

(2005) 05 DEL CK 0036
In the Delhi High Court
Case No : WP (C) 2338 of 2001

Manjit Singh Sawhney

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-05-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 21, 226, 32

Citation : (2005) 120 DLT 156 : (2005) 82 DRJ 459 : (2005) 4 RCR(Civil) 547

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : Kuljeet Rawal, for the Appellant; Purnima Sethi, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.—By way of the present petition, the petitioner is seeking payment of Rs. 1,18,275.00 with interest on account of compensation for the injuries and loss suffered by him in the 1984 riots.

The 31st of October, 1984 saw the unfurling of a saga of terror let lose by barbaric mobs indulging in a spate and orgy of violence directed against a specific community after the killing of late Prime Minister Smt. Indira Gandhi. The agony of the people effected would have known no bounds in as much as there are allegations and instances to the effect that the protectors of life, society and property completely failed in discharge of their duty to protect and, if did not actually perpetrate the crime, acted in their promotion and tacit support to the unruly mobs.

Noticing the turmoil, tragedy and loss suffered by mankind, Anil Dev Singh, J in his judgment reported at Bhajan Kaur Vs. Delhi Administration, , commented thus:-

"5. The case demonstrates how innocent lives were snuffed out by barbaric mobs indulging in an orgy of violence after the brutal killing of Smt. Indira Gandhi. It is not difficult to visualise the terror, pain and the suffering which must have struck

the affected people not at the hands of beasts but fellow beings belonging to the same mother land to which the dead belonged. Bemoaning the loss of the near ones, how they would have preferred beast to human beings for company and must have yearned for a place free of marauding crowds-yearned for a place where fear would not enter-yearned for a situation described in the following words of Gurudev Rabindra Nath Tagore:-

"If I were the soil, if I were the water,

If I were the grass or fruit or flower,

If I were to roam about the earth with beasts and birds, there would be nothing to fear,

In never-ending ties wherever I go, it will be the limitless me."

2. One does not have to go far back in the memory lane and most of us can recollect the horror and agony suffered by every right thinking citizen of this country as to what was being experienced. The agony of those who actually underwent the experience and dejection at the failure of the state machinery to ensure the life and liberty constitutionally granted to them, cannot be expressed in words. Till date, cases relating to prosecution of persons accused of involvement in the riots which occurred are ending in courts.

There has been little success at bringing the guilty to book and this has only compounded the hopelessness in the minds of victims.

4. Article 21 of the Constitution of India guarantees as a fundamental right to every citizen of this country personal liberty which is fundamental to the functioning of our democracy. The very Preamble ensures liberty, equality and fraternity to the citizens of India, promise of which the nation is reminded each time communal violence and riots erupt. Undoubtedly, the state is obligated to ensure that the rights of individuals or group of persons under Article 21 of the Constitution of India are not and cannot be violated.

5. As noticed in the afore-stated judgment, it is the bounden duty and responsibility of the state to secure and safeguard life and liberty of an individual from mob or violence. That these riots occurred on account of laxity and indifference of the administration in enforcing law and order cannot be doubted. If expeditious and timely action is taken effectively and efficiently, undoubtedly such riots can be prevented or curtailed. The state is enjoined to implement the expressed will and give full effect to the constitutional promises. The message to those guilty must be clear and unequivocal that their actions would not be tolerated and that they would be strictly dealt with. Simultaneously, the state cannot ignore its duty in ensuring the creation of civilised values and behavior.

6. Noticing the sweep of Article 21, the Apex Court in the judgment reported at National Human Rights Commission Vs. State of Arunachal Pradesh and Another, held thus:-

"9. The sweep of Article 21 is wide and far reaching. Article 21 is not to be restricted to the violation of right to life and liberty committed by the State alone. That right is also to be protected and safeguarded by the State from being violated or interfered with by private individuals. In National Human Rights Commission Vs. State of Arunachal Pradesh and Another, , the Supreme Court held that the State is bound to protect the life and liberty of every person and it cannot permit any body or group of persons to threaten it. The Supreme Court in this regard held as follows:-

"We are a country governed by the Rule of Law. Our constitution confers certain rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise, and it cannot permit any body or group of persons, e.g., the AAPSU, to threaten the Chakmas to leave the State, failing which they would be forced to do so. No State Government worth the name can tolerate such threats by one group of persons to another group of persons; it is duty bound to protect the threatened group from such assaults and if it fails to do so, it will fail to perform its Constitutional as well as statutory obligations. Those giving such threats would be liable to be dealt with in accordance with law. The State Government must act impartially and carry out its legal obligations to safeguard the life, health and well being of Chakmas residing in the State would being inhibited by local politics. Besides, by refusing to forward their applications the Chakmas are denied rights, Constitutional and statutory, to be considered for being registered as citizens of India."

"10. Article 21 is the Nation's commitment to bring every individual or group of persons within its protective fold. This Nation belongs to members of all the communities. They are equal members of the Indian society. Equality before law and equal protection of laws is ensured to them by Article 14 of the Constitution to them. None is to be favored or discredited. The conduct of any person or group of persons has to be controlled by the State for the lofty purpose enshrined in Article 21 of the Constitution. It is the duty of the State to create a climate where the cleavage between members of the society belonging to different faiths, caste and creed are eradicated. The State must act in time so that the precious lives of the people are not destroyed or threatened. Otherwise, Article 21 will remain a paper guarantee. Time is long overdue for adopting measures that have more than a hortatory effect in enforcing Article 21 of the Constitution. The State cannot adopt a "do nothing attitude

"Like disease prevention, the State must take every precaution, measure and initiative to prevent terrorem populi of the magnitude represented by 1984 riots and in the event of an cut-break of riots it must act swiftly to curb the same and not allow precious time to slip by, as any inaction or passivity on its part can result in loss of precious life and liberty of individuals amounting to violating and

negation Article 21 of the Constitution. The State has to enforce minimum standards of civilized behavior of its citizens so that the life, liberty, dignity and worth of an individual is protected and preserved and is not jeopardised or endangered. If it is not able to do all that then it cannot escape the liability to pay adequate compensation to the family of the person killed during riots as his or her life has been extinguished in clear violation of Article 21 of the Constitution which mandates that life cannot be taken away except according to the procedure established by law.

7. It is noteworthy that the Bhajan Kaur case (Supra) had been filed by a widow of a 1984 riots victim whose husband Shri Narain Singh lost his life on 1st November, 1984 in the riots which took place after the assassination of Smt. Indira Gandhi. According to Bhajan Kaur, on the fateful days, her husband was traveling by the Bombay-Firozpur Janta Express train. According to FIR No. 355 dated 1st November, 1984 lodged at Police Station New Delhi Railway Station, around 12.30 noon, the train stopped at Tuglakabad Railway Station where 300-350 villagers surrounded it. They pulled up 25-26 passengers from the train and killed them. The persons killed included Narain Singh, son of Jawahar Singh who was a resident of Village Bhalajala Tehsil Taran, Distt. Amritsar, Punjab. Smt. Bhajan Kaur had impugned the action of the Delhi Administration in awarding ex gratia compensation of Rs. 20,000/- to her by means of a cheque on the ground that the same was too meagre and deserved to be enhanced. It is noteworthy that the writ petition was filed in 1996 after the riots which had occurred in 1984.

8. I may notice here that in the instant case, the petitioner is admittedly a victim who has stated that he has suffered at the hands of mob who pulled him out of the train at the same Railway Station Tuglakabad near Delhi on 2nd November, 1984 (This is one day after Bhajan Kaur's husband Shri Narain Singh was pulled out by the mob at the same spot). Callous disregard and failure to discharge its constitutional obligation on the part of the state is writ large from the fact that even two days after the commencement of riots on 31st October, 1984 and despite having full knowledge of the sensitive spot, no action was taken by the state to discharge its prime duty of ensuring security to its citizens. The train of the present petitioner was stopped at the same Railway Station at Tuglakabad. The passengers of one community are stated to have been pulled out of the compartment at the same spot. Seven of them are stated to have been killed while the petitioner escaped death only because he was so badly battered that the mob believed that he had also expired.

9. The complete breakdown of the state machinery is evident from the fact that as in the present case, even in Bhajan Kaur's case, the FIR relating to her husband was not lodged by the local police where the incident occurred at the Tuglakabad, but was lodged at the New Delhi Railway Station.

10. The stand of the respondents in the instant case is to the effect that because there is no F.I.R. and no documentary proof of the incident or of the injuries suffered by the petitioner, he could not be given any further compensation other

than the meager policy amount of Rs. 2,000/- sent to him on the 2nd June, 1986.

11. I may notice that Smt. Bhajan Kaur was paid the ex gratia amount of Rs. 20,000/- pursuant to the same policy of the State Government whereby it had been decided to pay Rs. 20,000/- in the case of death, and Rs. 2,000/- in the case of injury suffered on account of the afore-stated riots. Commenting on the adequacy of the compensation which had been decided to be paid by the state, Anil Dev Singh, J in Bhajan Kaur's case stated that -

"18. It cannot be denied that the State recognised the factum of death of the petitioner's husband during the riots and it was in recognition thereof that the financial assistance in the form of compensation of Rs. 20,000/- was given to the petitioner.

The compensation to a widow or the family of a person who lost his life during the riots is highly inadequate. It is mockery of compensation for a riot victim. When a wife loses her husband, children their father, parents their son in a riot, it amount to a cruel joke to give Rs. 20,000/- as financial aid to the family of a deceased. This paltry sum of Rs. 20,000/- cannot by any standard be the tower of their hope and strength. The very offer of such a sum would aggravate the pain and suffering, rather than reducing the same. The time when the blow is fresh, it is then that the family should receive adequate financial aid or compensation to tide over immediate financial crisis and look to the future with a glimmer of hope. It is true that life of an individual cannot be compensated by payment of money, but at the same time it relieves financial strain and alleviates the sufferings of the victims and their families. Financial aid of Rs. 20,000/- as a measure of immediate relief is, as already stated, grossly inadequate and is far from being just, fair and reasonable. It is no victory for the victim.

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25. Though the aforesaid cases do not pertain to riots, but broadly the quantum of compensation or financial aid for the loss of a near one can be ascertained there from. The decisions show that the judicial trend is to award substantial compensation for illegal extinction or deprivation of life and liberty. The loss of life in jail at the hands of inmates or jail authorities and loss of life outside the jail at the hands of functionaries of the State or rioters bring the same tragic results for the families of the victims. Therefore, no distinction can be made for the purpose of grant of compensation in the aforesaid situations. Thus, the principles for grant of compensation or financial aid to the families of the victims whose lives are taken away without due process of law should be the same.

26. Having regard to the aforesaid discussion and decisions it appears to me that the ex gratia payment made to the petitioner and families of the riot victims of 1984 is unrealistic and does not equip them to lead a life of dignity and proper human existence, and to be able to live an adequate human life to satisfy human wants - if all human wants cannot be satisfied, they should be satisfied so far as possible and at least to the extent of decent human minimum. The State is duty

bound to adopt a realistic approach in keeping with the spirit of Article 21 of the Constitution. The State should be mindful of the fact that in cases where liberty of individuals was curtailed illegally the Supreme Court awarded Rs. 50,000/- as compensation to them with a right to prosecute their claims for further compensation in appropriate proceedings.

27. Here we are concerned with illegal extinction of life by mobs which put into execution their plans openly in public places and in full gaze of the authorities. It was not something done clandestinely for which the State could plead ignorance. At least in the capital of the country the State has requisite resources to prevent the riots. It cannot afford to ignore even a small indication or sign of a likely flare up of communal tension, and at the stage itself it has to respond by educating the mass and deploying adequate police or para military forces to diffuse the situation. The Report of Justice R.N. Misra Commission of Inquiry refers to the passivity, callousness and indifference of the police of Delhi in the matter of controlling the situation during the 1984 riots. In this regard, the Commission observed as follows:-

"On the other hand, as held earlier, the evidence fits into the position that when the incidents started taking place and the police remained passive, leading to the generation of feeling that if Sikhs were harassed no action would be taken, the situation fast deteriorated and the anti-social got into the fray and gave the lead after taking over the situation.....(Page 30 of the report)

There is abundant evidence before the Commission that the Police on the whole did not behave properly and failed to act as a professional force. Telephone No. 100 which is meant for notifying for police assistance did not respond at all during that period. The police stations when contacted on telephone ordinarily did not respond and if there was any response it was a plea of inability to assist. The behavior of most policemen was shabby in the sense that they allowed people to be killed, houses to be burnt, property to be looted, ladies to be dragged and misbehaved with in their very presence. Their plea was that they were a few and could not meet the unruly armed mob usually of hundreds or thousands. Some senior police officers had taken the stand that the community was in a frenzy and to meet the cruel mob greater strength of force was necessary. Obviously, the police could not expect that their number had to be equal to that of the miscreants. A professional police force by its expertise, experience and training was expected to meet any challenge and was not to seek cover under an umbrella of excuses based upon instructions in archaic Police Rules. Has any hero been heard of opening his scriptures when he suddenly meets a challenge to his life.....(Pages 22 and 34 of the report)

There is evidence which the Commission cannot ignore that on several occasions when fire tenders started moving to places of arson on receiving intimation, the mobs blocked the passage and held them up or forced them to return. On several occasions this was done in the presence of the police. It is well-known that fire tenders have precedence of movement on the roads for they move to

answer an emergency, yet the police did not attempt to clear the way.

Several instances have come to be narrated where police personnel in uniform were found marching behind, or mingled in the crowd. Since they did not make any attempt to stop the mob from indulging in criminal acts, an interference has been drawn that they were part of the mob and had the common intention and purpose. Some instances, though few in number, have also been noticed where policemen in uniform have participated in looting (Page 37 of the report)

The Commission has found that the police at Delhi showed total passivity and callous indifference when called upon to perform its duty."

28. While considering the question of grant of compensation or ex-gratia payment to the petitioner and families of the victims killed during the riots, all the aforesaid aspects have to be kept in view. It is also noteworthy that the Supreme Court awarded Rs. 1 lakh to Rs. 7.5 lakhs for illegal curtailment of life as indicated in the aforesaid decisions. Therefore, obviously the compensation or ex gratia payment as a measure of immediate relief to the victim's family should be more than Rs. 50,000/- and between Rs. 1 lakh and Rs. 7.5 lakhs.

29. It has been brought to my notice by Mr. Adarsh Goel, learned counsel for the respondent - Govt. Of NCT of Delhi, that widows of riot victims are being paid Rs. 1,000/- per month as pension. Learned counsel has produced on record a copy of letter No. F.9(38)/R-1/DC/88/648 dated May 17, 1996, from, the Deputy Director (Relief-1), Office of the Deputy Commissioner, Delhi, to the Desk Officer, Ministry of Home Affairs, Govt. of India, North Block, New Delhi, along with report regarding progress of relief and rehabilitation measures in regard to riot victims of 1984. According to the report, 195 widows are getting pension. Be that as it may, the financial assistance of Rs. 20,000/- which was to ameliorate the immediate effect and the long term effect of the killing of an earning hand, was highly inadequate and unfair.

30. Having regard to the aforesaid discussion and also keeping in view the decisions of the Supreme Court I am of the opinion that the petitioner should have been paid at least a sum of Rs. 2 lakhs as compensation. Since the petitioner has already been paid a sum of Rs. 20,000/- the respondent is directed to pay a sum of Rs. 1,80,000/- to the petitioner with interest from October 1984 to the date of payment, which is quantified at Rs. 1.50 lakhs. The respondent will make the payment of Rs. 3.30 lakhs to the petitioner within one month.

31. This direction to pay enhanced compensation would be applicable to similar cases in order to secure parity and to alleviate the sufferings of the families of the victims who lost their lives during the Delhi riots of 1984. Accordingly, it is directed that the widows and families of the victims who lost their lives in the 1984 Delhi riots be paid a sum of Rs. 3.50 lakhs (Rs. 2 lakhs with interest quantified at Rs. 1.50 lakhs). The payment would be made to them by the

respondent after adjusting the amount if any, paid to them as ex gratia grant of compensation. It will also be open to the Govt. of N.C.T. of Delhi and the Union of India to consider the grant of compensation over and above the aforesaid amount depending upon the circumstances of the families of the riots victim. I would also direct the State to constitute a Committee to disburse the amount of compensation quantified as above to the families of those who were killed in riots after their proper identification. I order accordingly. The exercise should be completed within a period of four months. The State and the Union, as the case may be, will be well advised to locate the responsibility for the riots whenever and wherever they occur and the persons held responsible for the same should be made to pay compensation and the law should provide for confiscation of their properties so as to secure payment of compensation out of the assets so confiscated. In case it is found that an official or officials of the State did not act in time or were indifferent to mob violence, they should also be required to make reparations to the victims and face disciplinary proceedings."

12. I may notice that despite the directions of this court in Bhajan Kaur's case, there is nothing forthcoming with regard to the fixation and location of responsibility for the riots or for confiscation of property so as to secure payment of compensation

13. The present case is concerned not with the death of the victim but relates to the injuries suffered by the victim. The petitioner is stated to have been pulled out of the railway coach, beaten and left on the track. He has submitted that he was picked up from the track by the Army Authorities who brought him to New Delhi Railway Station where a Cell had been created for riot victims. He was taken to Lok Nayak Jai Prakash Hospital and given an indoor ticket bearing CR No. 209537. The petitioner has submitted that he was not traveling alone and he had a sister who was traveling with him. He was extremely concerned about her fate after he had been thrown out of the train and brought to the hospital. In these circumstances, he got himself discharged from the hospital and went to look for his sister.

14. The respondents have unfairly sought to draw advantage from the fact that the petitioner did not remain admitted in hospital. It has been contended that he suffered hardly any injury in as much as he was able to leave the hospital. To say the least, such a stand, apart from being only insensitive, is completely unrealistic. Normal human conduct would show the terror in the mind of the victim who had narrowly escaped death and seen his co-passengers being beaten to death. The machinery of the State having failed in its duty to protect, there would be a feeling of distrust and insecurity in a state run institution. The petitioner would obviously have been deeply concerned about the welfare and well being of his sister who had also been traveling in train with him but was not in the hospital. It is, Therefore, to be expected that any right thinking person would seek to leave the hospital at the earliest in order to ensure the welfare and well being of his kith and kin. Concern for his missing sister outweighed all

concerns of his own injuries and the petitioner ignored his wounds while getting his discharge from the Hospital. The petitioner has contended that so grave was the trauma and insecurity experienced by them, that the petitioner and his sister left for Punjab to the security of their home at the first available opportunity. The stitches which had been put at the L.N.J.P. Hospital were got removed in Punjab and the document in this behalf has been placed on record.

The respondents have placed no material before this court with regard to the extent of damage, death toll, the numbers of the injured in the incident in which the petitioner was injured. Even records relating to the petitioner have not been placed before me even though the same would be in their power and possession.

15. I find that the issue of compensation on account of contravention of human rights and fundamental freedoms has fallen for consideration before the Apex Court in several judgments. The legal principles which are applicable in such cases are well settled. It has been held that the protection which is guaranteed in the Constitution is an acknowledged remedy for enforcement and protection of such rights. It is settled law that such a claim based on strict liability made by resorting to a Constitutional remedy provided for enforcement of the fundamental rights, is distinct from and in addition to the remedy in private law for damages for the attack resulting from the contravention of fundamental rights. The defense of sovereign immunity being inapplicable and alien to the concept of guarantee of fundamental rights, there can be no question of such a defense being available to such 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 power and enforcement of the fundamental right is claimed by resorting to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This view was taken by the Apex Court in the judgment reported at *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, .; *Khatri and Others Vs. State of Bihar and Others*, and *Khatri and Others Vs. State of Bihar and Others*, .

The Apex Court had observed that the court is not helpless to grant relief in the case of violation of the rights to life and personal liberty, and it should be prepared to forge new tools and devices 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.

16. In *Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc.*, , the Apex Court observed that we have to develop our own law and find what is necessary to construct a new principle of liability to deal with the unusual situation which has arisen and which is likely to arise in future. There is no such reason why we should hesitate to evolve such principle of liability.

17. In the Nelabati Behura case (Supra), the court observed as under:-

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

18. I may also notice the observation of Dr. A.S. Anand, J (as his lordship then was) in his concurring judgment in Smt. Nilabati Behura case (Supra) where it was observed as under:-

"33. 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 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 penalising law.

34. 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 decision of this Court in the line of cases starting with *Rudul Sah Vs. State of Bihar and Another*, . 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 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 rights of a citizen under Article 21 are 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 a 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."

19. I may also appropriately refer to the observation of the Division Bench of this court in the judgment reported at 2001 (1) JCC Delhi 57 entitled *Govt. of NCT of Delhi v. Shri Nasiruddin (Father of deceased Mohd. Yasin)* to the following effect:-

"16. This view finds support from the decisions of the Apex Court in the

Bhagalpur Blinding cases : Khatri and Others Vs. State of Bihar and Others, and Khatri and Others Vs. State of Bihar and Others, wherein it was said that the court is not helpless to grant be relied on exclusively to arrive at a reasonable estimate of just compensation for mush pertains to the realms of hypothesis, and in that region arithmetic is a good servant but a bad master and Therefore, an award should be of a round sum rater than one actually computed. (Per Lord Ruttan J, in Bal v. Kraft 1967 ACJ 235 Supreme Court of British Columbia, Canada). The following broad principles govern the grant of damages:-

- (i) There should not be any negligence on the part of the claimant himself.
- (ii) There should not be any improper conduct on the part of the claimant himself.
- (iii) The claimant should have taken all the reasonable action to maintain the loss on injury sustained by him.
- (iv) The acts of the claimant should be lawful, just and reasonable.
- (v) The amount of damages should not exceed the loss sustained by him, and damages may be minimized if own conduct has resulted contributory negligence, or has rendered some of the damages too remote or has constituted a failure to mitigate the damages, either by not taking such steps to reduce the original loss or to avert further loss.

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21. It is true that perfect compensation is hardly possible and money cannot renew a physique frame that has been battered and shattered, as stated by Lord Morris in West v. Shephard (1964) AC 326. Justice requires that it should be equal in value, although not alike in kind. Object of providing compensation is to place claimant as far as possible in the same position financially, as he was before accident. Broadly speaking, in the case of death basis of compensation is loss of pecuniary benefits to the dependants of the deceased which includes pecuniary loss, expenses, etc. and loss to the estate. Object is to mitigate hardship that has been caused to the legal representative due to sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring the damage. It cannot be arrived at by precise mathematical calculation, but amount, recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor it should be a source of profit of the person in whose favor it is awarded. Upjohn L.J. In Charter House Credit v. Tolly; (1963) 2 QB 683 remarked, the assessment of damages has never been an exact science, it is essentially practical".

20. The award of monetary relief to the victim for deprivation of fundamental right is to be guided by the afore-stated principle requiring the state to make monetary amends under public law for the wrong done due to breach of the public duty of not protecting the fundamental rights of the citizens. This

computation is not guided by any strict arithmetical formula and it has to be borne in mind that money cannot remove the trauma and the battering suffered by a victim.

21. It is noteworthy that it would be impossible to recover from the terror which was generated against the community to which the petitioner belonged in 1984. The mark left by such riots and the insecurity generated as a result in the minds of those who suffered at the hands of the marauding mobs may perhaps never get obliterated. The pain of seeing loved ones being killed before the eyes of the surviving victims may perhaps never be extinguished and undoubtedly the feeling of anger against the state which failed to take any action for the protection and preservation of life, limb and property of the riot victims shall never cease.

22. In the judgment reported at S.S. Ahluwalia Vs. Union of India and Others, , dealing with 1984 riots in different states, it was held by the Apex Court that what holds true for loss of life would equally applies to loss of limbs.

23. Admittedly, on the 5th July, 1996, this court pronounced in Bhajan Kaur's case to the effect that the compensation in the death cases of Rs. 20,000/- was highly inadequate and unfair. The court was pleased to enhance the compensation payable to the survivors where there had been a death, to the extent of Rs. 2,00,000/- and was pleased to direct payment of interest from October, 1984 to the date of payment. The interest at the time of pronouncement of the judgment on 6th July, 1996 was quantified at Rs. 1,50,000/-.

24. Undoubtedly, keeping in view the directions made by the court in the matter relating to a death on account of riots, and the observations of the court, in all fairness, the state should have examined all cases where it had paid compensation in respect of injuries as well.

25. The petitioner was deprived of copies of the records relating to his own injuries on the ground that the same was a medico legal case. I find that the petitioner lodged his claim with the respondents for the first time on 8th November, 1984. This was followed by a legal notice on 19th November, 1984. He has made a claim with the Deputy Commissioner on 28th November, 1985 on the prescribed proforma and has also submitted a list of his articles. The petitioner has also sent reminders on 14th August, 1985, 8th November, 1985, 28th November, 1985, 10th December, 1985 and 17th November, 2000. The petitioner did his best to obtain copies of the records from the Lok Nayak Jai Prakash Hospital. However, he received a letter dated 3rd July, 1986 from the Medical Officer in charge at the Lok Nayak Jai Prakash Narain Hospital to the following effect:-

"With reference to your letter No. dated 13.12.85 on the subject noted above, it is to be informed that the information can be given to you being a Medico Legal Case. The particulars of injuries etc. will be intimated to the Commissioner of Relief, Tis Hazari, Delhi as and when the Court of law desires."

26. This court has already held that the compensation given as ex gratia by the state to the victims of the riots in 1984 is highly inadequate.

27. There is no warrant for disbelieving the petitioner as stated that his belongings were also lost in the riots. Perusal of the list shows that the same consists of personal items etc. small amount of cash, suitcase containing his cloths valued at hardly Rs. 2,000/- wrist watch of Rs. 225/- gold ring of Rs. 800/- cash in pocket Rs. 4800/- cash in other pockets at Rs. 225/- and compensation for injuries and treatment of Rs. 10,000/- only. General damages on account of shock and agony of Rs. 1,00,000/- have been claimed. The petitioner has submitted that in reply to the letter from the respondents dated 14th August, 1985 telling him that his claim was not in a proper form, he has submitted the claim in the proper format to the respondents on 8th November, 1985 and no heed was paid to repeated representations.

28. It has been pointed out that the respondents accepted that the petitioner was a victim of riots and paid him the policy amount of Rs. 2,000/- by cheque. In these circumstances, I have no manner of doubt that the amount of Rs. 2,000/- which was paid to the petitioner on account of the ex gratia for the injuries etc. suffered by him on account of riots, is grossly inadequate.

29. The respondents have sought to explain their action on the ground that they had made payment as per the policy and that the petitioner accepted the same. Much issue was made to urge that the injuries suffered by the petitioner were only minor which fact, according to the respondents, evidenced by his release from the hospital at the same day. The respondents have vehemently contended that the petition suffers from unexplained delay and laches and that the respondents did not have any records relating to the case of the petitioner. It has been contended that the writ petition deserves to be dismissed on this ground alone.

30. This court has entertained Bhajan Kaur's petition in 1996 and held in the decision rendered on 5th July, 1996 that the decision of the respondents to pay Rs. 20,000/- in a death case in the same riots was inadequate. There is nothing on record to show that the respondents have complied with the directions given in that case. The findings and directions of the court were clear and unambiguous. The respondents had a duty to enforce the same. Having failed to do so, the State cannot be permitted to avoid its liability to the petitioner on the ground of laches. It is to be noticed that the respondents failed to even acknowledge the petitioner's representations let alone address the same.

31. It is to be borne in mind that the injuries were suffered at Delhi by the petitioner who was a resident of Punjab. An unruly, marauding mob was permitted to stop the train in which the petitioner was traveling and pulled out passengers from a train and battered them to death. Despite the demise of Ms. Indira Gandhi on 31st October, 1984 and full knowledge of the fact that riots had commenced in Delhi, the State failed to take action either on 31st October, 2004

or on 1st or 2nd November, 2004 The nature of the violence and the frenzy of the mob is borne from the fact that no police complaints even have been lodged at the place of the incident. Bhajan Kaur lost her husband on 1st November, 2004 at the same spot where the petitioner suffered the injury the next day. The petitioner was denied the equal protection of law by the machinery of the State as was constitutionally guaranteed to the petitioner under Article 21.

32. The respondents accepted their liability to compensate the petitioner as well as the genuineness of his claim, and made payment of Rs. 2000/- to him. The petitioner has explained the delay in approaching this court by pointing out that he has been repeatedly representing to the respondents. His applications have not been adjudicated upon till date and admittedly the respondents have paid only an ex gratia amount. The petitioner submits that despite request even to the hospital for medical records, the same has not been given.

33. I find that the petitioner had addressed a letter dated 21st December, 2000 to the Registrar of this court based whereon this court had directed the same to be registered as Public Interest Litigation bearing No. 1982/2001.

34. Perusal of the order sheet shows that on account of failure to file the counter affidavit, this court had closed the right of the respondents to file the counter affidavit. Development Commissioner (Relief Grant) was directed to remain personally present and had appeared only on 14th December, 2004 The counter affidavit was permitted to be filed only subject to payment of costs. There was no counter affidavit forthcoming on record even on 21st March, 2005 when the petition was taken up for hearing. An undated, unsigned copy of the respondents response has been handed over in court during the course of hearing. Such is the position emanating even in response to court orders.

35. In the judgment reported at Chandra Bhushan and Another Vs. Deputy Director of Consolidation (Regional), U.P. and Others, ., the Apex Court held that there are no statutory rules prescribing a period for preferring a writ petition. Delay and laches was merely a rule of practice and cannot prescribe a binding rule of limitation, which rule may only indicate how the discretion would be exercised by the court in determining whether having regard to the circumstances of the case, the applicant has been guilty of laches or undue delay. It has been held by the Apex Court that delay by itself may not defeat the claim for relief unless the position of the other party had been so altered which cannot be retracted on account of lapse of time or inaction of the other parties. A delayed petition will be rejected also if ground of relief puts an undue hardship in any manner by reason of the delay in approaching the High Court for the relief by the party. Reference in this regard can be made to Hindustan Petroleum Corporation Ltd. and Another Vs. Dolly Das, .

36. Having regard to the facts and circumstances of the instant case, there is no reason to hold that the writ petition suffers from delay and laches.

37. Keeping in view the entire conspectus of facts and the nature of claim made

on behalf of the petitioner and the conduct of the respondents in 1984 and thereafter, I am of the view that the ex gratia amount of Rs. 2,000/- is by no means adequate compensation for the failure to protect the limb and property of the petitioner. The petitioner has submitted that he has been an advocate by profession. On account of extreme trauma suffered by him, he has not been able to recoup his profession and suffered lot. There is no reason to disbelieve such statement. Different individuals may react differently in the same situation. There can possibly be no scale to measure the depth of the emotional wounds and trauma as a result of undergoing the experiences of the petitioner. He bore the brunt of the attack by the mob and barely escaped death. Scars so left may never heal.

38. Keeping in view the amount awarded by this court in Bhajan Kaur case for the loss of life, in my view, the petitioner ought to be compensated by a sum of Rs. 75,000/- for the injuries suffered by him and deprivation of his property on account of the riots on 2nd November, 2004 Since the petitioner has already been paid a sum of Rs. 2,000/-, the respondents is directed to pay a sum of Rs. 73,000/- to the petitioner with interest from October, 1984 to the date of payment. The interest is quantified at Rs. 50,000/-. The respondents will, Therefore, make payment of Rs. 1,23,000/- to the petitioner within one month.

39. This court in the judgment dated 5th July, 1996 reported at Bhajan Kaur Vs. Delhi Administration, , directed the respondents to pay the enhanced compensation awarded to all similar cases. In order to secure parity to all persons who suffered injuries, the respondents shall pay the enhanced compensation awarded herein to all such persons to whom the respondents had disbursed the amount of Rs. 2,000/- as ex gratia on account of the injuries received in the 1984 riots.

40. The petitioner shall be entitled to costs of the present proceedings which are quantified at Rs. 11,000/-.