IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.659 OF 2018

1 Rekha P. Thapar]
Age: 50 years, Occ: Housewife]
of Mumbai Indian Inhabitant]
residing at Bldg. No.12, Room No.547,]
GTB Nagar, Sion Kolivada,]
Mumbai 400 037.]

2 Hedric Dsouza]
Age: 59 years, Occ: Retired]
of Mumbai Indian Inhabitant]
residing at Sagittarius, C-706, Divya]
Park, Jankalyan Nagar, Malad (W),]
400 095.]

3 Antony Xavier Fernando]
of Mumbai Indian Inhabitant]
Age: 54 years, Occu: Business, residing]
at Room No.423, A/32, BMC Chawl,]
Dr. Ambedkar Road, M.L. Camp,]
Mumbai 400 019.]

4 Sangeeta Kanaujia]
of Mumbai Indian Inhabitant]
Age: 29 years, Occ: Housewife]
residing at A/203, Geeta Gayatri]
Apt., Near Kalavati Mandir]
old M. B. Estate, Near MGM School,]
Virar (West) 401 303.]

5 Jalil Ahmed Shaikh]
of Mumbai Indian Inhabitant]
Age: 52 years, Occ: Retired]
residing at J/402, Premier Residences]
Opp: Kohinoor Kamani, Kurla (W).]
Mumbai 400 070.]

6 Mushtaque Shaikh]
of Mumbai Indian Inhabitant]
Age: 49 years, Occ: Business]
residing at 38/A, Sami Compound,]
Room No.6, M. P. Marg (Pipe Road),]
Kurla (W), Mumbai 400 070.]

7 Jacinta D'Souza]
of Mumbai Indian Inhabitant]
Age: 50 years, Occ: Service]
residing at A3 Everard Nagar,]
Eastern Express Highway, Sion,]
Mumbai 400 022.]

8 Ateeq Rehman Chaudhary]
of Mumbai Indian Inhabitant]
Age: 53 years, Occ: Scrap paper]
Business, residing at Room No.203,]
Nakhuda Chawl, Idgaah Road,]
Bhiwandi – Thane.] .. Petitioners.

Versus

1 State of Maharashtra]
through Sr. Inspector of Police,]
Investigation Officer, Vinoba Bhave]
Police Station, Kurla (West),]
Mumbai 400 070.]

2 Mumbai Municipal Corporation]
Mahapalika Marg, Mumbai 400 001.]

3 Hindustan Petroleum Corporation Ltd.,]
L. U. Gadkari Marg, Behind H P Refinery]
Chembur, Mumbai 400 074.]

4 Municipal Commissioner,]
Mumbai Municipal Corporation]
Mahapalika Marg, Mumbai 400 001.]

5 Adani Electricity Mumbai Limited]
Santacrus (East), Mumbai 400 055.]

6 Sudesha Mahabal Hegade]
Age: 47 years, Occ: Owner of Kinara]
Hotel, B/2, Premsagar Apartment,]
Near Shital Cinema, L.B.S. Marg,]
Kurla (West), Mumbai 400 070.]

7 Sharad Ramapati Tripathi]
Age: 52 years, Occ: Conductor of]
Kinara Hotel, 2/ Annsalam Lodge,]
Premier Road, Opp: Sandip Hotel,]
L.B.S. Marg, Kurla (W), Mumbai 400 070.] ..
Respondents

Adv. Naushad Engineer, Sr. Advocate with Adv. Hasmit Trivedi, Adv. Mehek Shah i/b. Jayesh Mestry, for the Petitioners.
Ms. Purnima H. Kantharia, G. P. with Mr. Abhay L. Patki, Addl. G. P. for Respondent No.1- State.
Mr. A. Y. Sakhare, Sr. Advocate with Adv. Yashodeep Deshmukh, Adv. Jyoti Mhatre, Adv. Anuja Tirmali i/b. Adv. Komal Punjabi, for Respondent Nos. 2 and 4 – MCGM.
Adv. S. R. Page with Adv. Eesha Jaifalkar, Adv. Archana Joglekar, for Respondent No.3- HPCL.
Adv. Vighnesh Kamat with Adv. Satish Kamat, for Respondent No.5.
Dr. Shailendra Gujjar, Medical Officer of Health (L Ward), present in Court.
Mr. Vishal Ghagre, Investigation Officer (D.E. Cell), Enquiry Department, present in Court.

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
RESERVED ON: MARCH 24, 2025
PRONOUNCED ON: JUNE 10th, 2025

JUDGEMENT (Per FIRDOSH P. POONIWALLA,J.):-

1. **RULE.** Rule made returnable forthwith and heard finally by consent of the parties.

INTRODUCTION:-

2 On 16th October, 2015, 8 young adults visited a restaurant named Hotel City Kinara (herein after referred to as "Kinara") for lunch at 1.00 p.m.. They were made to sit on a table in the loft area/ mezzanine floor of Kinara where food was served to them. At about 1.20 p.m. a fire broke out in the loft area/ mezzanine floor. The Fire Brigade came at around 1.36 p.m. However, tragically all 8 young adults lost their lives. The names of these young adults, the names of the Petitioners who are their parents/ widow and the relation of each of the Petitioners to the deceased victims is set out herein below:-

Petitioners No.	Name of the Petitioner	Name of the deceased victim	Relation to the Victim
1	Rekha P. Thapar	Akash Thapar	Mother
2	Hendric Dsouza	Erwin Dsouza	Father
3	Antony Fernando	Brian Fernando	Father
4	Sangeeta Kanaujia	Arvind Kanaujia	Wife
5	Jalil Ahmed Shaikh	Sharjeel Shaikh	Father
6	Musthaque Shaikh	Taha Shaikh	Father
7	Jacinta D'souza	Bernadette D'souza	Mother
8	Ateeq Rehman Chaudhary	Sajid Chaudhary	Father

3 On 28th August, 2016, a complaint was filed before the Lokayukta, Maharashtra State, seeking directions for investigation into the fire incident and compensation to the families of the 8 young

adults. By an Order dated 27th February, 2017, the Lokayukta, Maharashtra State, dismissed the complaint. As far as the claim for compensation was concerned, it was recorded that, during the course of hearing, it had transpired that compensation had already been ordered to be paid to the families of the deceased persons who died due to the accidental fire at Kinara. It was also recorded that the compensation amount had already been credited to the account of the Tahsildar, Kurla, who had been directed to take further steps. In view thereof, the Lokayukta did not grant any compensation.

4 Being aggrieved by the Order dated 27th February, 2017 passed by the Lokayukta, Maharashtra State, the Petitioners filed the present Petition. When the present Petition came up for hearing on 20th August, 2019, this Court was pleased to pass the following order:-

> *"2:- In view of the tragic loss of human lives, we would like to consider the issues arising in the petition, in particular whether compensation should be paid to the family of the victims and whether the liability can be attached to the municipal corporation for negligence or disregard in discharge of its duties, if any, which may have resulted into or led to the unfortunate incident. Both the sides are put to notice that the petition will be disposed off finally at this stage. Stand over to 17th September, 2019 at 03.00 p.m."*
>
> *(emphasis supplied)*

5 By virtue of the said Order dated 20th August, 2019, and which was not been challenged by any of the parties, the issue, as to whether compensation has to be paid to the family of the victim and whether any liability can be attached to Respondent No.2 (MCGM) for negligence or disregard in discharge of its duties which may have resulted into or led to the unfortunate incident, would have to be considered by us in this Petition.

FACTS:-

6 Respondent No.6 is the owner of premises bearing Shop No.1, Madhur Seth Chawl, Opposite Holy Cross School Gate, Premier Road, Kurla (West), Mumbai 400 070.

7 In 2009-10, Respondent No.6 entered into an Agreement with Respondent No.7 whereunder Respondent No.7 commenced the business of running a restaurant under the name and style of "Hotel City Kinara". Kinara consists of a ground floor and a mezzanine floor. The restaurant had a narrow room on the ground floor and 216 sq. ft on the mezzanine floor where it had sitting place for 16 persons.

8 One Martin Matthews filed an Application dated 4th September, 2012 under the Right to Information Act, 2015 ("RTI

Act") with Respondent No.2, seeking certain information in respect of Kinara.

9 During a routine inspection carried out on 13th September, 2012 [of Kinara], the Medical Officer of Health (MOH) of Respondent No.2 found that Kinara was infringing various conditions of its license. Amongst the infringements was that no letter from the Chief Fire Officer granting permission for running the restaurant was produced at the time of inspection. Further, it was also found that the restaurant was using extra space outside the licensed premises for preparation of eatables such as Chinese food. Accordingly, the inspection report directed Respondent Nos. 6 and 7 to rectify the infringements and cautioned them that failing the same, Respondent No.2 would take action under Section 394 of the Mumbai Municipal Corporation Act, 1888 ("MMC Act"). What is important to note is that this inspection report showed that Respondent No.2 was aware since 13th September, 2012 itself that Kinara did not possess a Fire NOC. However, no action was taken by Respondent No.2 in that regard.

10 Be that as it may, in response to the RTI Application dated 4th September, 2012 filed by Martin Matthews, on 27th

September 2012, the MOH, 'L' Ward provided, *inter alia*, the following information:-

(i) No licence had been granted to Kinara in respect of its verandah;

(ii) The copies of the Police and the Chief Fire Officer's NOC for Kinara were not available;

(iii) No information was available regarding where and how many gas cylinders were stored in Kinara;

(iv) No information was available regarding the water tanks in Kinara; and

(v) No license had been granted to Kinara in respect of its bathroom.

11 A complaint dated 22th October, 2012 was made to the Senior Police Inspector, Vinoba Bhave Nagar Police Station, Kurla (East), by Martin Matthews regarding, *inter alia*, the violations by Kinara in cooking food outside the restaurant area and storing gas cylinders. The said complaint categorically raised the issue of usage of gas cylinders by Kinara and the risk of blast of the gas cylinders. This complaint was forwarded by the Police to Respondent No.2.

12 On 15th March, 2013, the Assistant Commissioner, 'L' ward, of Respondent No.2 held a hearing pursuant to the complaint dated 22nd October, 2012 made by Martin Matthews. The minutes of the said hearing recorded that during the meeting, the MOH, 'L' ward, of Respondent No.2 had submitted that during certain previous routine inspections, his section had issued an Inspection Report mentioning the infringements of the license conditions. The MOH had also produced a Report from the Mumbai Fire Brigade dated 5th December, 2012. Despite the same being brought to the notice to the Assistant Commissioner of 'L' ward, he did not take the complaint seriously, and, in fact, recorded that, with the available machinery at the disposal of Respondent No.2, it would be a herculean task to take action every now and then against such establishments. At the said meeting, the MOH was directed to urgently inspect the said eating house (Kinara), issue the necessary Inspection Report and follow the Inspection Report logically to its end in the future.

13 Accordingly, the MOH carried out another inspection of Kinara on 20th March, 2013 and once again highlighted the infringements of the license conditions, which included using extra space outside the licensed premises for preparation of eatables such

as Chinese food. Respondent Nos. 6 and 7 were again directed to rectify the infringements of the license conditions within a period of 7 days, failing which, action would be initiated against them under Section 394 of the MMC Act. However, no action was taken by Respondent No.2 pursuant to the said Inspection Report dated 20th March, 2013.

14 On 2nd September, 2015, Respondent No.2 carried out a 3rd inspection of Kinara. The Inspection Report in respect of this inspection set out the infringements of the license conditions by Kinara. One of the said infringements was that the mezzanine floor was found to be used for service purpose, when it was meant only for storage purpose. It is to be noted that the said inspection was carried out just one and a half months prior to the fire in Kinara, but again no action was taken by Respondent No.2 pursuant to this Inspection Report.

15 As mentioned earlier, on 16th October, 2015, a fire broke out at Kinara which tragically claimed the lives of the Petitioners' children/ husband.

16 After the incident, a Fire Inspection Report was prepared which stated the following as the supposed cause of fire:-

" While all the above mentioned causes are ruled out, the supposed cause of fire "Leaked & accumulated L.P.Gas from the defective main valve/ regulator assembly came in contact with unknown ignition sources." needs to be examined. As stated by the eye witnesses, Origin of fire (location) was on loft /mezzanine floor containing combustible materials like wooden table & chairs, plastic chair etc. The LPG cylinders were kept on loft / mezzanine floor& electrical switch board for loft / mezzanine floor is located in its close vicinity (marking of the electrical switch board could be easily seen on wall near entrance door to balcony, same is verified through C.C. TV footage recording received from police personnel). The electrical cable is routed very close to LPG cylinders Gas Manifold installed in the balcony of loft / mezzanine floor. As per the statement of the witness no 1 & 3 at the initial stage, large flames & thereafter dense Black smoke was started coming out from the loft/mezzanine floor.

Considering the statement of eye witnesses, the location of fire, and elimination process to rule out other probable causes of fire as mentioned above, the supposed cause of fire could not be establish at this stage. However prima facia probable cause of fire could be "Leaked & accumulated L.P.Gas from the defective main valve/ regulator assembly of L.P. Gas cylinder (H.P.C.L. Co. Make) came in contact with unknown ignition sources."

(emphasis supplied)

17 The Fire Inspection Report also noted the following:-

"The loft mezzanine floor is used for dinning purpose & balcony is used for storage purpose. Party has installed water storage tank in the

balcony of loft /mezzanine floor. Party failed to produce valid permission from competent Municipal authority for the authenticity of the loft/mezzanine floor.

d. Asst. Commissioner/A.E. (B. & F.), 'L'- Ward, requested to inspect the premises to check the authenticity i.e. to check the relevant permissions from competent Municipal Authority with respect to loft / mezzanine floor & addition - alteration, if any made in the premises etc. if party failed to produce relevant permissions from competent Municipal Authority action shall be initiated deemed fit for the same."

(emphasis supplied)

18 Respondent No.3 (Hindustan Petroleum Limited) addressed a letter dated 20th October, 2015 to the Senior Police Inspector, Vinoba Bhave Nagar Police Station, stating that its officers had visited Kinara and, upon inspection, it was observed that there was no leakage of LPG.

19 On 28th October, 2015, Respondent No.1 recorded the statement of one Mohd. H. Shamim Khan, a gas cylinder delivery boy, who stated that he was providing one gas cylinder to Kinara every alternate day. He also stated in his statement to the Police that while supplying gas cylinders to Kinara, he would sometimes store the gas cylinder on the loft and some times on the ground floor as directed by the Seth of the hotel.

20 On 31st October, 2015, the Bombay Fire Brigade issued another report in respect of the fire at Kinara which, *inter alia*, stated as under:-

> *" With reference to above subject this is to inform you that on 16/10/2015 fire incident occurred at above mentioned address. Fire was confined to wooden table & chairs, plastic chairs, electric wiring, electric installation, leaked & accumulated L.P. Gas etc. on 1st floor & in balcony. Fire was extinguished by the personnel from Mumbai Fire Brigade.*
>
> *Fire involved premises was inspected thoroughly from fire investigation point of view it was observed that in the 1st floor in balcony two L. P. Gas cylinders of H.P.C.L. Co. having capacity 19 kg were found. One was empty & another was filled connected to LPG manifold through regulator & corrugated metal tube through substandard regulator.*
>
> *As per fire safety norms commercial cylinders of LPG should not be permitted on upstairs. In this case cylinders were kept at first floor balcony of restaurant. It is learnt from police personnel that the manager of M/s. Laxmi Gas Agency, Kurla (East) has agreed that M/s. Laxmi Gas Agency (H.P.C.L. Co. Distributer), Kurla (East) supplying refilled H.P.C.L. LPG Cylinder to the City kinara restaurant (Premiere lunch Home). Police personnel are investigating the matter in detail."*
>
> *(emphasis supplied)*

21 In November/ December 2015, a representative from the office of the Collector, Bombay, handed over a cheque of Rs.1 lakh to each of the Petitioners as ex-gratia compensation.

22 By a letter dated 14th December, 2015 addressed to the Police Inspector of Vinoba Bhave Nagar Police Station, Respondent No.3 (Hindustan Petroleum Ltd.) once again contended that there was no evidence to suggest that the cause of fire was because of a leakage of LPG. Respondent No.3 stated that the mention of LPG leakage as cause of the fire should be dropped from the FIR.

23 The Electrical Inspector (Santacruz Inspection Department, Industry, Energy and Labour Department,Bandra) of Respondent No.1 addressed a letter dated 8th January, 2016 to the Police Inspector of Vinoba Bhave Police Station, stating that due to the fire that took place on the first floor of Kinara, the electrical set up at the said place had been completely burned out. Therefore, it was not possible to make any type of electrical inspection at the said place. Therefore, he was unable to say as to whether the fire took place due to some electrical reasons or otherwise.

24 By a letter dated 30th March, 2016, the Public Information Officer of the Bombay Fire Brigade informed Nicholas Almeida of Watchdog Foundation, in response to a RTI application, that, as per the records of the Fire Department, no fire NOC had been given to Kinara.

25 Further, by a letter dated 5th April, 2016, addressed to Mr. Godfrey Pimenta of Watchdog Foundation, Respondent No.3, pursuant to an RTI enquiry, informed him that, as per its records, Kinara was not a registered customer of M/s. Laxmi Gas Agency, Kurla (East), Mumbai, which supplied gas cylinders to Kinara.

26 On 1st June, 2016, the Deputy Municipal Commissioner of Respondent No.2 issued show cause notices against (i) Rajendra Rathod - Jr. Engineer (B & F); (ii) Vijay J. Chavan, Sanitary Inspector of 'L' ward from 2011 to 3rd June, 2015; (iii) Deepak Bhurke, Sanitary Inspector of 'L' ward after Vinod J. Chavan and (iv) Tulsiram Waghvale - Mukadam.

27 On 28th August, 2016, the Petitioners and Watchdog Foundation filed a complaint before the Lokayukta, Maharashtra State, seeking a proper investigation into the incident and grant of compensation to the Petitioners for the loss of lives in the tragedy.

28 Pursuant to the departmental enquiry made by it, Respondent No.2 issued a Report dated 19th January, 2017. The said Report includes various findings against the said officials of Respondent No.2 to whom Show Cause Notices had been issued. As

far as Deepak Bhurke, Sanitary Inspector, was concerned, it was noted that he deliberately suppressed the fact that LPG gas cylinders were being stored on the loft area in Kinara. It was held that the charge stood proved and he was held guilty of breach of duty, particularly because the aforesaid inspection conducted by him was only one and a half months before the incident. Pertinently, during the enquiry, an issue arose as to how Kinara would have been granted an eating house license without a fire NOC. In this context, the Report (as translated into English) stated as under:-

> *"As per the Fire Brigade Department's questioners submitted on 26.10.2015 (Q. No. 3) and as per the questioners submitted by the Building and Factory Department on 27.10.2015 (Q. No. 10) it was mentioned that it is necessary to obtain No Objection Certificate of said Fire Brigade Department and Building and Factory Department at the time of issuance of the license to the said City Kinara Premier Lunch Home Establishment on 04.01.1995 and it is seen that the Medical Health Officer had issued the permission to the said establishment without obtaining NOC from the Fire Brigade Office and Building and Factory Department. The said fact is committing the breach of the rules for issuance of license and hence possibility cannot be denied that the Medical Health Officer L Ward may have intentionally lost the said original file / paper / documents / plan."*
>
> *(emphasis supplied).*

29 Further, though the MOH was not the subject of the departmental enquiry, a specific direction was given to confirm the

records/ register of MOH 'L' Ward and to initiate action as per Rules and Regulations by inspection as to whether the issued license to Kinara by the MOH 'L' ward is just and proper, and if any irregularities are found in this regard. Despite the aforesaid specific findings of the departmental enquiry, no action was taken against the MOH by Respondent No.2.

30 The Deputy Commissioner (Zone 5) of Respondent No.2 passed an Order dated 27th January, 2017, accepting the Departmental Enquiry Report dated 19th January, 2017. Further, additional observations were made to the effect that the loft area of Kinara was being used as a service area instead of a store room and that, as per the Rules of the Health Department, it was not permissible to have a loft above the kitchen.

31 As stated herein above, by an Order dated 27th February, 2017 passed by the Lokayukta, Maharashtra State, the complaint of the Petitioners was dismissed.

32 By an Order dated 15th March, 2017, the Assistant Chief Officer (Inquiry) of Respondent No.2 also confirmed the findings/ observations contained in the Report dated 19th January, 2017 and

recommended punishment in accordance with Section 83 of the MMC Act. The Assistant Chief Officer (Inquiry), additionally recorded as under:

(i) The Fire Brigade had found that LPG cylinders were kept on the upper floor of Kinara. It was the duty of the Cleanliness Inspectors (viz. Deepak Bhurke and Vinod Chavan) to inspect and initiate action against Kinara in respect of such irregularity;

(ii) Respondent Nos. 6 and 7 were regularly violating Rules and Regulations and it was necessary on the part of the Cleanliness Inspector to frequently visit Kinara and initiate action.

33 Thereafter, Deputy Commissioner (Zone 5) of Respondent No.2 passed an Order dated 22nd March, 2017 imposing a monetary penalty of Rs.70,000/- on the Cleanliness Inspectors, viz. Deepak Bhurke and Vinod Chavan. Their suspension duration was considered as *"excusable"*. Despite the conclusive findings against them in the Report dated 19th January, 2017, the Cleanliness Inspectors were not dismissed. The other officers, namely – Rajendra Rathod (Jr. Engineer) and Tulsiram Waghvale (Mukadam), against whom charges were purportedly not proved, were deputed to service immediately.

34 From the aforesaid, it is clear that Respondent No.2's officers faced no real consequence for their negligence in preventing the fire at Kinara and the deaths of the Petitioners' children/husband.

35 On 12th January, 2018, the present Petition was filed.

36 Pursuant to the filing of the present Petition, MOH, 'L' ward, addressed a letter to 18 different departments of Respondent No.2 in 'L' ward as well to 23 Health Officer of 23 different wards, calling upon them to search their records for the original file of Kinara, since the same was untraceable by the MOH, 'L' ward. None of Respondent No.2's departments or Health Officers have responded to the aforesaid letters.

37 The MOH, 'L' ward, addressed a letter dated 12th July, 2017 to the Senior Inspector of Police of Respondent No.1, requesting to file an FIR against the Public Information Officer of 'L' ward. This request was made since the Public Information Officer had stated in response to a RTI application filed by one Vijay Manthena, on 26th October, 2015, that the file of permissions in respect of Kinara was untraceable.

38 In the aforesaid context, it is important to note that, as of 19th August, 2019, i. e. nearly about four years after the tragedy at Kinara, the enquiry against the Public Information Officer still remains pending. The belated nature of Respondent No.2's enquiry is all the more appalling since this was not for the first time that the Public Information Officer of the Health Department, 'L' ward, had refused to give information on the ground of unavailability of files. As far back in September, 2012, even before the fire broke out at Kinara, the Public Information Officer had, in response to a RTI application made by Martin Matthews, stated that the permissions pertaining to Kinara were not available with it. At that time, no action, whatsoever, were taken to locate the files or hold the concerned officials responsible. More importantly, findings have been rendered in Respondent No.2's own departmental enquiry that the MOH may have deliberately misplaced the files to conceal his wrongdoings. Instead of acting upon these findings and uncovering the actual perpetrator behind the missing files, Respondent No.2 was merely penalizing the Public Information Officer.

39 The MOH 'L' ward addressed a letter dated 6th August, 2019 to the Mumbai Fire Brigade, requesting for a certified copy of

the fire NOC granted to Kinara. This request was made since the file had been *'misplaced'* by Respondent No.2's Health Department at 'L' ward. Similarly, another letter dated 6th August, 2019 was addressed by the MOH, 'L' ward, to the Building and Factories Department, requesting for a certified copy of the permission granted by it to Kinara.

40 By a letter dated 7th August, 2019, the Mumbai Fire Brigade responded to the letter dated 6th August, 2019, reiterating that no fire NOC in respect of Kinara was found on the records of the Mumbai Fire Brigade.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:-

41 In this factual backdrop, Mr. Naushad Engineer, the learned Senior Counsel appearing on behalf of the Petitioners, relied upon the aforesaid facts and submitted that a higher standard of care was imposed on Respondent No. 2 in matters concerning public safety. Mr. Engineer submitted that Respondent No.2 owed a duty to the members of the public (including the Petitioners' children/ husband) to ensure that public safety legislations are effectively implemented. Mr. Engineer submitted that, in matters concerning public health and safety, the standard of care imposed on the public

authorities is even higher. In this context, Mr. Engineer relied upon the judgements of the Hon'ble Supreme Court in ***MCD v/s. Uphaar Tragedy Victims Association, (2011) 14 SCC 481*** and ***Sanjay Gupta v/s. State of UP (2022) 7 SCC 203.***

42 Mr. Engineer submitted that the supervision and maintenance of adequate fire prevention measures in places of public entertainment, such as eating houses, is the statutory duty of Respondent No.2. Mr. Engineer submitted that since this duty pertains to public safety, higher standard of care is imposed upon Respondent No.2 and its officials. Mr. Engineer submitted that, it is in this backdrop, that the degree of Respondent No. 2's negligence is to be ascertained.

43 Mr. Engineer further submitted that there was gross negligence on the part of Respondent No.2 in discharge of its duties, despite complaints and known breaches. Mr. Engineer submitted that, in the present case, Respondent No.2 received complaints, carried out inspections and was fully aware of fire safety violations committed in Kinara. Despite being aware of such violations, Respondent No.2 did not take any action against Kinara.

44 Mr. Engineer submitted that the breaches committed by Kinara are as under:-

(i) use of loft area/ mezzanine floor for serving patrons;

(ii) operation of the restaurant without fire NOC;

(iii) use of LPG cylinders without license and storage of the same in the loft area / mezzanine floor; and

(iv) cooking outside the restaurant premises.

45 Mr. Engineer further submitted that, in the present case, there has been an utter and gross failure of discharge of statutory duties by Respondent No.2 and its officials. Mr. Engineer submitted that Respondent No.2 was guilty of the following breaches towards its statutory duties:- (i) Respondent No.2's officials did not regularly inspect Kinara, (ii) Respondent No.2 did not act on the complaint and inspection reports, and (iii) Respondent No.2 did not cancel Kinara's eating house license.

46 Mr. Engineer further submitted that Respondent No.2's conduct, particularly in (i) issuing a eating house license without a fire NOC in place; (ii) taking no action despite having noted the fire hazards in its inspections; (iii) failing to remove LPG cylinders on the mezzanine floor/ loft area of Kinara and (iv) allowing Kinara to

serve patrons on the mezzanine floor / loft area; shows a complete breach of its statutory duties.

47 Mr. Engineer submitted that Respondent Nos.2' s negligence has a proximate cause to the tragic fire in Kinara and, therefore, Respondent No.2 can and should be held liable. In this context, Mr. Engineer submitted that Respondent No.2 and its officials were grossly negligent in (i) granting the eating house license to Kinara despite the fire NOC and other NOCs not having been obtained; (ii) failing to act on the complaints about the illegalities being committed in Kinara; (iii) failing to take action pursuant to 3 inspections wherein it was specifically noted that (a) Kinara did not have a fire NOC; (b) the mezzanine floor was illegally being used for service; and (c) it was storing LPG cylinders without a license.

48 Mr. Engineer submitted that it is only due to the negligence on the part of Respondent No.2, in matters of public health and safety, as also the failure to act timely, that the fire took place, and which could have been entirely prevented had Respondent No.2 taken the necessary action.

49 In this context, Mr. Engineer relied upon a Division Bench decision of this Court in ***Tri-Sure India Ltd., v/s. A. F. Ferguson and Co., (1985) SCC Online Bom 342.*** Mr. Engineer submitted that the *'but for'* test which has been laid down in the said decision was squarely met in the facts of the present case. Mr. Engineer submitted that had Respondent No.2 promptly discharged its statutory duties by acting upon the fire safety violations, cancelling Kinara's license under Section 479 of the MMC Act, seizing the LPG cylinders under Section 394 of the MMC Act and preventing the use of the mezzanine floor/ loft area for serving patrons, the fire would not have occurred, and in any event, no lives would have been lost. Mr. Engineer submitted that Respondent No.2's officials' deliberate inaction and negligence in fulfilling their duties was the main reason for the loss of lives at Kinara.

50 Mr. Engineer submitted that where officials fail to perform their duties, it is settled law that the Court can not only penalize the wrongdoer but can fix vicarious liability on the public authority as the public authority would have failed in its duties to protect the fundamental rights of the citizens. In this context, Mr. Engineer placed reliance on the judgement of the Hon'ble Supreme Court in ***Khatri (IV) v/s. State of Bihar (1981) 2 SCC 493***, wherein the

defence of the State that it would not be liable for the unauthorized acts of its officials was rejected.

51 Mr. Engineer submitted that Respondent No.2 ought to be held vicariously liable for the negligent acts and omissions of its officers in causing the fire at Kinara.

52 Mr. Engineer further submitted that the investigation by Respondent Nos. 1 and 2 into the Kinara tragedy was wholly inadequate and granted no reliefs to the Petitioners. In this context, Mr. Engineer submitted that for the loss of 8 young lives, Respondent No.2 had held merely two Cleanliness Officers responsible for not conducting regular / proper inspections in respect of Kinara. Further, the only punishment imposed was a monetary penalty of Rs.70,000/- deducted from their salary. The Cleanliness Officers were not even dismissed from their services. Mr. Engineer submitted that no reason has been given for exonerating the concerned officers on such a minor penalty. Mr. Engineer submitted that punishment imposed on Respondent No.2's Officials can hardly be considered appropriate for the death of 8 young adults, which would have been prevented if these officials had done their duties.

53 Mr. Engineer further submitted that, save and except the above, Respondent No.2 had not held any its officials responsible for causing the tragedy in Kinara. This was nothing but an attempt on the part of Respondent No.2 to shield the actual culprits responsible for the loss of the lives of the Petitioners' children/ husband.

54 Mr. Engineer submitted that Respondent No.2's investigation could not be stated to be proper and complete without an enquiry into the acts/ omissions of the MOH, the authorized officers of Respondent No.2, and the officials of the Fire Department and the Building and Factories Department.

55 Further, Mr. Engineer submitted that, in matters pertaining to breaches of fundamental rights by the State or public authorities, compensation can be awarded under Article 226 of the Constitution of India. In this context, Mr. Engineer submitted that the loss of lives of the Petitioners' children/ husband had caused immense trauma and agony to the Petitioners. In addition, the Petitioners, who are from low to middle income backgrounds, had lost the only potential bread-earners of their families. Mr. Engineer submitted that the negligence on the part of Respondent No.2 had occasioned a gross violation of the Petitioners' fundamental right to

life under Article 21 of the Constitution of India. He further submitted that it is now well settled law that where the violation of fundamental rights under Article 21 of the Constitution of India is concerned, the Courts have power to compensate the victims. In this regard, Mr. Engineer relied upon the following judgements of the Hon'ble Supreme Court:

(a) Rudul Sah v/s. State of Bihar (1983) 4 SCC 141;

(b) Nilabati Behera v/s. State of Orissa (1993) 2 SCC 746;

(c) D. K. Basu v/s. State of West Bengal (1997) 1 SCC 416; and

(d) Common Cause v/s. Union of India (1999) 6 SCC 667.

56 Mr. Engineer submitted that in addition to the aforesaid judgements, there was a consistent line of judicial precedent over 40 to 50 years, upholding the powers of a writ Court to grant compensation for the violation of fundamental rights, and, in this context, referred to the following judgements:-

(a) Khatri (IV) v/s. State of Bihar (1981) 2 SCC 493;

(b) Bhim Singh v/s. State of J & K (1985) 4 SCC 677;

(c) M C Mehta v/s. Union of India (1987) 1 SCC 395;

(d) Saheli, A Women's Resources Centre v/s. Commissioner of Police (1990) 1 SCC 422; and

(e) Sube Singh v/s. State of Haryana (2006) 3 SCC 178.

57 Mr. Engineer further submitted that from the catena of judgements passed the Hon'ble Supreme Court on the subject, the following principles can be summarized:-

(a) A writ court has not only the power but the obligation to grant compensation to a victim whose fundamental rights have been infringed;

(b) Notwithstanding the alternate civil remedy, the victims ought not to be relegated to filing a civil suit, which is a long-drawn out and cumbersome process;

(c) The State or the Public Authority ought to be held vicariously liable for the negligent act of its officers.

58 Mr. Engineer further submitted that in cases where fire has broken out at public spaces on account of the negligence of statutory authorities in enforcing safety norms and rules, the Hon'ble Supreme Court has been pleased to direct the statutory authorities to grant compensation to the families of the victims. In this context, Mr. Engineer relied upon the judgement of the Punjab & Harayana High Court in ***Dabwali Fire Tragedy Victims Assn v./s. Union of India, (2009) SCC Online P & H 10273,*** and the judgements of the

Hon'ble Supreme Court in ***DAV Managing Committee v/s. Dabwali Fire Tragedy Victims Assn., (2013) 10 SCC 494, Sanjay Gupta v/s. State of U. P. (2015) 5 SCC 283*** and ***Sanjay Gupta v/s. State of U P. (2022) 7 SCC 203.***

59 Next, Mr. Engineer made submissions on the quantum of compensation payable to the Petitioners by Respondent No.2. In this regard, Mr. Engineer relied upon the judgement of the Hon'ble Supreme Court in ***Nilabati Behera (supra)*** and submitted that the said judgement had held that the compensation in matters concerning violation of fundamental rights cannot be equated with damages in a civil action. He submitted that it was held in ***Nilabati Behere (supra),*** that, while granting compensation,the approach of the Court must be to penalize the wrongdoer by directing it to make monetary amends for the wrong done due to breach of public duty. Mr. Engineer submitted that, in the said case, the Hon'ble Supreme Court had held that the compensation to be awarded by the Courts in such matters must be in the nature of *'exemplary damages'*.

60 In support of his aforesaid submissions, Mr. Engineer also relied upon the judgement of the Hon'ble Supreme Court in ***Raman v/s. Uttar Haryana Bijli Vitran Nigam Limited (2014) 15 SCC***

1 and the judgement of this Court in ***Umakant Kisan Mane v/s. Dean, Rajawadi Municipal Hospital, Mumbai, (2016) 2 Mah, L J 266.***

61 Mr. Engineer submitted that the age and educational qualifications of the Petitioners' children/husband and the occupation and financial background of their family members are as under:-

Sr. No.	Name	Age	No. of Family Members	Educational Qualification	Skills	Working status of the victim or their family members
1	Erwin Dsouza	18	3	2nd year – Bachelors' in Mass Media	Athlete, Guitarist, Studious	Alden Dsouza, the victim's brother is working
2	Akash Pradeep Thapar	19	3	3rd year Engineering (IT)	Footballer and Studious	Rekha P. Thapar, the victim's mother, conducts Tutions
3	Brian Antony Fernando	20	4	3rd year Engineering (IT)	Footballer with many accolades to his name	None
4	Arvind Kumar Kanaujia	32	3	…	….	Employee at Sterling Engineering Consultants
5	Sharjeel Jalil Shaikh	20	4	3rd year Engineering (IT)	Footballer and Studious	The victim's mother is a teacher
6	Taha Mushtaque Shaikh	20	4	3rd year – Engineering (IT)	Footballer and Studious	The victim's father dealt in second hand cars
7	Bernadette Alein D'souza	18	2	2nd year – Bachelors' in	Basketball Player and	The victim's mother is

				Mass Media	Photographer	working
8	Sajid Chaudhary	20	4	3rd year Engineering (IT)	Footballer and Studious	The victim's father is working.

62 Mr. Engineer further submitted that most of the Petitioners came from low to middle income group. The Petitioners had poured their life's savings into the education of their children, with the hopes and aspirations of a brighter future ahead. The Petitioners' children, who were pursuing their engineering degrees, would ultimately be the only breadwinners of their families and look after the Petitioners in their old age. At the tender age of just 18-22 years, their lives have been taken in the most unfortunate and tragic manner.

63 Mr. Engineer submitted that, till date, each of the Petitioners had been granted compensation of only Rs. 1 lakh by the State Government for the loss of lives of their children/ husband. Mr. Engineer submitted that, considering the appalling facts of the present case, the grant of such a meager amount as compensation was unjust and inadequate.

64 Mr. Engineer also submitted that, for all the aforesaid reasons, the Order dated 27th February, 2017 of the Lokayukta

Maharashtra State, ought to be set aside and compensation be granted to all the Petitioners, as this Court may deem fit.

SUBMISSIONS OF RESPONDENT NOS.2 (MCGM) AND 4 (MUNICIPAL COMMISSIONER OF MCGM):-

65 An Affidavit of Sunil M. Dhamane, the Deputy Municipal Commissioner (Public Health Department of Respondent No.2), dated 19th August, 2019, has been filed on behalf of Respondent Nos. 2 and 4. A further Affidavit of the said Sunil Dhamane, affirmed in September 2019, has also been filed on behalf of Respondent Nos. 2 and 4. On the basis of these Affidavits filed opposing the Petition, Mr. Sakhare, the learned Senior Advocate appearing on behalf of Respondent Nos. 2 and 4, made submissions opposing the Petition.

66 Mr. Sakhare submitted that the Petitioners had already been granted ad-hoc compensation of Rs.1 lakh each and it was for this reason that the Lokayukta, Maharashtra State had dismissed their complaint. Mr. Sakhare submitted that, in these circumstances, the Petitioners were always at liberty to file a Civil Suit for appropriate amount of compensation for loss of life, which can be ascertained only after trial, as it depends on several factors like age of the victim, number of dependents, income etc. Mr. Sakhare

submitted that the Petitioners instead chose to invoke the writ jurisdiction and filed a misconceived Writ Petition.

67 Mr. Sakhare next submitted that the present Writ Petition was originally filed challenging the order of the Lokayukta, Maharashtra State. Mr. Sakhare submitted that the scope of the present Writ Petition cannot be allowed to be expanded as the Petitioners appear to have abandoned their original proceedings initiated before the Lokayuktya and have sought to argue the present Writ Petition as if it was an original proceeding.

68 Mr. Sakhare submitted that, after the Kinara fire incident, one Vijay Manthena had invoked writ jurisdiction, raising a similar grievance against the actions/ in-action of Respondent No.2. He submitted that the said Writ Petition was disposed of by this Court by an Order dated 16th July, 2019 after considering the detailed Affidavits filed on behalf of Respondent No.2. Mr. Sakhare submitted that hence this Court had occasion to consider the steps taken and default on the part of Respondent No.2 against the backdrop of the very same incident, and, therefore, nothing survives in the present Writ Petition and the present Writ Petition ought to be dismissed.

69 Next, Mr. Sakhare submitted that this Court, by an Order dated 23rd July, 2019, had, *inter alia,* directed Respondent No.1 as well as Respondent No.2 to produce on record a policy, if any, in existence, for grant of *ex-gratia* compensation in case of death due to unfortunate incidents and payments if any made to families of victims till date. Mr. Sakhare submitted that Respondent No.2 does not have any such policy framed for grant of *ex-gratia* compensation covering incidents like the present case.

70 Mr. Sakhare further submitted that Respondent No.2, through the contentions made in its Affidavit in Reply, had made it clear that there was no gross negligence or willful or blatant disregard by the officers of Respondent No.2 in the discharge of their duties, and the facts of the present case did not satisfy the test laid down by the Hon'ble Supreme Court for award of compensation against a public authority by public law remedy/ in exercise of writ jurisdiction.

71 Mr. Sakhare next submitted that it was the Kinara Hotel which was guilty of negligence and disregard towards compliance with the rules. He submitted that the owner of Kinara had set up a storage area 1.5 ft. above the mezzanine floor, where two 500 litre

water tanks, plastic chairs and other items were kept. He submitted that, after the incident, it was discovered that both an empty and a partially filled LPG cylinder were stored in this area, with a gas connection running to the kitchen, in violation of safety regulations prohibiting cylinders on upper floors. Mr. Sakhare submitted that the reckless act by the owner/ manger/ conductor were the sole cause of the fire incident on 16th October, 2015 turning fatal. Mr. Sakhare submitted that, in the past, prosecution had been lodged against Kinara for improper storage of cylinders, which culminated in imposition of penalty.

72 Mr. Sakhare submitted that, in these circumstances, the owner and conductor of Kinara were solely liable to compensate the victims and had absolute responsibility for their reckless acts which directly endangered lives and was the sole cause of the fatalities. He submitted that the owner and conductor of Kinara owe direct and exclusively liability for compensating the victims. In support of his submissions, Mr. Sakhare relied upon the judgement of the Hon'ble Supreme Court in ***Municipal Corporation of Delhi v/s. Association of Victims of Uphaar Tragedy & Others (2011) 14 SCC 481.***

73 Mr. Sakhare further submitted that the liability of Respondent No.2 cannot be presumed in the absence of a direct and proximate causal link between the acts of commission and/or omission of the municipal officers and the fire incident and the fatalities in question. Mr. Sakhare submitted that the doctrine of proximate cause, which is well recognized both in constitutional and tort law, mandates that the liability be attributed only to the party whose actions or omissions were the direct and immediate cause of the harm suffered. Mr. Sakhare submitted that, in the present case, the evidence established that illegal and unsafe storage of LPG cylinders on the mezzanine floor by the hotel owner was apparently the cause of the explosion and the resultant loss of life. Mr. Sakhare submitted that the role of Respondent No. 2 is confined to municipal administration, and no act or omission by its officers could be shown to have directly contributed to the tragedy. Mr. Sakhare submitted that, in the light of the above, the principle of strict liability of the State is wholly inapplicable to the facts of the present case.

74 Further, Mr. Sakhare submitted that, after the incident, departmental enquiry was first initiated against various officials of Respondent No.2. In the said enquiry, it was found that no complaint was received or any report found in the record of the Building and

Factories Department in respect of unauthorized constructions and the assessment record also did not indicate any change in area of the hotel.

75 Mr. Sakhare submitted that Circular dated 8th June, 1963 issued by the Public Health Department, laying down rules for construction of a mezzanine floor to be used for services of eatables, contains no absolute bar to use the mezzanine floor for customer service by an eating house and permissibility of such use depends on compliance of certain criteria like height, light and air ventilation, etc.

76 Mr. Sakhare further submitted that there was no significant variation noticed at any time in the height of the hotel structure as compared to the average line i.e. height of structures on the said street, though there appears to be some increase in height of the subject structure, which went unnoticed.

77 Mr. Sakhare submitted that the assessment record indicates that the structure was prior to cut off date of 1st April, 1962 and therefore was treated as a *'tolerated structure'*. He submitted that the record indicates that there always existed a structure referred to in the records as loft area, ad-measuring 21 sq. mtrs, with

total area ad-measuring 42.70 sq. mtrs. inclusive of the ground floor, and the said area had not undergone any change in the assessment records.

78 Further, Mr. Sakhare submitted that the Circular dated 3rd September, 1984, pertaining to loft area/ mezzanine floor, tolerated structures existing prior to the cut off date. He submitted that different criteria applies with respect to structures existing prior to cut off date and those which have came up after 1st April, 1962. He submitted that as the subject structure is a tolerated structure under the relevant circulars/ rules, no separate application for regularization of the loft / mezzanine floor is required to be submitted by the owner as the loft existed prior to the cut off date.

79 In respect of the role of the Health Department of Respondent No.2, Mr. Sakhare submitted that the Health Department of Respondent No.2 is concerned with issuance of licenses under Section 394 of MMC Act for establishment and running of a restaurant/ eating house. In this context, Mr. Sakhare submitted that the duty of a Sanitary Inspector and Senior Sanitary Inspector is to report to sister departments for action, if there is any violation i.e. for example unauthorized construction works carried

out in an establishment, to inspect food establishments and other traders in its jurisdiction and to see whether the conditions of the license are observed or whether there is any breach of the provisions of Sections 394 & 412A of the MMC Act.

80 Mr. Sakhare further submitted that duties and responsibilities of the MOH consists, *inter alia,* of inspecting and controlling the food establishments and other trades covered under Sections 394 and 412A of the MMC Act in his ward, to implement the provisions of Maharashtra Prevention of Food Adulteration Rules 1962 and to carry out surprise inspections of trades and operations in his ward to see whether they are carried out in conformity with the conditions of the license they hold etc.

81 Mr. Sakhare submitted that Respondent No.2, with the limited manpower and other resources available at its disposal, aims and strives to provide best standard of service to the people and is aware of its responsibilities towards the people and need for better governance.

82 Mr. Sakhare submitted that it should be noted that Kinara is situated in 'L' ward, which is the largest ward in the Corporation, with an area of 15.88 sq. kms, which stretches from

Sion to Ghatkopar and Chembur to Powai. The population of the said ward, as per the 2011 census, was around 8,92,279, and considering the growth in population, it might have been around 10 to 11 lakhs in the year 2015. He submitted that the number of licensed eateries in the said ward are 313. Mr. Sakhare submitted that, as per the organizational structure of the Public Health Department, MOH is the licensing authority under whom there is a Senior Sanitary Inspector, and below the Senior Sanitary Inspector are Sanitary Inspectors. He submitted that, at the time of the incident, there was only one Senior Sanitary Inspector, and against four posts of Sanitary Inspector, there were only three Sanitary Inspectors available. He submitted that the said officers had the humongous task of ensuring strict compliance of regulatory requirements in the 'L' ward, in addition to their other duties and responsibilities.

83 In support of his submissions, Mr. Sakahre relied upon the judgement of the Hon'ble Supreme Court in ***Rajkot Municipal Corporation v/s. Manjulben Jayantilal Nakum and Others (1997) 9 SCC 552.*** Mr. Sakhare submitted that, in the said judgement, the Hon'ble Supreme Court has evolved the doctrine of direct and immediate causation which mandates that accountability be affixed only to the party whose negligent act or omission proximately

resulted in the harm suffered. Mr. Sakhare submitted that applying the said principle of the judgement to the present case, the explosion at Kinara was a direct and exclusive consequence of the wilful violation of statutory safety norms by the hotel owner and manager, specifically concerning the improper storage and handling of LPG cylinders. Mr. Sakhare submitted that Respondent No.2, in its capacity as a regulatory authority, cannot be held liable for the said incident in the absence of any proximate act or omission on its part that directly contributed to the explosion or fatalities. Mr. Sakhare submitted that the actions of the hotel management constitute an independent and intervening cause which severs any casual link between Respondent No.2 and the resulting harm.

84 Further, in the context of the MOH of 'L' ward, Mr. Sakhare submitted that, it was only when an application under the RTI Act was received by the MOH, 'L' ward, from one Vijay Manthena, that it was realized that the file of Kirana was not traceable. This was after the incident of the fire. Mr. Sakhare submitted that the MOH of 'L' ward ought to have lodged a complaint with the police in respect of the missing file. However, in the present case, the said step was not taken for a considerably long period. Mr. Sakhare submitted that when it was learnt that the files

are not traceable after the incident of fire, for such lapse, departmental enquiry had been initiated against the MOH of 'L' ward.

85 Further, Mr. Sakhare submitted that, in the departmental enquiry, which was held subsequent to the unfortunate fire incident at Kinara, Show Cause Notices were issued to two Sanitary Inspectors, the charge was found partially proved and recommendation was made to impose appropriate punishment. Pursuant to the recommendation, the competent authority approved the findings of the Enquiry Officer and imposed a penalty of Rs.70,000/- and a suspension period not to be treated as *'on duty'* period.

86 Next, Mr. Sakhare submitted that the probable cause of the fire at Kinara was gas leakage and explosion. He submitted that the fire investigation report of the Mumbai Fire Brigade as well as the photographs referred to by Respondent No.2 in its second Affidavit in Reply indicate that the probable and most likely cause of the fire is gas leakage and explosion of gas which had accumulated on the mezzanine floor. He submitted that, as a result of the same, the roof and/or ceilings of the mezzanine floor had collapsed

trapping the Petitioners' children and husband who came for lunch to the said hotel and prevented their escape. Mr. Sakhare submitted that the statement of witnesses recorded by the police in the course of investigation confirms that there was a sound of a fire explosion.

87 Further, Mr. Sakhare submitted that the Teflon tape seen in the photographs of the cylinder, taken immediately after the fire was doused, indicates that there was a leakage problem and the hose (Gas Cylinder Regulator) was not of standard quality as it was easily removable by simple pulling it, whereas the standard hose (Gas Cylinder Regulator) has a lock feature, and, without unlocking, the hose (Gas Cylinder Regulator) cannot be removed.

88 Mr. Sakhare submitted that the aforesaid demonstrates that the report of Respondent No.3 (HPCL) was false and misleading. Mr. Sakhare submitted that it was important to note the statement of the LPG cylinder delivery boy to the police wherein he had admitted to have kept the new/ filled gas cylinders on the mezzanine floor storage area and sometimes in the kitchen. Mr. Sakhare submitted that, inspite of there being prohibition of using / storing filled cylinders on the upper floor / mezzanine floor in any commercial structure and near electric circuit/ wiring, the gas

agency delivering the HPCL cylinders had also acted recklessly and with complete disregard to the applicable fire safety rules / norms, which had ultimately resulted in the unfortunate fire accident and death of 8 persons. Mr. Sakhare submitted that, hence, apart from the owner and manager of the restaurant, Respondent No.3 would also be liable.

89 Mr. Sakhare reiterated that the tragic fire incident at Kinara, on 16th October, 2015, was a direct result of the reckless and negligent actions of the hotel owner and operator, who violated the safety norms and regulations. Mr. Sakhare submitted that the Departmental Enquiry of Respondent No.2 had taken action against such officers who were found guilty of lapse of vigilance/ duty. However, such a lapse cannot be equated with the blatant negligence of the hotel owner/ operator and the gas supplying agency to fasten monetary liability on Respondent No.2.

90 Mr. Sakhare next submitted that the Hon'ble Supreme Court has held that Article 14 mandates fairness and reasonableness in State action but does not impose absolute liability on the State officials for every unfortunate incident. Mr. Sakhare submitted that the Hon'ble Supreme Court in **Nilabati Behera (supra)** has

categorically held that compensation under public law remedy is available only in cases where the violation is caused directly by the State or its instrumentalities in the course of exercising their sovereign functions. Mr. Sakhare submitted that, in the present case, the tragic deaths were not caused by any act of the officers of Respondent No.2 but were the direct consequence of the hotel management's reckless failure to adhere to fire safety regulations. He submitted that Respondent No.2 had undertaken due diligence in regulatory enforcement, including prior prosecution of the said hotel for safety violations. He submitted that Offence Sheets were drawn in the years 2012, 2013 and 2015, which showed that the officers were vigilant and recorded the transgressions when noticed. He submitted that the facts of the case show that Respondent No.2 had acted uniformly in accordance with municipal law and regulations and has not granted any undue favour or special treatment to Kinara. Further, upon the occurrence of the unfortunate incident, Respondent No.2 had initiated a departmental inquiry against its officials and appropriate penalties were imposed on those found guilty of lapses.

91 Without prejudice to the aforesaid, Mr. Sakhare submitted that Respondent No.2, as a public body, may not be

fastened with liability, considering the steps taken after the incident and the strain which such award would put on the public funds.

92 As regards payment of compensation in exercise of writ jurisdiction, Mr. Sakhare relied upon the Order dated 8th August, 2019 passed by this Court in Writ Petition No. 4066 of 2018. Mr. Sakhare submitted that, by the said Order, this Court had directed the Municipal Council to pay Rs.2 lakhs to the mother of the deceased by way of ad-hoc compensation and left it open for the Petitioners to file appropriate civil proceedings seeking further compensation. Mr. Sakhare submitted that the said approach is the correct one and deserves to be followed in the present case too. He submitted that, in the case before this Court, the wall which fell and led to death was built and managed by the Municipal Council, and yet such a course was adopted.

SUBMISSIONS OF RESPONDENT NO. 1 (STATE OF MAHARASHTRA)

93 On behalf of Respondent No.1, an Affidavit in Reply has been filed by Sunil Murkate, the Assistant Commissioner of Police, Kurla Division, Mumbai, affirmed in March, 2025. On the basis of the said Affidavit, Ms. Kantharia, the learned G. P., made submissions on behalf of Respondent No.1.

94 Ms. Kantharia pointed out that, in respect of the fire incident at Kinara, FIR No. 280/2015 dated 16th October, 2015 was registered at Vinoba Bhave Nagar Police Station, and after completion of investigation, the charge-sheet was filed on 15th January, 2016, vide case No. 186 of 2016.

95 Ms. Kantharia further pointed out that Accused No.2 had filed an Application for discharge under Section 227 of the Criminal Procedure Code, 1973, and the same was rejected by an Order dated 7th December, 2019. Accused No.1 had also preferred an Application for discharge before the Sessions Court in October, 2021. The said discharge application is not disposed of till date and is pending hearing. Further, charges are not framed against accused persons and trial has not yet commenced.

96 Ms. Kantharia further pointed out that the Inspector of Vinoba Bhave Nagar Police Station is conducting further investigations to ascertain the cause of fire, since there is no opinion given either by the Fire Officer of Respondent No.2 or the Electrical Inspector, State of Maharashtra or the Officer of HPCL with regards to actual cause of fire. Ms. Kantharia referred to the Affidavit filed on

behalf of Respondent No.1 which gives details of the further investigation which have commenced from 12th March, 2025.

97 Further, Ms. Kantharia submitted that there was no dilution of charge. She submitted that the charge sheet is filed under Sections 304, 285 and 34 of the Indian Penal Code, 1860.

98 Ms. Kantharia denied that there was any improper investigation in the matter. She submitted that since the cause of fire was not ascertained, further investigation is being done by Vinoba Bhave Nagar Police Station and a supplementary charge sheet could be filed on completion of further investigation.

SUBMISSIONS OF RESPONDENT NO. 5 (ADANI ELECTRICITY, MUMBAI LIMITED)

99 An Affidavit dated 30th January, 2025 of one Jayprakash Ghotekar, Manager (Legal) and authorized signatory of Respondent No.5, has been filed on behalf of Respondent No.5. On the basis of the said Affidavit, Mr. Vighnesh Kamat, the learned Counsel appearing on behalf of Respondent No.5, made submissions.

100 Mr. Kamat submitted that the incident of fire at Kinara had not been caused due to any electric problem. He submitted that Section 161 of the Electricity Act, 2003 empowers the Electrical Inspector to enquire whether the cause of fire arose out of an electric problem. In the letter dated 8th January, 2016 issued by the Electrical Inspector, Santacruz Inspection Departments, Industry, Energy and Labour Department, Bandra, it was observed that the electric meter, cut-off and main switch board installation were found to be intact. He submitted that this established that the incident had not been caused due to any fault on the part of Respondent No.5. He further submitted that, in any case, the responsibility of the Distribution Licensee (Respondent No.5) is limited only till the point of supply and not beyond.

SUBMISSIONS OF RESPONDENT NO.3 (HPCL):-

101 Mr. S. R. Page, the learned Advocate appearing on behalf of Respondent No.3, submitted that Respondent No.3 had addressed a letter dated 20th October, 2015 to the Senior Police Inspector, Vinoba Bhave Nagar Police Station, Mumbai, stating therein that the Officers of Respondent No.3 had visited

the accident site and had recorded the observation that there was no leakage of LPG.

102 Mr. Page further submitted that Respondent No.3 had addressed a letter dated 14th December, 2015 to the Police Inspector, Vinoba Bhave Nager Police Station, Mumbai, stating therein that the investigation detail is not substantiating any evidence of fire due to any LPG leakage and that there was no evidence to suggest that the cause of fire was LPG Leakage.

103 Mr. Page also submitted that a letter dated 5th April, 2016 was addressed to one Godfrey Pimenta, under the RTI Act, providing information to the effect that Kinara was not a registered customer of M/s. Laxmi Gas Agency, Kurla (East), Mumbai of Respondent No.3. Mr. Page submitted that, in light of the same also, Respondent No.3 is not liable or responsible for the fire which led to the loss of lives.

FINDINGS AND CONCLUSIONS:-

104 This Petition was initially filed challenging an Order dated 27th February, 2016 of the Lokayukta, Maharashtra State.

105 As mentioned earlier, by an Order dated 20th August, 2019 passed by this Court in the present Writ Petition, it was held as under:-

> *" In view of the tragic loss of human lives, we would like to consider the issues arising in the petition, in particular whether compensation should be paid to the family of the victims and whether the liability can be attached to the municipal corporation for negligence or disregard in discharge of its duties, if any, which may have resulted into or led to the unfortunate incident. Both the sides are put to notice that the petition will be disposed off finally at this stage. Stand over to 17th September, 2019 at 03.00 p.m."*

106 In the light of the aforesaid, the issues that we are considering in this Petition are the validity of the Order dated 27th February, 2017 passed by the Lokayukta, Maharashtra State and secondly, whether compensation should be paid to the families of the victims and whether liability can be attached to the Municipal Corporation (Respondent No.2) for negligence or disregard in discharge of its duties, if any, which may have resulted into or led to the unfortunate fire incident.

107 The second issue, namely whether compensation should be paid to the families of the victims and whether liability can be attached to Respondent No.2 for negligence or disregard in discharge

of its duties, if any, which may have resulted into unfortunate fire incident, raises the following questions:

(A) What is the standard of care imposed on Respondent No.2 in matters concerning public safety?

(B) Whether there was any negligence on the part of Respondent No.2 in the discharge of its duties?

(C) Whether Respondent No.2's negligence has a proximate cause to the fire and whether Respondent No.2 can be held liable?

(D) In matters pertaining to breach of fundamental rights by an authority like Respondent No.2 (which is a State within the meaning of Article 12 of the Constitution of India) whether compensation can be awarded under Article 226 of the Constitution of India?

(E) If the answers to the aforesaid questions are in the affirmative, what should be the quantum of compensation payable to the Petitioners by Respondent No.2?

ON QUESTION 'A' ABOVE:-

108 As far as the question, as to what is the standard of care imposed on Respondent No.2 in matters concerning public safety, is

concerned, it would be apposite to refer to the judgement of the Hon'ble Supreme Court in **Uphaar Tragedy Victims Assn. (supra).** In the said judgement, Justice K. S.Radhakrishnan, in his concurring opinion, has held as under:-

> "*96. Courts have held that due to the action or inaction of the State or its officers, if the fundamental rights of a citizen are infringed then the liability of the State, its officials and instrumentalities, is strict. The claim raised for compensation in such a case is not a private law claim for damages, under which the damages recoverable are large. The claim made for compensation in public law is for compensating the claimants for deprivation of life and personal liberty which has nothing to do with a claim in a private law claim in tort in an ordinary civil court.*
>
> *97. This Court in Union of India v. Prabhakaran Vijaya Kumar, extended the principle to cover public utilities like the Railways, electricity distribution companies, public corporations and local bodies which may be social utility undertakings not working for private profit. In Prabhakaran a woman fell on a railway track and was fatally run over and her husband demanded compensation. The Railways argued that she was negligent as she tried to board a moving train. Rejecting the plea of the Railways, this Court held that her "contributory negligence" should not be considered in such untoward incidents-the Railways has "strict liability". A strict liability in torts, private or constitutional do not call for a finding of intent or negligence. In such a case the highest degree of care is expected from private and public bodies, especially when the conduct causes physical injury or harm to persons. The question as to whether the law imposes a strict liability on the State and its officials primarily depends upon the purpose and object of the legislation as well. When activities are hazardous and if they are inherently dangerous the statute expects the highest degree of care and if someone is injured because of such activities, the State and its officials are liable even if they*

could establish that there was no negligence and that it was not intentional. Public safety legislations generally fall in that category of breach of statutory duty by a public authority. To decide whether the breach is actionable, the Court must generally look at the statute and its provisions and determine whether legislature in its wisdom intended to give rise to a cause of action in damages and whether the claimant is intended to be protected.

98. But, in a case, where life and personal liberty have been violated, the absence of any statutory provision for compensation in the statute is of no consequence. Right to life guaranteed under Article 21 of the Constitution of India is the most sacred right preserved and protected under the Constitution, violation of which is always actionable and there is no necessity of statutory provision as such for preserving that right. Article 21 of the Constitution of India has to be read into all public safety statutes, since the prime object of public safety legislation is to protect the individual and to compensate him for the loss suffered. Duty of care expected from State or its officials functioning under the public safety legislation is, therefore, very high, compared to the statutory powers and supervision expected from the officers functioning under the statutes like the Companies Act, the Cooperative Societies Act and such similar legislations. When we look at the various provisions of the Cinematograph Act, 1952 and the Rules made thereunder, the Delhi Building Regulations and the Electricity laws the duty of care on officials was high and liabilities strict."

(emphasis supplied)

109 The same view has been reiterated by the Hon'ble Supreme Court in **Sanjay Gupta (supra).**

110 From the aforesaid judgements, it is clear that the question, as to whether the law imposes a strict liability on the public

authorities and their officials primarily depends upon the purpose and object of the legislation as well. When activities are hazardous and are inherently dangerous, the statute expects the highest degree of care, and if some one is injured because of such activities, the State and its officials are liable even if they could establish that there was no negligence and that it was not intentional. Public safety legislations generally fall in that category of breach of statutory duty by a public authority. To decide whether the breach is actionable, the Court must generally look at the statute and its provisions and determine whether the legislature, in its wisdom, intended to give rise to a cause of action in damages and whether the claimant is intended to be protected.

111 Further, the Hon'ble Supreme Court has held that Article 21 of the Constitution of India has to be read into all public safety statutes since the prime object of public safety legislations is to protect the individual and to compensate him for the loss suffered. Duty of care expected from the State or its officials functioning under the public safety legislation is, therefore, very high, compared to the statutory powers and supervision expected from the officers functioning under statutes like the Companies Act, the Cooperative Societies Act and such similar legislations.

112 The supervision and maintenance of adequate fire prevention measures in places of public entertainments such as a eating house like Kinara, is a statutory duty of Respondent No.2. Since this duty pertains to public health and safety, on the basis of the law laid down by the Hon'ble Supreme Court, a higher standard of care is imposed upon Respondent No.2 and its officials. Thus, to answer question A, a higher standard of care is imposed on Respondent No.2 in matters concerning public safety.

ON QUESTION B:-

113 In the light of the aforesaid position in law, that a higher standard of care is imposed on Respondent No.2 in matters concerning public safety, we will have to examine as to whether there was any negligence on the part of Respondent No.2 in discharging its duties.

114 In the present case, various breaches of the license conditions were committed by Kinara. These breaches increased the danger of fire in Kinara. Respondent No. 2 received complaints in that regard, carried out inspections, and was fully aware of the said fire safety violations committed in Kinara. Despite being aware of

such fire safety violations, Respondent No.2 did not take any action against Kinara.

115 The first breach committed by Kinara was the use of the loft area/ mezzanine floor for serving the patrons. General Condition No.14 of the eating house license issued to Kinara did not permit it to serve food in the loft area/ mezzanine floor, which was to be used only for storage purpose. Further, the Advisory issued by the Chief Fire Officer of the Mumbai Fire Brigade also prohibits the usage of loft area for any purpose other than storage. In contravention of the said license condition and the Advisory, the loft area/ mezzanine floor of Kinara was being used to serve patrons. In fact, the Petitioners' children/ husband were made to sit in this loft area / mezzanine floor for serving food to them, where the fire ultimately broke out. In an inspection carried out by an official of Respondent No.2 on 2nd September, 2015, i.e. merely 44 days before the fire broke out, it was specifically noted that the mezzanine floor/loft area, which can be used only for storage purposes as per the eating house license, was being used to serve patrons. Though this breach, which was a fire hazard, was specifically known to Respondent No.2, no action was taken by Respondent No.2 in that regard.

116 The other major breach committed by Kinara was running the restaurant without a fire NOC from the Chief Fire Officer (CFO). In order to operate a restaurant, an *'eating house license'* is to be obtained from Respondent No.2 under Section 394 of the MMC Act. As a precondition to obtaining the eating house license, approximately 33 other licenses have to be obtained. It is an admitted position that one of these licenses to be obtained is a Fire NOC from the CFO. It is also admitted by Respondent No.2 that the procedure to apply for a eating house license from Respondent No.2 postulates outright rejection of the application if no Fire NOC is obtained by the applicant. In fact, a Circular dated 16th November, 1990 issued by Respondent No.2, and produced by it in the proceedings, clarifies that the independent satisfaction of Respondent No.2 – Health Department as to compliance with fire safety measure is ***not*** adequate to grant an eating house license and that a fire NOC from the CFO is a must.

117 It is an admitted fact that Kinara did not have a fire NOC. The Petitioners have produced on record a letter dated 30th March, 2016, issued by the Public Information Officer of the Mumbai Fire Brigade to one Nicholas Almeida of Watchdog Foundation, wherein it has been stated that, as per the record of the Fire

Department, no fire NOC had been given to Kinara. Further, the Departmental Enquiry Report of Respondent No.2 also states that, in response to the questionnaire submitted to the Fire Brigade Department by the Deputy Commissioner (Zone V) on 26th October,2015, the Fire Brigade Department had informed that NOC had not been obtained by Kinara to run the establishment. Further, the said Report stated that the MOH of Respondent No.2 had issued a license to Kinara without obtaining any NOC from the Fire Brigade Department. It is also recorded in the said Report that the said fact amounted to a breach of the rules for issuing of license, and, hence, the position, that the MOH might have intentionally lost the said original file/ papers/ documents/ plan in respect of Kinara, could not be denied. In our view, these factors clearly show that Kinara was granted a eating housing license without it obtaining any fire NOC from the Fire Brigade Department. This, in our view, was one of the most egregious breaches committed not only by the owner and operator of Kinara but also by Respondent No.2 by issuing an eating house license to Kinara without obtaining any fire NOC.

118 Further, in our view, even more shocking is the fact that even after Respondent No.2 became aware that a eating house license was issued to Kinara without it obtaining a fire NOC,

Respondent No.2 did not take any action in that regard. As early as on 13th September, 2012, when an inspection was carried out of Kinara, Respondent No.2 had noted in the Inspection Report dated 13th September, 2012 that Kinara was being operated without a fire NOC. Once again on 27th September, 2012, in response to a RTI Application, Respondent No.2 admitted that the fire NOC for Kinara was not available in its records. Despite having knowledge of the fact that Kinara was being operated without a fire NOC, Respondent No.2 took no action.

119 In our view, by initially granting an eating house license to Kinara without a fire NOC, and thereafter not taking any action against Kinara when it was discovered that Kinara was operating without a fire NOC, Respondent No.2 has committed gross negligence and has acted totally in breach of its statutory duties.

120 Another breach committed was allowing Kinara the use of LPG cylinders without a license and storage of the same in the loft area/ mezzanine floor. Under Section 394 (1) (b), read with part (III) of Schedule M of the MMC Act, LPG cannot be stored without a license. No such license has been brought on record. In fact, in the letter dated 5th April, 2016 issued by Respondent No.3 to Godfrey W.

Pimenta, under the RTI Act, it has been stated by Respondent No.3 that no documents had been provided by the owner/ occupants of Kinara to Respondent No.3, and, as per the records of Respondent No.3, Kinara was not a registered customer of M/s. Laxmi Gas Agency, Kurla (E), Mumbai.

121 Section 394 (4) of the MMC Act empowers Respondent No.2 to take all necessary measures in respect of premises such as Kinara where unauthorized articles are stored, including discontinuance of use of the premises, seizure of offending articles etc. However, no measure was taken by Respondent No.2 in respect of Kinara, in gross breach of its statutory duties.

122 Further, Kinara could not have stored LPG cylinders on the loft area/ mezzanine floor as per the prevailing fire safety norms. This is recorded in a letter dated 31st October, 2015 issued by the Mumbai Fire Brigade to Respondent No.3. Further, according to the Fire Inspection Report dated 16th October, 2015 prepared by the Mumbai Fire Brigade in respect of the fire at Kinara, it has been recorded that it was the LPG stored on the loft area that had leaked, accumulated and ultimately caused the fire to spread rapidly. In our view, if Respondent No.2 had taken necessary action against Kinara

for the aforesaid breaches, the LPG cylinders would not have been stored in the loft area/ mezzanine floor and the fire would not have taken place, and in any event, there would have been no loss of life.

123 The aforesaid facts clearly show that there has been an utter and gross failure by Respondent No.2 and its officials in the discharge of their statutory duties.

124 In addition to the aforesaid, Respondent No.2 is also guilty of other breaches of its statutory duties. As per Circular No.HO/39667/C of the Public Health Department of Respondent No.2 dated 9th January, 1980, the Sanitary Inspector of Respondent No.2 was required to check all food establishments once in three months. However, the Sanitary Inspector of Respondent No.2 did not do so. This is recorded in the Departmental Enquiry Report of Respondent No.2. Hence, this was one more breach of its statutory duties by Respondent No.2.

125 Further, Respondent No.2 did not act on the complaints made to it in respect of Kinara nor did it act on its own inspection reports. In October 2012, a complaint was made by one Martin Matthews regarding various violations in Kinara to the Senior Police

Inspector, Vinoba Bhave Nagar Police Station, who forwarded the said complaint to Respondent No.2 . Despite the Assistant Commissioner, 'L' ward, recording in his Order dated 13th March, 2013, passed in respect of said complaint, that the MOH should urgently inspect Kinara, issue the necessary inspection report and follow the inspection report to its logical conclusion, no appropriate action was taken by Respondent No.2 in that regard.

126 Further, three inspections of Kinara were carried out by Respondent No.2's officials on 13th September, 2012, 20th March, 2013 and 2nd September, 2015. These inspection reports have been produced by Respondent No.2 in the present proceedings. The Inspection Report dated 13th September, 2012 recorded that the permission letter from the Chief Fire Officer had not been produced at the time of inspection. Further, the Inspection Report dated 2nd September, 2015 recorded that the mezzanine floor was being used for service, although it was meant for storage purposes. Both these breaches were dangerous and a fire hazard. Despite warning Respondent Nos. 6 and 7, that action would be taken against them under Section 394 of the MMC Act, Respondent No.2 never proceeded to take action, and, as a result thereof, the illegality being

committed in Kinara, continued unabated and ultimately led to the fire and the loss of life.

127 Further, Respondent No.2 committed a major breach of its statutory duties by not cancelling the eating house license of Kinara. As referred to herein above, Kinara was violating various conditions of the eating house license like operating without the NOC of the CFO and serving food on loft area/ mezzanine floor. In our view, in the face of the said egregious violations by Kinara, Respondent No.2 was bound to take steps under Section 479 (3) of the MMC Act, which empowers Respondent No.2 to revoke or suspend the license granted under the MMC Act if any of its restrictions or conditions are infringed or violated.

128 In our view, in the light of what is stated herein above, there was gross negligence on the part of Respondent No.2 in the discharge of its duties. We answer Question B accordingly.

ON QUESTION C:-

129 As can be seen from what is recorded by us herein above, Respondent No.2 and its officials were grossly negligent in (i) granting the eating house license despite the fire NOC and other

NOCs not having been obtained by Kinara; (ii) failing to act on the complaints about the illegalities being committed in Kinara; (iii) failing to take action pursuant to three inspections wherein it was specifically noted that Kinara did not have a fire NOC, that the mezzanine floor was illegally being used for services and LPG cylinders were being stored without a license. In our view, it was only due to gross negligence on the part of Respondent No.2 in matters of public health and safety, as also the failure to act timely, that the fire took place as a result of the very same breaches, and which could have been entirely prevented by Respondent No.2, by taking the necessary action.

130 The test, as to whether the negligence of Respondent No.2 was the proximate cause for the damage suffered, is succinctly set out in a judgement of this Court in **Tri – Sure India (supra).** Paragraph 33 of the said judgement in **Tri – Sure India (supra) i**s relevant and reads as under:-

> *"33. The test is the standard of the ordinary skilled man exercising and professing to have that special skill, but one need not possesss the highest expertise or skill at the risk of being found negligent. It is well established that it is sufficient if one exercises the ordinary skill of an ordinary competent man exercising that particular art. It hardly requires to be stated that burden to prove any action of negligence rests primarily on the plaintiffs, who, to maintain action, must show that he was injured by a negligent act or omission for which the defendant in law is*

responsible.This was to prove some duty owed by the defendant to the plaintiff, some breach of duty, and an injury to the plaintiff between which and the breach of duty, a causal connection must be established. In order to establish contributory negligence, the defendant has to prove that the plaintiff's negligence was a cause of harm which he has suffered in consequence of the defendant's negligence. Knowledge by the plaintiff of an existing danger or of the defendant's negligence may be an important element in determining whether or not he has been guilty of negligence. The question is not whether the plaintiff realised the danger but whether the plaintiff had knowledge which would have caused the reasonable person in his position to realise the danger. It is also essential for the plaintiff in an action for damages on the ground of negligence to establish that on the balance of probabilities the defendant's negligence was an essential pre-condition of the damage suffered and which is normally done by reference to the "but for" test. The test demands that the negligence was a factual cause of damage. A reference can be made in support of this aspect on"Factual causation"in Dugdale and Santon's 'Professional Negligence', Chapter 28, paragraph 28.01. A reference can be usefully made in this connection to the short passage from the speech of Lord Reid in the case of McWilliams v. Sir William Arrol and Co. Ltd., [1962] 1 WLR 295 (HL) and which has been quoted with approval in Karak Rubber Co., Ltd. v. Burden (No. 2), [1972] 1 WLR 602, 631 (Ch D):

> *"If I prove that my breach of duty in no way caused or contributed to the accident, I cannot be liable in damages. And if the accident would have happened in just the same way whether or not I fulfilled my duty, it is obvious that my failure to fulfil my duty cannot have caused or contributed to it. No reason has ever been suggested why a defender should be barred from proving that his fault, whether common law negligence or breach of statutory duty, had nothing to do with the accident."*
>
> *(emphasis supplied)*

131 In the aforesaid judgement, this Court has recommended what is known as the *'but for'* test. In our view, the '*but for*' test is squarely met in the facts of the present case. Had Respondent No.2 promptly discharged its statutory duties by acting upon the fire safety violations and canceled Kinara's license under Section 479 of the MMC Act, seized the LPG cylinders under Section 394 of the MMC Act and prohibited the use of loft area/ mezzanine floor for serving patrons, the fire would definitely not have occurred. Respondent No.2's officials' deliberate inaction and negligence in fulfilling their duties was an essential pre-condition for the loss of lives at Kinara.

132 Further, it is settled law that when officials of a public authority fail to perform their duties, the Court can not only penalize the wrongdoer but can also fix vicarious liability on the public authority, as the public authority has failed in its public duty to protect the fundamental rights of its citizens. In this regard, it would be appropriate to refer to the judgement of the Hon'ble Supreme Court in **Khatri (IV) (supra)** wherein the State's defense that it would not be liable for the unauthorized acts of its officials was expressly rejected. Paragraph 7 of the judgement in **Khatri (IV) (supra)** is relevant and is set out herein below:-

"7. That takes us to the question whether the reports made by Sh. L. V. Singh as a result of the investigation carried by him and his associates are relevant under any provision of the Indian Evidence Act so as to be liable to be produced and received in evidence. It is necessary in order to answer this question, to consider what is the nature of the proceeding before us and what are the issues which arise in it. The proceeding is a writ petition under Article 32 for enforcing the fundamental rights of the petitioners enshrined in Article 21. The petitioners complain that after arrest, whilst under police custody, they were blinded by the members of the police force, acting not in their private capacity, but as police officials and their fundamental right to life guaranteed under Article 21 was therefore violated and for this violation, the State is liable to pay compensation to them. The learned Attorney-General who at one stage appeared on behalf of the State at the hearing of the writ petition contended that the inquiry upon which the court was embarking in order to find out whether or not the petitioners were blinded by the police officials whilst in police custody was irrelevant, since, in his submission, even if the petitioners were so blinded, the State was not liable to pay compensation to the petitioners first, because the State was not constitutionally or legally responsible for the acts of the police officers outside the scope of their power or authority and the blindings of the under-trial prisoners effected by the police could not therefore be said to constitute violation of their fundamental right under Article 21 by the State and secondly, even if there was violation of the fundamental right of the petitioners under Article 21 by reason of the blindings effected by the police officials, there was, on a true construction of that Article, no liability on the State to pay compensation to the petitioner. The attempt of the learned Attorney- General in advancing this contention was obviously to pre-empt the inquiry which was being made by this Court, so that the court may not proceed to probe further in the matter. But we do not think we can accede to this contention of the learned Attorney-General. The two questions raised by the learned Attorney-General are undoubtedly important but the arguments urged by him in regard to these two questions are not prima facie so strong and appealing as to persuade us to decide them as preliminary objections

without first inquiring into the facts. Some serious doubts arise when we consider the argument of the learned Attorney-General. If an officer of the State acting in his official capacity threatens to deprive a person of his life or personal liberty without the authority of law, can such person not approach the court for injuncting the State from acting through such officer in violation of his fundamental right under Article 21? Can the State urge in defence in such a case that it is not infringing the fundamental right of the petitioner under Article 21, because the officer who is threatening to do so is acting outside the law and therefore beyond the scope of his authority and hence the State is not responsible for his action? Would this not make a mockery of Article 21 and reduce it to nullity, a mere rope of sand, for, on this view, if the officer is acting according to law there would ex concessionis be no breach of Article 21 and if he is acting without the authority of law, the State would be able to contend that it is not responsible for his action and therefore there is no violation of Article 21. So also if there is any threatened invasion by the State of the fundamental right guaranteed under Article 21, the petitioner who is aggrieved can move the court under Article 32 for a writ injuncting such threatened invasion and if there is any continuing action of the State which is violative of the fundamental right under Article 21, the petitioner can approach the court under Article 32 and ask for a writ striking down the continuance of such action, but where the action taken by the State has already resulted in breach of the fundamental right under Article 21 by deprivation of some limb of the petitioner, would the petitioner have no remedy under Article 32 for breach of the fundamental right guaranteed to him? Would the court permit itself to become helpless spectator of the violation of the fundamental right of the petitioner by the State and tell the petitioner that though the Constitution has guaranteed the fundamental right to him and has also given him the fundamental right of moving the court for enforcement of his fundamental right, the court cannot give him any relief. These are some of the doubts which arise in our mind even in a prima facie consideration of the contention of the learned Attorney-General and we do not, therefore, think it would be right to entertain this contention as a preliminary objection without inquiring into the facts of the case. If we look at the

averments made in the writ petition, it is obvious that the petitioners cannot succeed in claiming relief under Article 32 unless they establish that their fundamental right under Article 21 was violated and in order to establish such violation, they must show that they were blinded by the police officials at the time of arrest or whilst in police custody. This is the foundational fact which must be established before the petitioners can claim relief under Article 32 and logically therefore the first issue to which we must address ourselves is whether this foundational fact is shown to exist by the petitioners. It is only if the petitioners can establish that they were blinded by the members of the police force at the time of arrest or whilst in police custody that the other questions raised by the learned Attorney-General would arise for consideration and it would be wholly academic to consider them if the petitioners fail to establish this foundational fact. We are, therefore, of the view, as at present advised, that we should first inquire whether the petitioners were blinded by the police officials at the time of arrest or aftci arrest, whilst in police custody, and it is in the context of this inquiry that we must consider whether the reports made by Sh. L. V. Singh are relevant under the Indian Evidence Act so as to be receivable in evidence."

(emphasis supplied)

133 Hence, in our view, the negligence and breach of statutory duties by Respondent No.2 is a proximate cause of the fire and Respondent No.2 can be held vicariously liable for the acts of commission and omission of its officials. We, accordingly, answer Question C in the affirmative.

ON QUESTION D

134 The loss of life of the Petitioners' children/ husband, has resulted in violation of their fundamental right to life under Article

21 of the Constitution of India. Further, as far as the Petitioners are concerned, the loss of life of their children/ husband has caused immense trauma and agony to the Petitioners. In addition, the Petitioners, who are from low to middle income backgrounds, have lost the potential bread earners of their families. This has resulted in a gross violation of Petitioners' right to life under Article 21 of the Constitution of India.

135 This violation of the fundamental rights of the Petitioners and their children/ husband under Article 21 of the Constitution of India has been caused as a direct result of the negligence and breach of statutory duties on the part of Respondent No.2.

136 It is now well settled that where there is a violation of fundamental rights under Article 21 of the Constitution of India by a public authority, the Court has the power to direct the wrongdoers to compensate the victims. In this regard, the following judgements are relevant:-

A In **Rudul Sah (supra)**, the Petitioner was seeking compensation for his illegal detention for more than 14 years after his acquittal by a Court. Paragraphs 9 to 12 of

the said judgement are relevant and are set out here under:-

> *"9. It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of courts, civil and criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. The instant case is illustrative of such cases. The petitioner was detained illegally in the prison for over 14 years after his acquittal in a full-dressed trial. He filed a habeas corpus petition in this Court for his release from illegal detention. He obtained that relief, our finding being that his detention in the prison after his acquittal was wholly uniustified. He contends that he is entitled to be compensated for his illegal detention and that we ought to pass an appropriate order for the payment of compensation in this habeas corpus petition itself.*
>
> *10. We cannot resist this argument. We see no effective answer to it save the stale and sterile objection that the petitioner may, if so advised, file a suit to recover damages from the State Government. Happily, the State's counsel has not raised that objection. The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court*

were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative scicrosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilization is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.

11. Taking into consideration the great harm done to the petitioner by the Government of Bihar, we are of the opinion that, as an interim measure, the State must pay to the petitioner a further sum of Rs 30,000 (Rupees thirty thousand) in addition to the sum of Rs 5000 (Rupees five thousand) already paid by it. The amount shall be paid within two weeks from today. The Government of Bihar agrees to make the payment though, we must clarify, our order is not based on their consent.

12. This order will not preclude the petitioner from bringing a suit to recover appropriate damages from the State and its erring officials. The order or compensation passed by us is, as we said above, in the nature of a palliative. We cannot leave the petitioner penniless until the end of his suit, the many appeals and the execution proceedings. A full-dressed debate on the nice points of fact and law which takes place leisurely in compensation suits will have to await the filing of such a suit by the poor Rudul Sah. The Leviathan will have liberty to raise those points in that suit. Until then, we hope, there will be no more Rudul Sahs in Bihar or elsewhere."

(emphasis supplied)

B In **Nilabati Behera (supra),** the Hon'ble Supreme Court was dealing with grant of compensation for the custodial death of the Petitioner's child. The Hon'ble Supreme Court, while discussing the law on the issue of awarding compensation, held that the Court is not helpless to grant relief in a case of violation of the right to life and personal liberty. Paragraphs 17 and 19 of the majority judgement in **Nilabati Behera (supra)** and paragraphs 33 to 35 of the concurring judgement of Justice Dr. A. S. Anand are relevant and are set out here under:-

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

19. This view finds support from the decisions of this Court in the Bhagalpur Blinding cases: Khatri (II) v. State of Bihar and Khatri (IV) v. State of Bihar 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 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 with regard to the court's power to grant relief.

* * * *

33. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much as protector and guarantor of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations.

34. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the

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

35. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal

by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with Rudul Sah v. State of Bihar granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental right of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and self-restraint, lest proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law. Some of those situations have been identified by this Court in the cases referred to by Brother Verma, J."

(emphasis supplied)

C In **B. K.Basu (supra)**, the Hon'ble Supreme Court once again held that monetary compensation ought to be granted by a Writ Court as redressal for infringed fundamental rights. The Hon'ble Supreme Court took judicial notice of the fact that the ordinary civil remedy for damages is a long-drawn and cumbersome process, and thus held that the grant of compensation by a Writ Court would be

the only effective remedy. Paragraphs 45 and 54 of the said judgement are relevant and are set out here under:-

> *"45. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim- civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family.*
>
> *54. Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim*

> *with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."*
>
> *(emphasis supplied)*

137 From the aforesaid judgements passed by the Hon'ble Supreme Court, it is clear that a Writ Court has the power to grant compensation in cases where fundamental rights have been infringed. In cases involving breach of fundamental rights by a public authority like Respondent No.2, and, in particular, the fundamental rights under Article 21 of the Constitution of India, the parties ought not to be relegated to file a civil suit which is a long-drawn out and a cumbersome process.

138 Further, significantly, in cases where a fire has broken out at public places on account of the negligence of statutory authorities in enforcing safety norms and rules, the Courts have been pleased to direct Governmental authorities to grant compensation to the families of the victims. The Punjab & Haryana High Court in **Dabwali Fire Tragedy Victims Assn (supra)** held the

State liable to pay compensation to the families of victims of a fire. Paragraphs 18, 19 and 225 (1) and (2) of the said judgement are relevant and are set out here under:-

> *"18 Dealing with the liability of the Municipal Committee, Dabwali, the Commission came to the conclusion that Rajiv Marriage Palace was constructed in complete violation of the sanctioned plans. No Completion Certificate was obtained by the owners and the building occupied without clearance from the Municipal Authorities. There were no fire fighting equipments nor any exit gate except one that was barely 10×12 feet wide. The onwers of the Marriage Palace had never obtained "No ObjectionCertificate" from the Fire Officer nor made any arrangement for fire fighting equipment and other such essential services before putting the Marriage Palace to use. The Commission observed :-*
>
> > *"As stated by Shri Ramesh Chander, Assistant Engineer of the Municipal Committee, he did not care to inspect the site after the sanction of the building plan. He did not care to see as to whether the construction is being done according to the site plan and all the constructions made by the owners are according to the sanctioned site plan and that after completion of the construction, a completion certificate has been obtained or not and whether a 'no objection certificate' from the Fire Officer has been procured or not. In this view of the matter, the Municipal Committee (respondent No. 7) was certainly negligent and so also respondents No. 4 & 5 alongwith them".*
>
> *XXX XXX XXX*
>
> *"This further shows that the Municipal Committee was also negligent in so far as the maintenance and upkeep of its fire station and the presence of the officials at the Fire Station is concerned. It appears that the Municipal Committee perhaps had no control or supervision on the staff of its Fire Station, so much so, that even the*

Fire Station Officer was found to be on "furlough" at the time when his presence was of utmost importance at the time of such an emergency".

19 The Commission then summed up its findings regarding the negligence of the Municipal Committee and its officials, in the following words :-

> *"It has also been held in this report that the officials of the Municipal Committee, who were duty bound to check the unauthorized construction in the town and the construction of the Marriage Palace according to the sanctioned plan, miserably failed in the discharge of their duties. Had the officials of the Municipal Committee taken due and timely care, the tragedy might have been minimized. It has been held above that the building of respondent No. 9 was constructed in violation of the sanctioned plan; that no completion certificate was obtained by the owners of the building before occupying the same nor any fire fighting equipment was installed and there was only one gate of entry and exit of the size of 10' x 12'. The Fire Officer of the Municipal Committee took no pains to see that the owners of the Marriage Palace had never obtained 'No Objection Certificate' from him nor made any arrangement for keeping fire-fighting equipment in the case of emergency. Under the circumstances and as held above the Municipal Committee (respondent No. 7) and its officials were certainly negligent in the discharge of their duties.*

* * * *

225 In the result we pass the following order :—

(1) The amounts determined in each one of the cases referred to in the body of this judgment are hereby awarded in favour of the claimants with interest at the rate of 6% per annum with effect from date of the filing of the claim petition before the One Man Commission.

(2) Out of the total amount payable to each one of the claimant, the State of Haryana shall pay 45% of the total amount of compensation awarded in each one of the

cases dealt with by us with liberty to recover 15% each of the amount so paid from Dakshin Haryana Bijli Virtran Nigam and Municipal Committee, Dabwali. The balance 55% of the amount awarded shall be payable by respondents No. 4, 5 and 9 jointly and severally."

139 Further, in its judgement in **DAV Managing Committee (supra),** the Hon'ble Supreme Court upheld the aforesaid findings of the Punjab & Haryana High Court.

140 In the case of ***Sanjay Gupta v/s. State of U. P. (2015) 5 SCC 283,*** it was again the case of a fire breaking out at a Consumer Show at Meerut. The Hon'ble Supreme Court directed the payment of interim compensation to the families of the victims of the fire. Paragraphs 13, 27 and 33 of the said judgement are relevant and are set out here under:-

"13. Having so opined, we cannot comatose our judicial conscience to the plight of the victims who have approached this Court. Some of the petitioners are themselves the victims or next kin of the deceased and the injured persons who have suffered because of this unfortunate man-made tragedy. It is the admitted position that 64 deaths have occurred and a number of persons have suffered grievous injuries. There are also persons who have suffered simple injuries as has been asserted by the State. We have been apprised at the Bar that the State Government has already paid Rs 2 lakhs to the legal representatives of the persons who have breathed their last, and a sum of rupees one lakh has been paid by the Central Government. As far as seriously injured persons are concerned, rupees one lakh has been paid by the State Government and Rs 50,000 has been paid to the victims who have suffered simple injuries."

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

33. We have referred to the aforesaid authorities as Mr Bhatia has impressed upon us for apportionment at this stage. The principle of apportionment can be thought of only after the Commission's report is received, but, a pregnant one, the victims and the families cannot be left in the lurch. As we find, there have been statutory violation and negligence on the part of the authorities in not taking due care while granting permission and during the exhibition was in progress, we intend to direct payment of compensation, by way of interim measure, by the State. Regard being had to the facts and circumstances of the case and taking note of the fact that some amount has already been given, we direct, as an interim measure, that the legal representatives of the deceased shall be paid Rs 5 lakhs more and the seriously injured persons would be paid a further sum of Rs 2 lakhs each and the persons who have suffered minor injuries would be paid an additional

sum of Rs 75,000. The said amount shall be deposited before the District Judge, Meerut within two months hence. The learned District Judge may nominate an Additional District Judge, who, on making summary enquiry, shall pay the amount to the legal representatives and the victims. Be it noted, as asseverated by the State, the legal representatives of the deceased have been paid certain ex gratia amount and the injured persons have been paid certain amount ex gratia, their identity is known and, therefore, the Additional District Judge shall conduct a summary enquiry only for proper identification and disburse the amount. The Collector, Meerut shall produce all the documents for facilitating the summary enquiry at the earliest so that the victims should not suffer and for the said purpose we grant four weeks' time to the Collector, Meerut. The disbursement shall be made within one month from the date of deposit."

141 In very same matter, after the Commission appointed in 2015 returned its findings, the Hon'ble Supreme Court in ***Sanjay Gupta v/s. State of U. P. (2022) 7 SCC 203,*** directed the State Government to pay compensation on account of its negligence. Paragraphs 16 to 19 and 21 and 22 of the said judgement are relevant and are set out here under:-

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

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

"31. We would therefore hold that where in enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher."

18. The third category comprises of the cases where the liability for payment of compensation has been apportioned between the State and the Organisers of the function. In Dabwali Fire Tragedy Victims Assn. v. Union of India wherein in a fire accident, 446 persons died and many others received burn injuries. The High Court in a writ petition under Article 226 of the Constitution held that the school which organised the function and Respondent 8, the owner of the venue, would be jointly and severally liable to pay 55% of the compensation, remaining liability was to be borne out by the State.

19. An appeal was filed by the school disputing the liability of payment of compensation. This Court did not interfere with the percentage of liability reduced to 55% by the High Court from 80% held by the Inquiry Commission in a judgment reported as DAV Managing Committee v. Dabwali Fire Tragedy Victims Assn.

* * * *

21. The contentions raised by Mr Bhushan are substantially same as were raised before the Delhi High Court in Uphaar Tragedy Victims Assn., which were not accepted. This Court in appeal had accepted the view of the High Court except to the extent of the finding of negligence against certain respondents. We are in complete agreement with the findings recorded by this Court in appeal that:

"98. where life and personal liberty have been

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

22. Keeping in view the judgments referred to by this Court in its order dated 31-7-2014, as also the judgments referred to above, we find that infringement of Article 21 may be an individual case such as by the State or its functionaries; or by the Organisers and the State; or by the Organisers themselves have been subject-matter of consideration before this Court in a writ petition under Article 32 or before the High Court under Article 226 such as Uphaar Tragedy or Dabwali Fire Tragedy. Similar arguments have not found favour with the Delhi High Court and in appeal by this Court. The view taken therein does not warrant any interference and we respectfully endorse the same."

142 In our view, in the present case, Respondent No.2, by committing gross breach of its statutory duties, has violated the fundamental rights of the Petitioners and their children/ husband under Article 21 of the Constitution of India. In these circumstances, in our view, Respondent No.2 is liable to pay compensation to the Petitioners as held by the Hon'ble Supreme Court and the Punjab and Haryana High Court in the various judgements referred to by us

herein above. We accordingly answer Question D in the affirmative.

QUESTION E

143 On the question as to what should be the compensation payable to the Petitioners by Respondent No.2, the Hon'ble Supreme Court has held in **Nilabati Behera (supra)** that the compensation in matters concerning violation of fundamental rights cannot be equated with damages in a civil action. While granting compensation, the approach of the Court must be to penalize the wrongdoers by directing them to make monetary amends for the wrong done due to breach of public duties. The Hon'ble Supreme Court held that the compensation to be awarded by Courts in such matters must be in the nature of exemplary damages. Paragraph 34 of the said judgement is relevant in this regard and is set out here under:-

> *"34. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or*

protection of fundamental rights, it does so under the public law by way of penalizing 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."

144 Further, in the case of **Raman (supra),** where a live electrical wire electrocuted a five year old boy, the Hon'ble Supreme Court held that the educational qualifications of the victim, his future prospects including potential income, the number of dependents in his family etc. ought to be considered while granting compensation. Paragraphs 16 to 19, 21 and 22 of the said judgement are relevant and are set out here under:-

"16. The learned Single Judge of the High Court has awarded compensation keeping all these aspects of the matter and has applied the guiding principle of multiplier method after adverting to the case of Sarla Verma v. DTC for the purpose of computation of just and reasonable compensation in favour of the appellant which method should not have been applied to the case on hand, particularly, having regard to the statutory negligence on the part of the respondents in not providing the safety measures to see that live electric wires should not fall on the roof of the building by

strictly following the Rules to protect the lives of the public in the residential area. This Court in Balram Prasad v. Kunal Saha, has deviated from following the multiplier method to award just and reasonable compensation in favour of the claimant in a medical negligence case. The same principle will hold good in the case on hand too. The following case law is followed by this Court in the abovereferred case, the relevant paragraphs are extracted herein to award just and reasonable compensation in favour of the appellant: (SCC pp. 425, 437-39 & 445, paras 68, 99, 101, 103.1. & 112)

> *"68... three-Judge Bench decision of this Court in Indian Medical Assn. v. V.P. Shantha, wherein this Court has categorically disagreed on this specific point in another case wherein 'medical negligence' was involved. In the said decision, it has been held at para 53 that to deny a legitimate claim or to restrict arbitrarily the size of an award would amount to substantial injustice to the claimant.*
>
> *99. In Govind Yadav v. New India Insurance Co. Ltd this Court at para 15 observed as under which got reiterated at SCC pp. 639-40, para 13 of Ibrahim v. Raju : (Govind Yadav case, SCC pp. 691-92)*
>
> *15. In Reshma Kumari v. Madan Mohan this Court reiterated that the compensation awarded under the Act should be just and also identified the factors which should be kept in mind while determining the amount of compensation. The relevant portions of the judgment are extracted below: (SCC pp. 431-32 & 440-41, paras 26-27 & 46-47)*

26. The compensation which is required to be determined must be just. While the claimants are required 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.

27. The question as to the methodology required to be applied for determination of compensation as

regards prospective loss of future earnings, however, as far as possible should be based on certain principles. A person may have a bright future prospect; he might have become eligible to promotion immediately; there might have been chances of an immediate pay revision, whereas in another (sic situation) the nature of employment was such that he might not have continued in service; his chance of promotion, having regard to the nature of employment may be distant or remote. It is, therefore, difficult for any court to lay down rigid tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort of hypotheses or guesswork may be inevitable. That may be so.

** * * **

46. In the Indian context several other factors should be taken into consideration including education of the dependants and the nature of job. In the wake of changed societal conditions and global scenario, future prospects may have to be taken into consideration not only having regard to the status of the employee, his educational qualification; his past performance but also other relevant factors, namely, the higher salaries and perks which are being offered by the private companies these days. In fact while determining the multiplicand this Court in Oriental Insurance Co. Ltd. v. Jashuben held that even dearness allowance and perks with regard thereto from which the family would have derived monthly benefit, must be taken into consideration.

47. One of the incidental issues which has also to be taken into consideration is inflation. Is the practice of taking inflation into consideration wholly incorrect? Unfortunately, unlike other developed countries, in India there has been no scientific study. It is expected that with the rising inflation the rate of interest would go up. In India it does not happen. It, therefore, may be a relevant factor which may be taken into consideration for determining the actual ground reality. No hard-and-fast rule, however, can be laid down therefor."'

101. ... he has also strongly placed reliance upon the observations made at para 170 in Malay Kumar Ganguly case referred to supra wherein this Court has made

observations as thus: (SCC p. 282)

> *'170. Indisputably, grant of compensation involving an accident is within the realm of law of torts. It is based on the principle of restitutio in integrum. The said principle provides that a person entitled to damages should, as nearly as possible, get that sum of money which would put him in the same position as he would have been if he had not sustained the wrong. (See Livingstone v. Rawyards Coal Co.)'*

103.1. In Ningamma case this Court has observed at para 34 which reads thus: (SCC p. 721)

> *'34. ... in our considered opinion a party should not be deprived from getting "just compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the court is duty-bound and entitled to award 'just compensation' irrespective of the fact whether any plea in that behalf was raised by the claimant or not.'*

112. The claimant has also placed reliance upon Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka in support of his submission that if a case is made out, then the Court must not be chary of awarding adequate compensation. The relevant paragraph reads as under: (SCC pp. 38-39, para 88)

> *'88. We must emphasise that the court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not, come in the way of making a correct assessment, but if a case is made out, the court must not be chary of awarding adequate compensation. The "adequate compensation" that we speak of, must to some extent, be a rule of thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned.'*
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> *(emphasis supplied)*

17. Further in para 119, it is held: (Kunal Saha case, SCC

pp. 447-48)

> *"119. ..this Court has rejected the use of multiplier system to calculate [and award] the quantum of compensation [which must be just and reasonable]. The relevant paragraph is quoted hereunder: (Nizam's Institute case, SCC para 92)*
>
> *'92. Mr Tandale, the learned counsel for the respondent has, further submitted that the proper method for determining compensation would be the multiplier method. We find absolutely no merit in this plea. The kind of damage that the complainant has suffered, the expenditure that he has incurred and is likely to incur in the future and the possibility that his rise in his chosen field would now be restricted, are matters which cannot be taken care of under the multiplier method." "*
>
> *(emphasis in original)*

18. Further under para 121, the relevant paragraph from United India Insurance Co. Ltd. v. Patricia Jean Mahajan reads as under: (Kunal Saha case, SCC p. 448)

> *"121.... '20. The court cannot be totally oblivious to the realities. The Second Schedule while prescribing the multiplier, had maximum income of Rs 40,000 p.a. in mind, but it is considered to be a safe guide for applying the prescribed multiplier in cases of higher income also but in cases where the gap in income is so wide as in the present case income is 2,26,297 dollars, in such a situation, it cannot be said that some deviation in the multiplier would be impermissible. Therefore, a deviation from applying the multiplier as provided in the Second Schedule may have to be made in this case. Apart from factors indicated earlier the amount of multiplicand also becomes a factor to be taken into account which in this case comes to 2,26,297 dollars, that is to say, an amount of around Rs 68 lakhs per annum by converting it at the rate of Rs 30. By Indian standards it is certainly a high amount. Therefore, for the purposes of fair compensation, a lesser multiplier can be applied to a heavy amount of*

multiplicand. A deviation would be reasonably permissible in the figure of multiplier even according to the observations made in Susamma Thomas where a specific example was given about a person dying at the age of 45 leaving no heirs being a bachelor except his parents.' (Patricia Jean Mahajan case, SCC p. 295, para 20)"

(emphasis supplied)

19. Further, in para 177, it was held as under: (Kunal Saha case, SCC p. 475)

"177. Under the heading of loss due to pain and suffering and loss of amenities of the wife of the claimant, Kemp and Kemp write as under:

'The award to a plaintiff of damages under the head "pain and suffering" depends as Lord Scarman said in Lim Poh Choo v. Camden and Islington Area Health Authority, upon the claimant's personal awareness of pain, her capacity of suffering. Accordingly, no award is appropriate if and insofar as the claimant has not suffered and is not likely to suffer pain, and has not endured and is not likely to endure suffering, for example, because he was rendered immediately and permanently unconscious in the accident. By contrast, an award of damages in respect of loss of amenities is appropriate whenever there is in fact such a loss regardless of the claimant's awareness of the loss.'

'Even though the claimant may die from his injuries shortly after the accident, the evidence may justify an award under this head. Shock should also be taken account of as an ingredient of pain and suffering and the claimant's particular circumstances may well be highly relevant to the extent of her suffering.

* * * *

By considering the nature of amenities lost and the injury and pain in the particular case, the court must assess the effect upon the particular claimant. In deciding the appropriate award of damages, an important consideration is how long he be deprived of

those amenities and how long the pain and suffering has been and will be endured. If it is for the rest of his life the court will need to take into account in assessing damages the claimant's age and his expectation in life. ..." "

21. In view of the law laid down by this Court in the abovereferred cases which are extensively considered and granted just and reasonable compensation, in our considered view, the compensation awarded at Rs 60 lakhs in the judgment of the learned Single Judge of the High Court, out of which Rs 30 lakhs were to be deposited jointly in the name of the appellant represented by his parents as natural guardian and the Chief Engineer or his nominee representing the respondent Nigam in a nationalised bank in a fixed deposit till he attains the age of majority, is just and proper but we have to set aside that portion of the judgment of the learned Single Judge directing that if he survives, he is permitted to withdraw the amount, otherwise the deposit amount shall be reverted back to the respondents as the same is not legal and valid for the reason that once the compensation amount is awarded by the court, it should go to the claimant/appellant. Therefore, the victims/ claimants are legally entitled for compensation to be awarded in their favour as per the principles/guiding factors laid down by this Court in a catena of cases, particularly, in Kunal Saha case referred to supra. Therefore, the compensation awarded by the Motor Accidents Claims Tribunals/Consumer Forums/State Consumer Disputes Redressal Commissions/National Consumer Disputes Redressal Commission or the High Courts would absolutely belong to such victims/claimants. If the claimants die, then the Succession Act of their respective religion would apply to succeed to such estate by the legal heirs of victims/claimants or legal representatives as per the testamentary document if they choose to execute the will indicating their desire as to whom such estate shall go after their death. For the aforesaid reasons, we hold that portion of the direction of the learned Single Judge contained in sub-para (v), to the effect of Rs 30 lakhs compensation to be awarded in favour of the appellant, if he is not alive at the time he attains majority, the same shall revert back to the respondent Nigam after paying Rs 5 lakhs to the parents

of the appellant, is wholly unsustainable and is liable to be set aside. Accordingly, we set aside the same and modify the same as indicated in the operative portion of the order.

22. The remaining compensation amount of Rs 30 lakhs to be deposited in a fixed deposit account in the name of the petitioner (minor) under joint guardianship of the parents of Raman and the Engineer-in-Chief or his nominee representing the respondent Nigam, in a nationalised bank as corpus fund, out of which an interest of Rs 20,000 p.m. towards the expenses as indicated in sub- para (vi) of the order passed by the learned Single Judge, cannot be said to be on the higher side, but in our view, the said amount of compensation awarded is less and not reasonable and having regard to the nature of 100% permanent disability suffered by the appellant, it should have been much higher as the appellant requires permanent assistance of an attendant, treatment charges as he is suffering from agony and loss of marital life, which cannot be compensated by the amount of compensation awarded by the learned Single Judge of the High Court. Hence, having regard to the facts and circumstances of the case, it would be just and proper for this Court to restore the judgment of the learned Single Judge on this count and we hold that the directions contained in the said judgment are justifiable to the extent indicated above. The Division Bench while exercising its appellate jurisdiction should not have accepted the alleged requisite instructions received by the counsel on behalf of the appellant and treated as ad idem and modified the amount as provided under sub-para (vi) of the order of the learned single judge and substituted para 4 in his judgement as indicated in the aforesaid portion of the judgment which is wholly unreasonable and therefore, it is unsustainable in law as it would affect the right of the appellant for getting his legal entitlement of just and reasonable compensation for the negligence on the part of the respondents.

(emphasis supplied)

145 Further, the judgement of this Court in **Umakant B. Mane (supra)** also laid down principles for the grant of compensation by the State or public authorities for negligence and violation of fundamental rights. Paragraphs 28 to 30 of the said judgement are relevant and are set out here under:-

> *"28. While determining compensation, the age, income, impairment of future earning capacity and number of dependents are determining factors. There is no straight jacket formula. There is no uniformity or yardstick followed in awarding damages for violation of fundamental rights. In a similar matter, 2014 SCC OnLine SC 1089, Alfred Benddict and anr. vs. M/s Manipal Hospital, Bangalore and ors., the Apex Court awarded 20 lakhs for a two year old child. The relevant paragraphs are reproduced herein :-*
>
> > *"The facts in a nutshell are that complainants took their two years old daughter, who was suffering from normal cold and cough, to Dr. Arvind Shenoy, Consultant Pediatric, who after giving treatment for few days, advised for her admission to M/s Manipal Hospital Bangalore (in short, "the Hospital"). On admission, she was taken to pediatric intensive care unit and diagnosed that she was suffering from cold and cough as well as from pneumonia. She was given intravenous fluids by inserting needle on the dorsal aspect of right wrist from August 26, 2002 to August 28, 2002. However, the baby developed gangrene initially in the finger tips, which spread to the portion of the hand below writs joint, due to blockage of blood supply. It is contended on behalf of complainants (parents of the baby) that Hospital Doctors conducted Angiogram and confirmed that there was complete blockage of blood supply to the right forearm and they conducted operation on the right forearm to restore blood supply but the same could not be restored and, eventually,*

the daughter of the complainants had to lose her right forearm. It is alleged that the complainants, thereafter, came to know that the needle was wrongly inserted into artery instead of vein due to which the blood supply was blocked.

The complainants were shocked and highly dismayed at the conduct of the hospital Doctors, who had admitted their daughter for treating cough, cold and fever and now she was on the brink of losing her hand due to utter negligence of the Hospital and their Doctors. The complainants-Parents did not agree for the amputation as the child was merely two years old at that time. It is alleged that Dr. Vasudeva Rao,Vascular Surgeon of the Hospital, even threatened and forced the parents to give their consent for amputation on the pretext that any delay would endanger the life of child. Thus imputing the opposite parties i.e. the Hospital and the concerned Doctors, complainants filed a complaint before the Karnataka State Consumer Disputes Redressal Commission, Bangalore (in short, "the State Commission") praying for grant of compensation of Rs. One crore.

The National Commission affirmed the quantum of compensation and directed to pay a further sum of Rs.10,000/- to the complainants towards the cost. We have heard learned counsel for the parties and have gone through the finding recorded by the State Commission as also the National Commission. We do not find any reason to differ with the finding that it was only because of the negligence on the part of the Hospital the two years' child developed gangrene resulting into amputation of her right arm.

However, taking into consideration the sufferings of the girl child, who is now 13 years of age, in our opinion the compensation

awarded by the Commission is in a lower side. Learned counsel appearing for the complainant submitted that every year she has to incur battery charges for the artificial limb, which costs 80,000/- annually. There cannot be any dispute that the girl will have to suffer throughout her life and has to live with artificial limb. Not only she would have to face difficulty in her education but would have also to face problem in getting herself married. Although the sufferings, agony and pain, which the girl child will carry cannot be compensated in terms of money, but, in our view, a compensation of 20,00,000/- (Rupees Twenty Lakhs only) will be just and reasonable in order to meet the problems being faced by her and also to meet future troubles that will arise in her life.

With the aforesaid reason, we allow the appeal filed by the complainants being Civil Appeal arising out of SLP(C)No. 35632 of 2013 by enhancing the compensation to 20,00,000/- (Rupees Twenty Lakhs only), which shall carry simple interest of 9 per cent per annum from the date of this order. It may be made clear that out of the total compensation, a sum of ₹10 lakhs shall be deposited in a long term fixed deposit in a nationalized bank so that this amount along with interest, that may accrue, shall take care of her future needs. The balance Rs.10 lakhs shall be utilized by investing Rs.5 lakhs in a short term fixed deposit in a nationalized bank so that this amount along with accrued interest will take care of her needs in near future. The rest Rs. 5 lakhs may be spent for her further medical treatment.

The aforesaid compensation amount shall be paid by owner of the Hospital within six weeks from today. It is needless to say that the amount, which has already been paid, shall be adjusted out of the amount awarded by this Court."

29. As stated in the petition, the petitioner was about 21/22 years of age and he was doing an ITI - fitter course but now due to amputation of his right hand fingers he could not complete the course and is not in a position to secure any job. The petitioner had prayed for a direction to the respondent No. 2 to employ him so that he gets means of his livelihood. The respondent No. 2 declined to employ him. It is stated in the petition that there are 10 members in the family of the petitioner and the father of the petitioner was old and the only earning member in the family. Due to amputation of the fingers, the petitioner is a physically challenged person. Though in the service of the respondent No. 2 there are reservations made for physically challenged/disabled persons, still the respondent No. 2 refused to employ the petitioner on humanitarian ground. In fact the petitioner had even offered to work as a peon. The respondent No. 2 is a large organisation and could have employed the petitioner but had declined to do so. Moreover negligence attributable to the responsible staff not only ruined the future of the petitioner but also permanently handicapped him.

30. In our view, the cause for the petitioner losing the fingers of his right hand is directly attributable to the gross and direct negligence on the part of the doctors and nursing staff of Rajawadi Hospital run by the respondent-State. There has been gross negligence on the part of the respondents in performing its duties. The petitioner, therefore, is certainly entitled to compensation in the nature of exemplary damages from the respondents. The petitioner in the petition has stated that fitters earn in the region of Rs. 5000/-- ₹7000/- per month, which in our view is rather reasonable. This was the position in 2002/2003 when the petition was filed. Based on this, the petitioner has claimed 10,00,000/-. Factoring inflation and the changed economic scenario, the petitioner should be entitled to higher compensation. The petitioner, however, is claiming only 10 lakhs. We are, therefore, granting this amount as compensation. The respondents are, therefore, directed to pay the amount of ₹ 10 lakhs to the petitioner. The respondents also to

pay interest @ 9% p.a. on the said amount for the period beginning from 1st November, 2002 until payment/realisation. The principal and interest amount shall be deposited in this Court with the Prothonotary and Senior Master within two months from today. Failure to do so will attract further interest @9% p.a. on the principal amount of 10 lakhs and the accumulated interest."

146 The details of the victims of the fire incident at Kinara are set out herein below:-

Sr. No.	Name	Age	No. of Family Members	Educational Qualification	Skills	Working status of the victim or their family members
1	Erwin Dsouza	18	3	2nd year – Bachelors' in Mass Media	Athlete, Guitarist, Studious	Aledn Dsouza, the victim's brother is working
2	Akash Pradeep Thapar	19	3	3rd year Engineering (IT)	Footballer and Studious	Rekha P. Thapar, the victim's mother, conducts Tuitions
3	Brian Antony Fernando	20	4	3rd year Engineering (IT)	Footballer with many accolades to his name	None
4	Arvind Kumar Kanaujia	32	3	…	….	Employee at Sterling Engineering Consultants
5	Sharjeel Jalil Shaikh	20	4	3rd year Engineering (IT)	Footballer and Studious	The victim's mother is a teacher
6	Taha Mushtaque Shaikh	20	4	3rd year – Engineering (IT)	Footballer and Studious	The victim's father dealt in second hand cars
7	Bernadette Alein D'souza	18	2	2nd year – Bachelors' in	Basketball Player and	The victim's mother is

				Mass Media	Photographer	working
8	Sajid Chaudhary	20	4	3rd year Engineering (IT)	Footballer and Studious	The victim's father is working.

147 From the aforesaid table, it can be seen that except for the victim mentioned at Serial No.4, namely – Arvind Kanaujia, the other victims are all students and are 20 years of age or below. Further, as far as these students are concerned, five of them were studying Engineering (IT) and two of them were doing graduation in Mass Media. As far as the victim at Sr. No.4, Arvind Kumar Kanaujia, is concerned, his age is 32 years and he was gainfully employed at Sterling Engineering Consultants. Hence, in the case of all the victims, they had a full working life ahead of them. Further, since the students were studying Engineering (IT) or Mass Media, and Arvind Kanaujia was employed at Sterling Engineering Consultants, it would be safe to presume that, during their whole working life, they would earn a good salary. Further, looking at the table above, shows that all these persons had dependents, only few of whom were working. The wife of Arvind Kanaujia and the parents of the other victims would thus have relied upon the victims for their maintenance and upkeeping. Keeping all these factors in mind, in our view, in respect of each victim, compensation of atleast Rs.30 lakhs would be payable

in 2015. Considering inflation and the interest that the said sum of Rs. 30 lakhs would have earned over the period of 10 years, the compensation payable to each of the Petitioners, in 2025, would be Rs. 50 lakhs.

148 For all the aforesaid reasons, we are of the view that Respondent No.2 would be liable to pay compensation of Rs.50 lakhs to each of the Petitioners. We answer Question E accordingly.

DEFENSES RAISED BY RESPONDENT NO.2:-

149 It is the submission of Respondent No.2 that the present Petition was originally filed challenging the Order dated 27th February,2017 passed by the Lokayukta, Maharashtra State. It is the submission of Respondent No.2 that the scope of the present writ proceedings cannot be allowed to be expanded. Respondent No.2 submitted that the Petitioners appear to have abandoned their original proceedings initiated before the Lokayukta and have sought to argue the present Writ Petition as if it is an original proceeding. This submission of Respondent No.2 cannot be accepted in light of the Order dated 20th August, 2019 passed by this Court in the present Writ Petition wherein this Court has recorded that, in view of the tragic loss of human lives, this Court would like to consider the

issues arising in the Petition and, in particular, whether compensation should be paid to the families of the victims and whether liability can be attached to Respondent No.2 for negligence or disregard in discharge of its duties , if any, which may have resulted into or led to the unfortunate incident at Kinara. This Order, passed by this Court in the present Writ Petition, has not been challenged or set aside, and that is the reason why we have, in the present Writ Petition, considered the issue as to whether Respondent No.2 is liable to pay any compensation to the Petitioners or otherwise.

150 Respondent No.2 submitted that after the Kinara Fire Incident, one Vijay Manthena, had filed a Writ Petition, being Writ Petition No. 1443 of 2018, raising a similar grievance against the actions/ in-action of Respondent No.2. Respondent No.2 further submitted that the said Writ Petition was disposed of by this Court by its Order dated 16th July, 2019. It is the submission of Respondent No.2 that this Court had occasion to consider the steps taken and default on the part of Respondent No.2 against the backdrop of the Kinara Incident, and, therefore, nothing survives in the present Writ Petition.

151 Firstly, it important to note that the said Order dated 16th July, 2019 does not consider or discuss the issues raised in the present Writ Petition. Further, in any case, the said Writ Petition, in which the said Order dated 16th September, 2019 was passed, was not filed by any of the Petitioners, and, therefore, does not bind the Petitioners. For these reasons, we are unable to accept the aforesaid submission of Respondent No.2.

152 It is further the submission of Respondent No.2 that the owner and conductor of Kinara Hotel (who are Respondent No.6 and Respondent No.7) are solely liable for the fire at Kinara on account of their acts of gross negligence and recklessness. It is further the submission of Respondent No.2 that therefore it is these Respondents who are liable to compensate the Petitioners. As stated by us herein above, in the present Petition, in the light of Order dated 20th August, 2019 passed in this Petition, we are considering only whether Respondent No.2 is liable to compensate the Petitioners. Further, as held by us herein above, there has been gross negligence on the part of Respondent No.2 and gross breach of its statutory duties, despite receiving complaints and despite being aware of very serious breaches of the license conditions made by Kinara. Further, as already held herein above, Respondent No.2's

negligence has a proximate cause to the tragic fire and, therefore, Respondent No.2 must be held liable. In these circumstances, we are unable to accept the submission of Respondent No.2 that the owner and conductor of Kinara Hotel (Respondent Nos. 6 and 7) are solely liable to compensate the Petitioners. Further, in any case, it would be open to Respondent No.2 to recover from other persons [including the owner and conductor of Kinara Hotel] the compensation paid by it to the Petitioners.

153 Next, it is the submission of Respondent No.2 that the liability of Respondent No.2 cannot be presumed in the absence of a direct and proximate causal link between the acts of commission and/or omission of the officers of Respondent No.2 and the fire incident at Kinara and the fatalities in question. This argument of Respondent No.2 also cannot be accepted as, for all the reasons stated herein above, we have held that Respondent No.2's negligence has a proximate cause to the tragic fire, and, therefore, Respondent No.2 must be held liable.

154 Respondent No.2 has also submitted that Respondent No.2, within the limited manpower and other resources available at its disposal, aims and strives to provide best standard of service to

the people and is aware of its responsibilities towards the people and need for better governance. Respondent No.2 submitted that its resources are already strained. In this context, Respondent No.2 submitted that the Health Department has to undertake varied forms of duties, in addition to issuance of license and monitoring of trade establishments for compliance. Respondent No.2 submitted that this is coupled with the fact of the fast paced growth in activity in a city like Mumbai. Respondent No.2 further submitted that Kinara is situated in 'L' ward, which is the largest ward in the Corporation with an area of 15.88 sq. kms, which stretches from Sion to Ghatkopar and Chembur to Powai. The population of the said ward, as per the 2011 census, was around 8,92,279, and considering the growth in population, it might have been around 10 to 11 lakhs in the year 2015. He submitted that the number of licensed eateries in the said ward are 313. Respondent No.2 submitted that, as per the organizational structure of the Public Health Department, the MOH is the licensing authority under whom there is a Senior Sanitary Inspector, and below the Senior Sanitary Inspector, are Sanitary Inspectors. Respondent No.2 submitted that, at the time of the incident, there was only one Senior Sanitary Inspector and against four posts of Sanitary Inspector, there were only three Sanitary

Inspectors available. He submitted that the said officers had the humongous task of ensuring strict compliance of regulatory requirements in the 'L' ward in addition to their other duties and responsibilities.

155 In this context, Respondent No.2 relied upon the decision of the Hon'ble Supreme Court in **Rajkot Municipal Corporation (supra).** Respondent No.2 submitted that in the said judgement, the Hon'ble Supreme Court has evolved the doctrine of direct and immediate causation which mandates that accountability be affixed only to the party whose negligent act or omission proximately resulted in the harm suffered. Respondent No.2 submitted that applying the said principle to the present case, the explosion at Kinara was a direct and exclusive consequence of the wilful violation of statutory safety norms by the hotel owner and manager, specifically concerning the improper storage and handling of LPG cylinders. Respondent No.2 submitted that in its capacity as a regulatory authority, it could not be held liable for the said incident in the absence of any proximate act or omission on its part that directly contributed to the explosion or fatalities. Respondent No.2 submitted that the actions of the hotel management constitute an

independent and intervening cause which severs any casual link between Respondent No.2 and the resulting harm.

156 In the case of **Rajkot Municipal Corporation (supra),** the deceased Jayantilal was residing in Padadhri. He used to daily come on a railway season ticket to Rajkot to attend his office. On 25th March, 1975, while he was walking on the footpath on the way to his office, a roadside tree suddenly fell on him as a result of which he sustained injuries on his head and other parts of the body and later died in the hospital. The Respondent therein filed a suit for damages claiming a sum of Rs. 1 lakhs from the Appellant- Corporation. The Trial Court decreed the suit for a sum of Rs.45,000/-, finding that the Appellant had failed in its statutory duty to check the healthy condition of trees and to protect the deceased from the tree falling on him, resulting in his death. On Appeal, the Division Bench held that the Appellant had a statutory duty to plant trees on the roadsides as also the corresponding duty to maintain the trees in proper condition. While the tree was in a still condition, it had suddenly fallen on the deceased Jayantilal who was passing on the footpath. The statutory duty gives rise to tortious liability on the State and as its agent,the Appellant-Corporation being a statutory authority was

guilty of negligence on its part in not taking care to protect the life of the deceased. The Division Bench further held that the Respondents therein could not be called upon to prove that the tree had fallen due to the Appellant's negligence. Statutory obligation to maintain trees being absolute, and since the tree had fallen due to its decay, the Appellant had failed to prove that the occurrence had taken place without negligence on its part. The Appellant failed to make periodical inspection whether the trees were in good and healthy condition subjecting them to seasonal and periodical treatment and examination. Therefore, the Appellant had not taken care to foresee the risk of the tree's falling and causing damage to the passers-by. Thus, the Appellant is liable to pay damages for the death of Jayantilal. The Division Bench accordingly confirmed the decree of the Trial Court and therefore the Appeal by Special Leave was filed before the Hon'ble Supreme Court. The Hon'ble Supreme Court allowed the said Appeal.

157 In the said judgement, after discussing the law of torts in detail, the Hon'ble Supreme Court held that, in that case, since the Municipal Corporation was not in know of the discoverable defect or danger and the damage was caused by an accident like sudden fall of

the tree, it would be difficult to visualize that the Appellant-Corporation had knowledge of the danger and omitted to perform the duty of care to prevent its fault. In this context, paragraphs 58, 59,62 and 63 of the said judgement are relevant and are set out here under:-

> *"58:- But when the defendant was not in know of the discoverable defect or danger and it caused the damage by accident like sudden fall of the tree, it would be difficult to visaulise that the defendant had knowledge of the danger and he omitted to perform the duty of care to prevent its fault. There would no special relationship between the statutory authority and the plaintiff who is a remote user of the footpath or the street by the side of which the trees were planted, unless the defendant is aware of the condition of the tree that it is likely to fall on the footpath on which the plaintiff/class of persons to which he belongs frequents it. The defendant by his non-feasance is not responsible for the accident or cause of the death since admittedly there was no visible sign that the tree was affected by disease. It had fallen in a still condition of weather.*
>
> *59:- Therefore, there must exist some proximity of relationship, foreseeability of danger and duty of care to be performed by the Defendant to avoid the accident or to prevent danger to person of the deceased Jayantilal. The requisite degree of proximity requires to be established by the plaintiff in the circumstances in which the plaintiff was injured. The plaintiff would not succeed by establishing that the accident had occurred due to negligence,i.e. the defendant's failure to take reasonable care as ordinary prudent man, under the circumstances, would have taken and the liability in tort to pay damages had arisen. If the defendant had become aware of the decayed condition or that the tree was affected by disease and taken no action to prevent the accident, it would be actionable, though for non-feasance. Mere appearance of danger, gives rise to no*

liability. Actual damage had occurred before tortious liability for negligence arose. When the defendant is under a statutory duty to take care not to create latent source of physical danger to the property or the person who in the circumstances is considered to be reasonably foreseeable as likely to be affected thereby, the defendant would be liable for tort of negligence. If the latent defect causes actual physical damages to the person, the defendant is liable to damages for tortious liability. The negligent act or omission of the statutory authority must be examined with reference to the statutory provisions, creating the duty and the resultant consequences. The negligent act or omission must be specifically directed to safeguard the public or some sections of the public to which the plaintiff was a member from the particular danger which has resulted.

62 The question, therefore, is whether the respondents in the present case have established the three essential ingredients? The statute enjoins a power to plant trees on the roadsides or in public places. There is no statutory sanction for negligence in that behalf. But the question is whether the statutory function to plant trees gives rise to a duty of maintaining the trees. In a developing society it is but obligatory on every householder, when he constructs a house and equally for a public authority to plant trees and properly nurture them in a healthy condition so as to protect and maintain the eco-friendly environment. But the question is whether the public authority owes a statutory duty towards that class of persons who frequent and pass and repass on the public highway or road or the public places. If the local authority/statutory body has neglected to perform the duty of maintaining trees in a healthy condition and when damage, due to fall of the tree occurs, the question emerges whether the neighbour relationship and proximity of the causation and negligence and the duty of care towards the plaintiff have been satisfactorily proved to have existed so as to fasten the defendant with the liability due to tort of negligence. It depends on a variety of facts and circumstances. It is difficult to lay down any set standards for proof thereof. Take for instance, where a hanging branch of a tree/tree is gradually falling on the ground. The statutory/local authority fails to take timely action to

have it cut and removed and one of the passers-by dies when the branch/tree falls on him. Though the injured or the deceased has contributed to the negligence for the injury or death, the local authority etc. is equally liable for its negligence/omission in the performance of the duty because the proximity is anticipated. Suppose a boy not suspecting the danger climbs or reaches the falling tree and gets hurt, the defendant would be liable for tort of negligence. The defect is apparent. Negligence is obvious, proximity and neighbourhood anticipated and lack of duty of care stands established. The plaintiff, in common law action, is entitled to sue for tort of negligence. The authority will be liable to pay the damages for omission or negligence in the performance of the duty. Take another instance, where while 'A' is passing on the road, there is sudden lightning and thunder and 'A' takes shelter under a tree and the lightning falls on the tree and consequently 'A' dies. In this illustration, there is no corresponding obligation or a duty of care on the part of the Corporation or the statutory authority to warn that 'A' should not take shelter under the tree to avoid harm to him. Take yet another instance, where a road is being laid and there is no warning or signal and a cyclist or a motorcyclist during night falls in the ditch, i.e., place of repair due to negligence on the part of the defendant. The injury is caused to the victim/vehicle. The plaintiff is entitled to lay suit for tort of negligence. But in a situation like the present one where the victim being not aware of the disease/decay, the tree suddenly falls in a still weather condition, no one can anticipate and it is difficult to foresee that a tree would fall suddenly and thereby a person who would be passing by on the roadside, would suffer injury or would die in consequence. The Corporation or the authority is not liable to be sued for tort of negligence since the causation is too remote. Novus actus inconveniens snaps the link and, therefore, it is difficult to establish lack of care resulting in damage and foreseeability of the damage. The case in hand falls in this category. Jayantilal was admittedly passing on the roadside to attend to his office duty. The tree suddenly fell and he sustained injury and consequently died. It was difficult to foresee that a tree would fall on him.

> *63. 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, roadsides, highways 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 roadsides."*
>
> *(emphasis supplied)*

158 We fail to see how this decision would come to the rescue of Respondent No. 2. As stated in this decision, the Hon'ble Supreme Court clearly found, on facts, that the causation of the accident was too remote and it was difficult for the local authority to forsee such an accident. In the facts of the present case, as stated in detail herein above, Respondent No.2 was aware of the various breaches and illegalities in Kinara which were a fire hazard, and despite complaints and their own Inspection Reports noting the same, did not take any action. Further, as can be seen from the other judgements of the Hon'ble Supreme Court referred to herein above, some of which are subsequent to the judgement in **Rajkot Municipal**

Corporation (supra), the Hon'ble Supreme Court has clearly held that when breach of a statutory duty by a public authority leads to violation of fundamental rights under Article 21 of the Constitution of India, the public authority is liable to pay compensation. We, therefore, find that the reliance placed by Respondent No. 2 on the decision of the Hon'ble Supreme Court in the case of Rajkot Municipal Corporation (supra) is wholly misplaced.

159 Respondent No.2 has submitted that in the Departmental Enquiry held by it, two Sanitary Inspectors were given appropriate punishment, and, for this reason also, Respondent No.2 should not be held liable for payment of any compensation. In our view, awarding punishment in a Departmental Enquiry to certain officers does not absolve Respondent No.2 from paying compensation to the Petitioners for the violation of the fundamental rights of the Petitioners and their children/ husband under Article 21 of the Constitution of India. Therefore, in our view, this argument of Respondent No.2 is stated only to be rejected.

160 Respondent No.2 further submitted that since it is a public body, it should not be fastened with any liability for

compensation considering the steps taken by it after the incident and the strain which any such award of compensation would put on the public funds. In our view, any steps that may have been taken by Respondent No.2 after the incident cannot absolve Respondent No.2 of its liabilities. Further, the alleged strain on public funds also cannot be a ground to absolve Respondent No.2 of its liability. At the cost of repetition, we would like to reiterate that Respondent No.2, by not taking action against Kinara, despite being aware of serious breaches committed by Kinara of the license conditions, committed a breach of its statutory duties. This breach of statutory duties on the part of Respondent No.2 is the direct and proximate cause of the incident of fire at Kinara. If Respondent No.2 had performed its statutory duties, the fire at Kinara would not have taken place. It is in these circumstances, that we have held Respondent No.2 liable to pay compensation.

161 Finally, Respondent No.2 relied upon an Order dated 8th August, 2019 passed by this Court in **Shri Anil B. Kamble v/s. The Barshi Municipal Council and Another** (Writ Petition No. 4066 of 2018). Relying upon this Order, Respondent No.2 submitted that by the said Order, this Court had directed the Municipal Council to pay

Rs.2 lakhs to the mother of the deceased by way of ad-hoc compensation and had left it open to the Petitioners to file appropriate civil proceedings seeking further compensation. Respondent No.2 submitted that this approach was the correct one and deserves to be followed in the present case too. Respondent No.2 submitted that, in that case, the wall which fell and led to death was built and managed by the Municipal Council, and yet such a course was adopted by this Court. Respondent No.2 submitted that, in the present case also, such a course should be adopted by this Court. We are afraid that we are not inclined to accept the said submission of Respondent No.2. In **Shri Anil Kamble (supra),** in the facts of the said case, this Court came to the conclusion that the task of computing compensation cannot be done in a Writ Petition in the absence of full material facts before this Court, and, therefore, relegated the Petitioner therein to file appropriate civil proceedings, seeking such compensation. In our view, the said decision is clearly distinguishable on facts. In the present case, the material facts for claiming compensation have been placed before this Court. Further, as held by the Hon'ble Supreme Court in the various decisions referred to in this judgement, if a breach of statutory duties by a public authority has led to violation of fundamental rights under

Article 21 of the Constitution of India, then compensation can and ought to be awarded in a Writ Petition.

SUBMISSIONS OF OTHER RESPONDENTS:-

162 As stated herein above, we are only considering the validity of the Order dated 27th February, 2017 of the Lokayukta, Maharashtra State, and the issue as to whether Respondent No.2 is liable to pay any compensation to the Petitioners. In these circumstances, we are not dealing with the submissions of the other Respondents which are set out herein above in this judgement.

LOKAYUKTA ORDER DATED 27th FEBRUARY, 2017:-

163 The Order dated 27th February, 2017 of the Lokayukta, in so far as it deals with the payment of compensation is as under:-

> *" ... .*
> *During the course of hearing, it has transpired that the compensation has already been ordered to be paid to the families of deceased persons due to accidental fire at 'Hotel City Kinara'. It is submitted that the compensation amount has already been credited to the account of Tahsildar, Kurla and he has been directed to take further steps. In view thereof, this authority cannot interfere in the matter as far as the compensation issue is concerned."*

164 A perusal of the said Order dated 27th February, 2017 of the Lokayukta shows that the Lokayukta failed to consider that the

compensation of Rs.1 lakh each paid by the State Government to the families of victims of the Kinara fire, was only ad-hoc compensation. The Lokayukta failed to consider that it had to be considered as to what was the actual compensation, if any, that was payable to the Petitioners. On this ground alone, we are inclined to quash and set aside the Order dated 27th February, 2017 of the Lokayukta, Maharashtra State.

165 Further, in any case, the said Order of the Lokayukta, Maharashtra State, cannot prevent this Court from considering, under Article 226 of the Constitution of India, whether any compensation is payable to the Petitioners by Respondent No.2.

ORDER

166 For all the aforesaid reasons, we pass the following orders:-

(i) The Order dated 27th February, 2017 of the Lokayukta, Maharashtra State, is hereby quashed and set aside;

(ii) Respondent No.2 is directed to pay to each of the Petitioners compensation of Rs.50 lakhs (Rupees Fifty Lakhs only) within a period of 12 (twelve) weeks from the date of this Order. If compensation is not paid within a

period of 12 (twelve) weeks, then the said sum of Rs.50 lakhs (Rupees Fifty lakhs only) shall carry interest at the rate of 9% p.a. from today till payment and/or realisation.

(iii) Respondent No.2 is at liberty to recover the amount paid to the Petitioners from any other person, if it is so entitled to in law;

167 Rule is made absolute in the aforesaid terms. The Writ Petition is also disposed of in terms thereof. However, in the facts and circumstances of the case, there shall be no order as to costs.

168 This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**