . That was also a case of collision between a car and a truck. It was observed in SCC p. 458, para 8:

8. The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as negligence . Negligence ordinarily means breach of a legal duty to care, but when used in the expression contributory negligence it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an author of his own wrong .

18. The principle of 50:50 in cases of contributory negligence has been discussed and applied in many cases before this Court. In Krishna Vishweshwar Hede v.Karnataka SRTC [(2008) 15 SCC 771 : 2008 ACJ 1617] this Court upheld the judgment of the Tribunal assessing the ratio of liability at 50:50 in view of the fact that there was contributory negligence on the part of the appellant and fixed the responsibility for the accident in the ratio of 50:50 on the driver of the bus and the appellant.

119. Taking into account of the said principle of the contributory negligence, this Court by a Division Bench Judgment (wherein I am also a party) reported in 2016 (6) CTC 872 in the matter of S.Manjula Devi and another Vs. Brijbal Singh and others has held at para 20.10 which reads thus:

0.10. The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as `negligence'. Negligence ordinarily means breach of a legal duty to care, but when used in the expression "contributory negligence", it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an author of his own wrong. In the case of contributory negligence, the principle of 50:50 in cases of contributory

negligence has been discussed and applied in many cases. In view of the fact that there was contributory negligence on the part of the deceased, it would be proper to fix the responsibility for the accident in the ratio of 50:50 on the driver of the lorry and the deceased. In this case, the lorry was stationary and some amount of negligence on the part of the deceased cannot be ruled out. Hence, we find that there was contributory negligence on the part of the deceased and accordingly, the claimants are entitled to only 50% of the total amount of loss of dependency.

120. Though it was argued by the learned Additional Advocate General on behalf of the State that, the entire responsibility should be fastened on the shoulders of the 3rd respondent, this Court, for all these reasons and discussions made above, is not accepting the said contention of the State and also inview of the conclusion reached at by this Court to fix the contributory negligence on the part of the State as well as the 3rd respondent in the given facts and circumstances of the case, the said contention of the State is rejected.

121. Quantum of Compensation:

(i) In view of the said findings that the negligence is on the part of both the State machinery as well as the 3rd respondent, what shall be the apportionment of responsibility by sharing the contributory negligence to pay compensation to the victims' family, should also be looked into.

(ii) Since the State has been found for its dereliction of duty, certainly the State's responsibility in paying the compensation would be justifiable for atleast 50% and for the reckless and unjustifiable act on the part of the 3rd respondent, he should shoulder the responsibility of remaining 50%.

(iii) Insofar as the claim made by the petitioners for compensation, the following calculation memo has been filed by the petitioners and for the sake of brevity, only the calculation memo given in detail in respect of the writ petitioner in W.P.No.6609 of 2010 is extracted hereunder:

1. W.P.No.6609/2010:

NAME OF THE DECEASED ; K.NARESH AGE ; 24 CLAIMANTS ; TEMPORARY JOB ANDHRAPRADESH ELECTICITY BOARD;

INCOME	;	Rs.6000/- as per claim
CLAIM	;	Rs.25,00,000/-

FOR FUTURE INCOME 25% OF INCOME SHOULD BE ADDED TO HIS INCOME= Rs.7500/- and by deducting HALF amount for his personal expenses, it would be Rs.45,000/- per year. For multiplier method the mother of the age is 39; for the age group 35-40 would be 16 multiplier; Hence As Per multiplier method and adopted 16

multiplier 16 x 45,000= Rs.7,20,000/- + convention damages Rs.75,000/-= Rs.7,95,000/-

Total amount = Rs.7,95,000/-

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Solatium fund released by the government
To the victim family is                                    Rs.1,00,000/-
Now the family members/legal heirs would
Entitled to get   after deduction solatium fund is         Rs.6,95,000/-
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(iv) Insofar as the other petitioners are concerned, on the said basis of calculation, as has been mentioned in the memo given by the petitioners, as extracted above in respect of the first writ petitioner, the total amount as compensation for each of the petitioners, as has been claimed by the respective petitioners in each of the case, are given below:

Sl.

W.P.No. Amount entitled

1.

6609/2010 Rs.7,95,000/-

2. 6610/2010 Rs.7,55,000/-

3. 6611/2010 Rs.6,35,000/-

4. 6612/2010 Rs.7,35,000/-

5. 6613/2010 Rs.6,87,000/-

6. 6614/2010 Rs.6,51,000/-

7. 6615/2010 Rs.17,55,000/-

8. 6616/2010 Rs.7,50,000/-

9. 6617/2010 Rs.10,35,000/-

10. 6618/2010 Rs.11,55,000/-

11. 6619/2010 Rs.8,55,000/-

12. 6620/2010 Rs.6,15,000/-

13. 6621/2010 Rs.7,95,000/-

14. 6622/2010 Rs.6,51,000/-

15. 6623/2010 Rs.7,95,000/-

16. 6624/2010 Rs.7,95,000/-

17. 6625/2010 Rs.7,55,000/-

18. 6626/2010 Rs.8,40,000/-

19. 6627/2010 Rs.17,75,000/-

20. 6628/2010 Rs.7,55,000/-

21. 6629/2010 Rs.7,95,000/-

22. 6630/2010 Rs.7,50,000/-

23. 6631/2010 Rs.6,15,000/-

24. 6632/2010 Rs.8,55,000/-

25. 6633/2010 Rs.7,95,000/-

26. 6634/2010 Rs.8,55,000/-

27. 6635/2010 Rs.16,95,000/-

28. 6636/2010 Rs.8,55,000/-

29. 6637/2010 Rs.6,51,000/-

30. 6638/2010 Rs.6,51,000/-

31. 6639/2010 Rs.7,60,000/-

32. 6640/2010 Rs.7,95,000/-

122. Since the calculation has been made by the petitioners by applying the adoptable multiplier within the meaning of Sarla Verma Vs. Delhi Transport Corporation [2009(2) TNMAC 1 SC], this Court is inclined to take up the said calculation and accordingly, accept the said claim.

123. As has been noted earlier, in respect of 27 out of 32 victims, as they belong to the State of Andhra Pradesh, the said State Government had already paid a sum of Rs.1 lakh each to the kith and kin of the victims of the said 27 victims as, solatium. The respondent State Government has also paid Rs.1 lakh to each of the victims as solatium which has also been noted hereinabove. Therefore, the said payment of solatium of Rs. 1 lakh in respect of 5 petitioners in W.P.Nos.6622, 6638, 6614, 6625 and 6626 and for remaining writ petitioners, the solatium of Rs.1 lakh paid by the State of Tamil Nadu and yet another Rs.1 lakh paid by the State of Andhra Pradesh should be taken into account.

124. After deducting the said amount of Rs.1 lakh or Rs.2 lakh respectively as the case may be, the remaining claim as set out above in the table (para 120(iv)) shall be the compensation to be payable to the petitioners.

125. In the result, the following orders are passed in these batch of cases:

(i) That the petitioners are entitled to get adequate compensation from the State under Public Law Remedy.

(ii) Since the State's responsibility to take care of the citizens is enshrined in Article 21 of the Constitution, in case of any failure or dereliction of duty on the part of the State machinery or its instrumentalities i.e., the officials and staffs of the State machinery, and because of such failure or dereliction if the life and property of the citizen is endangered that would amount to dereliction on the part of the State towards its citizen and therefore, on that score, the State shall be liable to pay adequate compensation to the victims of the family of the citizen under Public Law Remedy;

(iii) Since the claim made by the petitioners is based on method of adopting multiplier, the said claim as has been quoted in the table at paragraph 120 (iv) shall be reasonable and also adequate compensation to the victims' family in the given facts and circumstances of the case. Therefore, the State as well as the 3rd respondent shall pay the said amount to each of the petitioners as per the apportionment mentioned below after deducting the solatium already paid by the State, with 6% interest from the date of these writ petitions till the date of payment.

(iv) In these batch of cases, as has been discussed in the earlier paragraphs, since the responsibility has been fixed equally on the State as well as on the 3rd respondent by way of contributory negligence as 50% - 50%, the respondent State shall pay 50% of the compensation claimed by the petitioners;

(v) Since the 3rd respondent admittedly, had indulged in illegally running the crackers shop without having any license, the 3rd respondent shall be responsible to shoulder the 50% of the compensation and accordingly, the 3rd respondent shall pay 50% of the compensation claimed by the petitioners in each of these cases.

(vi) As the respondent State as well as the State of Andhra Pradesh already paid a sum of Rs.1 lakh each to each one of 27 out of 32 writ petitioners' family, the said amount of Rs. 2 lakhs in respect of the said 27 writ petitioners can be deducted from the amount of 50% compensation payable by the State in respect of these 27 writ petitioners.

(vii) Insofar as the 5 remaining writ petitioners are concerned, to whom only the State of Tamil Nadu has paid Rs. 1 lakh each solatium, the said Rs.1 lakh amount can be deducted from the total amount of 50% of the compensation payable to each of the remaining 5 writ petitioners i.e.,in W.P.Nos. 6622, 6638, 6614, 6625 and 6626 of 2010.

(viii) The aforesaid directions shall be complied with by the official respondents as well as the 3rd respondent within a period of three months from the date of receipt of a copy of this order. The payment to be made by both official respondents as well as the 3rd respondent shall be made to the petitioners directly by informing them under notice and on production of their proper identity and after obtaining proper acknowledgment in this regard.

126. With these directions all these writ petitions are allowed to the terms as indicated above. However, there shall be no order as to costs.

28.07.2017 Index:Yes/No Internet: Yes/No kua R.SURESH KUMAR,J.

kua To

1.The District Collector, Thiruvallur District.

2. The Chief Secretary, Government of Tamil Nadu, Fort St.George, Chennai.

Pre-Delivery Order in W.P.Nos.6609 of 2010 etc., batch 28.07.2017