Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS 7114-15 OF 2003

Municipal Corporation of Delhi, Delhi … Appellant

Vs.

Association of Victims of Uphaar Tragedy & Ors. … Respondents

With CA 7116/2003 & CA 6748/2004

J U D G M E N T

R.V. Raveendran, J.

These appeals are filed against the judgment dated 24.4.2003 of a division bench of the Delhi High Court in the Uphaar Cinema tragedy. CA No.7114-15/2003 is by the Municipal Corporation of Delhi (for short 'MCD'). CA No.7116/2003 is by the Licensing Authority (Commissioner of Police). CA No. 6748/2004 is by M/s.Ansal Theatre and Clubotels Pvt. Ltd., the owners of the Uphaar Cinema Theatre (for short the 'theatre owner' or 'Licensee).

2. These appeals relate to the fire at Uphaar Cinema Theatre in Green Park, South Delhi on 13.6.1997, resulting in the death of 59 patrons and injury to 103 patrons. During the matinee show of a newly released film on 13.6.1997, the patrons of the cinema hall which was full were engrossed in the film. Shortly after the interval, a transformer of Delhi Vidyut Board installed in the ground floor parking area of Uphaar Cinema, caught fire. The oil from the transformer leaked and found its way to the passage outside where many cars were parked. Two cars were parked immediately adjoining the entrance of the transformer room. The burning oil spread the fire to nearby cars and from then to the other parked cars. The burning of (i) the transformer oil (ii) the diesel and petrol from the parked vehicles (iii) the upholstery material, paint and other chemicals of the vehicles and (iv) foam and other articles stored in the said parking area generated huge quantity of fumes and smoke which consisted of carbon monoxide and several poisonous gases. As the ground floor parking was covered all round by walls, and the air was blowing in from the entry and exit points, the smoke and noxious fumes/smoke could not find its way out into open atmosphere and was blown towards the staircase leading to the balcony exit. On account of the chimney effect, the smoke travelled up. Smoke also travelled to the air-conditioner ducts and was sucked in and released into the auditorium. The smoke and the noxious fumes stagnated in the upper reaches of the auditorium, particularly in the balcony area. By then the electricity went off

and the exit signs were also not operating or visible. The patrons in the balcony who were affected by the fumes, were groping in the dark to get out. The central gangway in the balcony that led to the Entrance foyer could have been an effective and easy exit, but it was closed and bolted from outside, as that door was used only for entry into the balcony from the foyer. The patrons therefore groped through towards the only exit situated on the left side top corner of the balcony. The staircase outside the balcony exit which was the only way out was also full of noxious fumes and smoke. They could not get out of the staircase into the foyer as the door was closed and locked. This resulted in death of 59 persons in the balcony and stairwell due to asphyxiation by inhaling the noxious fumes/smoke. 103 patrons were also injured in trying to get out.

3. First Respondent is an association of the victims of Uphaar Tragedy (for short the 'Victims Association' or 'Association'). The members of the Association are either those who were injured in the fire or are relatives/legal heirs of those who were killed in the fire. The Association filed a writ petition before the Delhi High Court. They highlighted the shocking state of affairs existing in the cinema building at the time of the incident and the inadequate safety arrangements made by the owners. They described the several violations by the owners of the statutory obligations placed on theatre owners under law, for prevention of fire hazards in public places. They highlighted the acts of

omission and commission by the public authorities concerned namely Delhi Vidyut Board ('DVB' for short), MCD Fire Force and the Licensing Authority. They alleged that these authorities not only failed in the discharge of their statutory obligations, but acted in a manner which was prejudicial to public interest by failing to observe the standards set under the statute and the rules framed for the purpose of preventing fire hazards; that they issued licenses and permits in complete disregard of the mandatory conditions of inspection which were required to ensure that the minimum safeguards were provided in the cinema theatre. They pointed out that most of the cinema theatres were and are being permitted to run without any proper inspection and many a time without the required licenses, permissions and clearances. They therefore, sought adequate compensation for the victims of the tragedy and punitive damages against the theatre owner, DVB, MCD, Fire Force and the Licensing Authority for showing callous disregard to their statutory obligations and to the fundamental and indefeasible rights guaranteed under Article 21 of the Constitution of India, of the theatre going public, in failing to provide safe premises, free from reasonably foreseeable hazards. They claimed compensation and other reliefs as under:-

(a) award damages of Rs.11.8 crores against the respondents, jointly and severally, to the legal heirs of the victims who lost their lives (listed in

Annexure B of the writ petition) through the Association with the direction to equally distribute the same to the first degree heirs of all the victims;

(b) award damages of Rs.10.3 crores against the respondents, jointly and severally, to the injured (listed in Annexure C to the writ petition) to be distributed evenly or in such manner as may be considered just and proper;

(c) award punitive damages of Rs.100 crores to the association for setting up and running a Centralized Accident and Trauma Services and other allied services in the city of Delhi; and to direct Union of India to create a fund for that purpose;

(d) to monitor the investigation from time to time, to ensure that no person guilty of any of the offences is able to escape the clutches of law and that the investigation is carried out as expeditiously as possible in a free and fair manner; and

(e) direct the Union of India to ensure that no cinema hall in the country is allowed to run without license granted after strictly observing all the mandatory conditions prescribed under the laws and to further direct them to stop the operation of all cinema halls and to permit the operation only after verification of the existence of a valid license/permit by the licensing authority, under the Cinematograph Act.

Relevant Legal Provisions

4. The Cinematograph Act, 1952 provides for regularization of exhibition of Cinemas. Section 10 provides that a cinema theatre cannot be run without

obtaining license from the Licensing Authority. Section 11 provides that the Licensing Authority shall be the District Magistrate. After the coming into force of the Commissioner of Police system in Delhi in 1978, the Commissioner of Police was notified as the licensing authority under the proviso to section 11 of the Act. Licenses to be granted to a cinema theatre under section 10 could be either annual or temporary. All cinema theatres in Delhi were required to get their licenses renewed annually by moving an application in writing to the licensing authority. While granting renewal, the licensing authority was required to satisfy itself that the licensee had complied with the provisions of the Cinematograph Act and the Delhi Cinematograph Rules framed thereunder.

5. When the cinema theatre was constructed in the year 1973, the Delhi Cinematograph Rules, 1953 were regulating the procedure of granting licences, inspection and conditions of licences. After the coming into force of the Commissioner of Police system, the Delhi Cinematograph Rules 1983 came into force. Rule 3 provides that license shall be granted in respect of a building which is permanently equipped for Cinematograph exhibition and in respect of which the requirements set forth in first schedule of the Rules were fulfilled. The first schedule to the Rules laid down the specifications with which compliance must be made before any annual license was granted in respect of any building. Besides other things, the schedule lays down specifications

regarding number of persons accommodated in the cinema hall and the manner in which the seats can be provided therein. The 1953 Rules insofar as they are relevant for accommodation, sitting, the width of gangways, stairways, exits, are extracted below:

> **(1)** **<u>Accommodation</u>** **-** The total number of spectators accommodated in the building shall not exceed twenty per hundred square feet of the area available for sitting and standing or twenty per 133.5 square feet of over all area of the floor space in the auditorium. . *x x x*
>
> **(2)** **<u>Seating</u>** **-** (1) *The seating in the building shall be arranged so that there is free excess to exits.*
>
> **(3)** **<u>Gangway</u>** - (1) Gangway not less than forty-four inches wide shall be provided in the building as follows :-
>
> (a) Down each side of the auditorium.
>
> (b) Down the centre of the seating accommodation at intervals of not more than twenty-five feet.
>
> (c) Parallel to the line of the seating so as to provide direct access to exits, provided that not more than one gangway for every ten rows shall be required.
>
> (2) All gangways, exits and the treads of steps and stairways shall be maintained with non-slippery surfaces. *x x x*
>
> (4) The exits and the gangways and passages leading to exits shall be kept clear of any obstruction other than rope barriers provided in accordance with sub-rule (6). *On no account shall extra seats be placed in the gangways or spectators be allowed to stand in the gangways at the time of performances in such a way as to block or effectively reduce their width. x x x*

(4) **<u>Stairways</u>** - (1) There shall be at least two stairways each not less than four feet wide to provide access to any gallery or upper floor in the building which is intended for use by the public.

x x x x

(5) No stairways shall discharge into a passage or corridor against or across the direction of exit.

(5) **<u>Exits</u>** : - (1) Every public portion of the building shall be provided with an *adequate number of clearly indicated exits placed in such positions and so maintained as to afford the audience ample means of safe and speedy egress.*

(2) In the auditorium there shall be atleast one exit from every tier, floor, or gallery for every hundred persons accommodated or part thereof :

Provided further that an exit on or by way of stage or platform shall not be reckoned as one of exits required by this rule.

(3) Every exit from the auditorium shall provide a clear opening space of not less than seven feet high and five feet wide.

(4) Exits from the auditorium shall be suitably spaced along both sides and along the back thereof and shall deliver into two or more different thorough fares or open space from which there are at all times free means of rapid dispersal.

(5) Every passage or corridor leading from an exit in the auditorium to a final place or exit from the building shall be of such width as will in the opinion of the licensing authority enable the persons who are likely to use it in an emergency to leave the building without danger of crowding or congestion. At no point shall any such passage or corridor be less than five feet wide and it shall not diminish in width in the direction of the final place of exit.

(6) The combined width of the final place of exit from the building shall be such that there are at least five feet of exit width for every hundred persons that can be accommodated in the building.

(7) All exit doors shall open outwards and shall be so fitted that when opened they do not obstruct any gangway, passage, corridor, stairway or landing.

(8) All exit doors and doors through which the public have to pass on the way to the open air shall be available for exit during the whole time that the public are in the building and during such time shall not be locked or bolted.

(9) All exits from the auditorium and all doors or openings (other than the main entrance) intended for egress from the building shall be clearly indicated by the word "EXIT" in block letters, which shall not be less than seven inches high and shall be so displayed as to be clearly visible in the light as well as in the dark.

(10) All other doors of openings shall be so constructed as to be clearly distinguishable from exits. They may be indicated by the words "NO THOROUGHFARE" arranged as in the figure below, but no notice bearing the words "NO EXIT" shall be used in any part of the building.

(6) <u>Parking Arrangements</u> – (1) Such arrangements shall be made for the parking of motor cars and other vehicles in the vicinity of the buildings as the licensing authority may require.

(2) No vehicle shall be parked or allowed to stand in such a way as to obstruct exits or impede the rapid dispersal of persons accommodated, in the event of fire or panic.

(7) <u>Fire Precautions</u> - (1) Fire extinguishing appliances suitable to the character of the building and of a patron, class and capacity approved by the licensing authority shall be provided as prescribed by him; these appliances shall be disposed to his satisfaction so as to be readily available for use in case of fire in any part of the building.

(2) There shall always be sufficient means of dealing with the fire readily available within the enclosure and these shall include a damp blanket, a portals Chemical fire extinguisher and two buckets of dry sand.

> *(3) All fire extinguishing appliances shall at all times be maintained in proper working order and available for instant use, and all Chemical fire extinguishers shall be capable of withstanding a pressure of not less than 250 lbs. square inch.*
>
> (4) During an exhibition all fire extinguishing appliances shall be in charge of some person or persons specially appointed for this purpose. Such persons need not be employed exclusively in looking after the fire appliances but they must not be given any other work during an exhibition which would take them away from the building or otherwise prevent them from being immediately available in case of danger or alarm of fire.
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> *(emphasis supplied)*

INQUIRY REPORTS

6. Immediately after the incident, the Lt.Governor constituted an enquiry committee under Mr.Naresh Kumar (DC, South) to investigate into the incident. He secured several reports and in turn submitted an exhaustive report on the calamity. When the investigation was transferred to CBI on 26.7.1997, they also secured several reports. The court appointed Commissioners also gave a report. These reports, enumerated below, were considered by the High Court:

(i) Report dated 16.6.1997 issued by Delhi Fire Service.

(ii) Report dated 25.6.1997 of Mr.K.L Grover, Electrical Inspector (Labour Department) submitted to Mr.Naresh Kumar.

(iii) Report dated 25.6.1997 submitted by Mr.R.K. Bhattacharya, Executive Engineer (Building) South Zone, MCD to Mr.Naresh Kumar.

(iv) Report dated 26.6.1997 submitted by the Fire Research Laboratory, Central Building Research Institute to Mr. Naresh Kumar.

(v) Report dated 27.6.1997 and 11.8.1997 of Central Forensic Science Laboratory to Station House Officer.

(vi) Report dated 29.6.1997 by Mr.K.V. Singh, Executive Engineer (Electrical) PWD, to Mr. Naresh Kumar.

(vii) Report dated 2.7.1997 by Mr. M.L.Kothari, Electrical Deptt., IIT affirming the observations of Mr.K.V. Singh.

(viii) Panchnama dated 2.8.1997 prepared by Sr. Engineer, PWD.

(ix) Inspection-cum-Scrutiny Report dated 11.8.1997 by Eng.Deptt. of MCD.

(x) Toxicology Report dated 18.9.1997 by AIIMS.

(xi) Joint Inspection Report dated 7.10.1997 by Representative of Licensing Authority, MCD, Delhi Fire Service, Electrical Inspector, and General Manger of Uphaaar Cinema.

(xii) Naresh Kumar Report.

(xiii) Court Commissioner's Report dated 30.11.2000.

Decision of High Court

7. The High Court after exhaustive consideration of the material including the aforesaid reports, recorded statements and other material, allowed the writ petition by order dated 24.4.2003. In the said order, the High Court identified the causes that led to the calamity and persons responsible therefor. It held the theatre owner, DVB, MCD and the Licensing Authority responsible for the fire

tragedy. It exonerated the Delhi Fire Force. We summarise below the acts/omissions attributed to each of them by the High Court.

Acts/omissions by DVB

8. DVB violated several provisions of the Electricity Act and the Rules. It had not obtained the approval of the Electrical Inspector for installation of the transformer as required under the Rules. The Rules required that the floor of the transformer room should be at a higher level than the surrounding areas and there should be a channel for draining of oil with a pit so that any leaking oil would not spread outside, increasing the fire hazard, and also to ensure that water did not enter the transformer. The transformer had to be checked periodically and subjected to regular maintenance and should have appropriate covers. The connecting of wires should be by crimping and not by hammering. The negligence on the part of DVB in maintaining the transformers and repairs led to the root cause of the incident, namely the starting of the fire.

Acts/Omissions of owner

9. Though the starting of the fire in the transformer happened due to the negligence of DVB, but if the owner had taken the necessary usual precautions and security measures expected of a theatre owner, even if the transformer had caught fire, it would not have spread to nearby cars or other stored articles nor

would the balcony and staircases become a death trap on account of the fumes. The following acts/omissions were attributed to the theatre owner :

(i) *Parapet wall*: The owner had violated the municipal bye-laws by making several unauthorised alterations in the structure which all contributed to the incident. In particular, the violation by the owner in raising a parapet wall which was shown to be of three feet height in the sanctioned plan till the roof level had disastrous effect when the fire broke out. The stilt floor plan (sanctioned in 1972) showed that what was sanctioned was a three feet high parapet wall along the ramp which was situated to the rear of the transformer room. If the said parapet wall had been constructed only to a height of three feet as shown in the sanctioned plan, the entire space above it would have been open and in the event of any fire in the transformer room or anywhere in the stilt floor, the fumes/smoke could have dispersed into the atmosphere. But at some point of time in or around 1973, the Licensee had raised the said three feet wall upto the ceiling height of twelve feet with the result the stilt floor (parking area) stood converted into a totally enclosed area. But for the construction of the parapet wall to ceiling height, the fumes/smoke from the transformer room and from the parking area where the cars were burning, would have gone out of the stilt floor into the open atmosphere. The unauthorized raising of this wall prevented the smoke from getting dispersed and forced it to seek a way up

through the stairwell causing the chimney effect and also entered the balcony through the air conditioning system resulting in the concentration of the smoke in the balcony area of the theatre and the stairwell itself, thereby playing a major role in spreading the fire/smoke to balcony area and stairwell. The Court found that the apparent intention of raising the height of the wall from three to twelve feet was to use the area between the wall and the transformer room for commercial purposes.

(ii) *Closing one exit in balcony and reducing the width of gangways*: Making alterations in the balcony, contrary to the Cinematograph Rules by closing the gangway/aisle on one side and closing/blocking one of the exits by construction of an owner's box in front of the right side exit (The details of these alterations are given in paras 11 to 14 below). The said acts impeded the free and quick exit of the occupants of balcony as everyone had to use the exit on the left side. The delay made them victims of asphyxiation due to the poisonous/noxious gases.

(iii) *Illegal parking in stilt floor*: The stilt floor where the three electrical rooms (generator room, HT room and LT room) were situated, had an earmarked parking space for 15 cars. The sanctioned plan clearly contemplated a passage way for movement of cars of a width of about 16 ft. The sanctioned plan required that the area in front of the three electrical rooms should be left

free as a part of that passage way and no parking was contemplated in front of the said three rooms. However the Licensee was permitting the patrons to park their cars in a haphazard manner, particularly in the central passage. Instead of restricting the cars to be parked in that floor to 15 and leaving the central passage, in particular the passage in front of the three electrical rooms free for maneuvering the cars, the owner permitted the entire passage to be used for parking the vehicles, thereby increasing the parking capacity from 15 to 35. This made exiting of vehicles difficult and until and unless the vehicles in the passage were removed, other parked vehicles could not get out. It also made it difficult for any patrons to use the said area as an exit in an emergency. Parking of vehicles in front of the three electrical rooms increased the fire hazard. If the passageway between two parked row of cars in the stilt floor had been kept free of parking as per the sanctioned plan and consequently if no cars had been parked in front of the transformer room, the fire in the transformer room would not have spread to the cars and the entire calamity could have been avoided. On that day, a contessa car parked next to the transformer room in the passageway first caught fire. (Though the sanctioned parking plan showed that the stilt floor was to be used for parking only fifteen cars with a middle passageway of fifteen feet width left free for movement of cars), the parking area was used for parking as many as 35 cars. As the parking area was overcrowded with haphazardly parked cars, the entire passageway meant for movement of cars was blocked.

Not following the provisions of Electricity Act and Electricity Rules in regard to the construction of the transformer room with required safeguard and permitting haphazard parking of large number of vehicles, particularly near the transformer room started the fire and spread it.

(iv) If the owners had not unjustly and by misrepresenting the facts, obtained an interim stay in the year 1983 which continued up to the date of the incident and as a consequence though the irregularities and violations of safety measures had been noticed and brought to its notice, they had not rectified them and the continued violations resulted in the incident.

Acts/omissions of MCD

10. The sanctioned plan issued in 1972 to the Licensee was for construction of a three feet high parapet wall. Though the Licensee raised the said wall up to ceiling height of 12 feet in violation of the Rules, the MCD failed to point out this violation between 1994 to 1997 and take action against the theatre owners.

MCD was required to give a NOC after inspecting the building, certifying that there was no violation of the building bye-laws or unauthorized construction, every year, from the year 1994 so that licence should be renewed. MCD failed

to make such inspections. On the other hand it gave a NOC for grant of licence in the year 1996.

Acts/omissions of the Licensing Authority

11. The licensing authority owed a duty to ensure that the cinema theatre complied with all the requirements of the Cinematograph Act and Rules and to obtain the necessary NOCs from MCD, Fire Force and Electrical Inspector. If there was any violation, it ought not to have renewed the licence. The Licensing Authority failed to note the violations/deviations and take remedial action. Even though a stay order had been issued by the High Court on 28.6.1983, in a writ petition challenging the suspension of licences, the said stay order did not come in the way of the Licensing Authority making appropriate inspections and if necessary to take action to suspend the licence or seek modification of the interim order. The Licensing Authority did not discharge its statutory functions and went on issuing temporary permits for periods of two months each, for a period of more than 13 years when the Rules clearly contemplated that the temporary permits could not be renewed for a period of more than six months.

Conclusion of High Court

Closing of one Balcony Exit and narrowing of gangway

12. We may only refer to the unauthorized closure of an exit from balcony and reduction of width of gangways by addition of seats in greater detail to have a complete picture. Uphaar Cinema was inaugurated on 27.4.1973. In the year 1975, there was a general cut of 10% value of the cinema ticket rates fixed by the Delhi Administration. The licensees made a representation to the Delhi Administration alleging that the expenses had gradually gone up during the course of years after the rates were fixed and that even the existing rates were inadequate to meet the operating costs. The representation of the Association of Motion Pictures Exhibitors was considered and the Delhi Administration agreed to relax the Rules and allowed the licensees to have additional seats (in addition to the existing seats) in their cinema halls to make good the loss caused to the licensees by the reduction in the rates by 10%. Uphaar Cinema was permitted to add 43 seats in balcony and 57 seats in the main hall, as per a notification dated 30.9.1976 issued by the licensing authority. As a consequence, 43 seats were added in the balcony and 57 seats were added in the main hall of Uphaar Theatre. The Chief Fire Officer inspected the theatre and submitted a report that the addition of seats was a fire hazard. The Lt. Governor therefore issued a notification dated 27.7.1979 cancelling with immediate effect the earlier notifications by which relaxation had been granted to the licensees (including Uphaar Cinema) by allowing them to increase the number of seats. The said notification dated 27.7.1979 was challenged by the Licensees by filing a writ

petition in the Delhi High Court. The said writ petition was disposed of by a Division Bench of the High Court by its judgment dated 29.11.1979 (reported in *Isher Das Sahni & Bros. v. The Delhi Administration* – AIR 1980 Delhi 147) holding that the Delhi Administration could not have granted such relaxations if such relaxations would have contravened the Rules to an extent as to increase the risk of fire hazard or to expose the spectators to unhealthy conditions. The High Court further held that the opinion and advice of the fire and health authorities had to be taken before grant of any relaxation. The High Court noted the following view of Chief Fire Officer showing reluctance to advise relaxation in the rules as the safety of the visitors to the theatres would be affected thereby:

> "Even under the normal circumstances the exit facilities are seriously hampered by people rushing and *it is felt that in case of panicky situation of a minor nature, the people will be put to great difficulty which may even result in stampede*. In the circumstances, I feel that it would not be advisable to allow extra seats required by the Managements. In a few theaters, however, the difficulty may not be so acute. If at all any relaxation has to be considered under unavoidable circumstances, our reaction to the proposals but forward by the management of a few cinema houses may kindly be seen in the enclosure".

The High Court also noted that Chief Fire Officer later modified and toned down his report when he was informed by the Delhi Administration that additional seats were permitted to compensate the loss on account of reduction

in cinema fares. The High Court noted that ultimately the Delhi Administration, Chief Fire Officer and Municipal Corporation agreed to some relaxation and disposed of the petitions directing the Delhi Administration to apply their mind and decide how many of the additional seats were in accordance with the Rules and could be permitted to be retained. The effect of the order was that only those additional seats which contravened the Rules had to be removed and cancellation of the Notification dated 30.9.1976 did not result in automatic removal of all additional seats.

13. In the meanwhile by order dated 6.10.1978, the Entertainment Tax Officer permitted Uphaar Cinema to install a box with eight seats for use without tickets (for complimentaries). This was not however specifically brought to the notice of the Licensing Authority nor his permission sought. These additional seats were not sanctioned by the Licensing Authority. In pursuance of such permission the Licensee closed the exit on the right side of the balcony for installing the box with eight seats. The central access was used exclusively for entry. As a result the only exit from the balcony was the one at the extreme left top corner of the balcony.

14. After the decision dated 29.11.1979, a show cause notice was issued to reconsider the addition of 100 seats and by order dated 22.12.1979, the DCP

(Licensing) held that six additional seats in the balcony (seat No.8 in rows 'A' to 'F') and 56 additional seats in the main hall were blocking the gangway and causing obstruction to egress of patrons and directed their removal so that the original vertical gangway could be restored. However on a subsequent application dated 29.7.1980 by the Licensee by order dated 4.10.1980, the Licensing Authority permitted installation of 15 additional seats in the balcony, that is two additional rows of 3 seats each in front of the exit in balcony, addition of one seat against back wall next to seat no.38 and eight additional seats by adding one seat in each of rows 'A' to 'H'. As a result (i) the seating capacity which was 287 plus Box of 14 went up to 302 plus two Boxes (14+8), (ii) the right side exit was closed and a box of 8 seats added; (iii) the right side vertical gangway was closed and a new gangway created between seat Numbers (8) and (9); (iv) the width of the gangways leading to exit from balcony was reduced.

15. What is significant is while obtaining permission of Licensing Authority for increasing the capacity from 287 to 302, he was not informed about addition of one box of 8 seats and closing of one exit. As per the 1953 Rules, there should be one exit for every 100 seats. Under the 1981 Rules, this became minimum of one exit for every 150 persons. Originally there was one central entry/exit point between foyer to balcony and two exits at the two top corners of

the balcony. After the modifications and increase in seats, the central door became an exclusive entry from the foyer; the right side corner of the balcony was permanently closed by installation of the special box of eight seats and there was only one exit for the entire balcony with a capacity of 302 persons, situated at the left side top corner of the balcony. This was the major cause for the tragedy, as when lights went off and fumes surrounded, the balcony became a death trap. The left (West) exit from the balcony led to the staircase leading to the parking area. Patrons from the balcony who entered the entire stairwell also died, as it was full of noxious fumes entering from the stilt parking area on account of the chimney effect. The patrons were denied access to the right (East) exit because of the installation of the private box and the closing of right (East) exit, which would have otherwise provided an access to the other staircase with lift well which led to the ticket foyer outside the parking area and therefore free from noxious fumes/smoke. The report shows that the exit light, ground light, side light, emergency lights and public address system were all non-functional, adding to the delay, confusion and chaos, making it very difficult to get out of the balcony which was dark and full of smoke/fumes.

16. The High Court held that the theatre owner (Licencee), DVB, MCD and Licensing Authority being responsible for the incident were jointly and severally liable to compensate the victims. The High Court directed payment of

compensation to the legal heirs of 59 patrons who died, and also to the 103 persons who were injured. The High Court determined a uniform compensation of Rs.18 lakhs payable in the case of deceased who were aged more than 20 years, and 15 lakhs each in the case of those deceased who were less than 20 years of age. It also awarded a compensation of Rs.1,00,000 to each of the 103 injured. It also awarded interest at 9% per annum on the compensation from the date of filing of writ petition to date of payment. The High Court apportioned the liability inter se among the four in the ratio of 55% payable by the theatre owners and 15% each payable by the Delhi Vidyut Board, MCD and the Licensing Authority. The High Court directed that while paying compensation the ex-gratia amount wherever paid (Rs.1,00,000 in the case of death, Rs.50,000 in case of grievous injuries and Rs.25000 for simple injuries) should be deducted. The High Court directed that the Licensee shall pay Rs.2,50,00,000/- (Rupees two and half crores) as punitive damages (being the income earned from installing extra 52 seats unauthorizedly during the period 1979 to 1996. The said amount was ordered to be paid to Union of India for setting up a Central Accident Trauma Centre.

17. The High Court approved the recommendations of Naresh Kumar Committee which were extracted in detail in the judgment of the High Court. The High Court also made the following recommendations:

A) Several requests by the fire authorities for adequate maintenance and timely upgradation of the equipment have floundered in the bureaucratic quagmire. When lives of citizens are involved the requirement of those dealing in public safety should be urgently processed and no such administration process of clearance in matters of public safety should take more than 90 days. The entertainment tax generates sufficient revenue for the administration to easily meet the financial requirements of bodies which are required to safeguard public health.

B) Considering the number of theatres and auditoria functioning in the city, sufficient staff to inspect and enforce statutory norms should be provided by the Delhi Administration.

C) The Delhi police should only be concerned with law and order and entrusting of responsibility of licensing of cinema theatres on the police force is an additional burden upon the already over burdened city police force.

D) The inspection and enforcement of the statutory norms should be in the hands of one specialized multi disciplinary body which should deal with all aspects of the licensing of public places. It should contain experts in the field of (a) fire prevention (b) electric supply (c) law and order (d) municipal sanctions (e) urban planning (f) public health and (g) licensing. Such a single multidisciplinary body would ensure that the responsibility of public safety is in the hands of a body which could be then held squarely responsible for any lapse and these would lead to a situation which would avoid the passing of the buck. The existing position of different bodies looking after various components of public safety cannot be continued. A single body would also ensure speedier processing of applications for licenses reducing red tape and avoidable complications and inevitable delay.

E) All necessary equipment should be provided to ambulances and the fire brigade including gas masks, search lights, map of water tanks located in the area including the existence of the location of the underground water tanks. Such water tank locations should be available to the firemen working in the area. The workshop for the fire tenders service and maintenance should also be fully equipped with all spares and other equipment and requisition made by the fire brigade should receive prompt and immediate attention. There should also be adequate training imparted to the policemen to control the crowd in the event of a disaster as it is found that onlookers are a hindrance to rescue operations. Similarly all ambulances dealing with disaster management should be fully equipped.

18. The Vidyut Board has accepted the judgment and has deposited 15% of the total compensation. The theatre owner, Delhi Police and MCD have not accepted the judgment and have filed these appeals. CAs. 7114-7115/2003 has been filed by the MCD denying any liability. The Licensing Authority has filed CA No.7116/2003 contending that the theatre owners should be made liable for payment of the entire compensation. The theatre owner has filed CA NO.6748/2004 urging two contentions, namely, their share of liability should have been far less than 55% and the rates of compensation fixed were excessive.

19. At the outset it should be noted that the causes for the calamity have been very exhaustively considered by the High Court and it has recorded a categorical finding about the negligence and the liability on the part of the licensee and the DVB. On the examination of the records, we agree with the High Court that such a catastrophic incident would not have happened if the parapet wall had not been raised to the roof level. If the said wall had not been raised, the fumes would have dispersed in the atmospheric air. Secondly if one of the exits in the balcony had not been blocked by construction of an owner's box and if the right side gangway had not been closed by fixing seats, the visitors in the balcony could have easily dispersed through the other gangway and exit into the unaffected staircase. Thirdly if the cars had not been parked in the immediate vicinity of the transformer room and appropriate pit had been made for draining of transformer oil, the oil would not have leaked into the passage nor would the burning oil lighted the cars, as the fire would have been restricted only to the transformer room. Even if one of the three causes for which the theatre owner was responsible, was absent, the calamity would not have occurred. The Licensee could not point out any error in those findings. Ultimately therefore the contention of the licensee before us was not to deny liability but only to reduce the quantum of liability fastened by the High Court and to increase the share of the liability of the three statutory authorities. DVB, as noticed above, has not challenged the decision of the High Court. Therefore,

we do not propose to reconsider and re-examine or re-assess the material considered and the finding recorded with reference to the Licensee and DVB. Therefore the incident is not disputed. The deaths and injuries are not in dispute. The identity of persons who died and who were injured is not in dispute. The fact that the Licensee and DVB are responsible is not in dispute. The limited questions that arise are whether the MCD and the Licensing Authority could have been made liable to pay compensation and whether the percentage of liability of the Licensee should be reduced from 55%.

20. On the contentions urged the following questions arise for consideration:

(i) Whether MCD and Licensing Authority could be made liable to pay compensation to the victims?

(ii) What should be apportionment of liability?

(iii) Whether compensation awarded is excessive?

(iv) Whether award of punitive damages of Rs.2.5 crores against the Licensee was justified?

We will deal with questions (i) and (ii) together and questions (iii) and (iv) together as they are interconnected.

Contentions of MCD

21. MCD submitted that the writ petition focuses on the violations by the licensee, the negligence on the part of the DVB, Fire Force and the licencing

authority; no specific role assigned to the MCD in regard to the incident; that the writ petition deals with the responsibilities of the owners (licensees) (paras 2 to 6 and 15); Delhi Vidyut Board (para 7); licencing authority - Delhi Police (paras 8 to 14) and seeks to make them liable. The role of Delhi Fire Services (para 16) is referred. Role of Licensing Authority, Delhi Police (para 17), role of medical facilities managed by health authorities (paras 18 to 20) and the cover-up operations by the owners and the role of the licensing authority; that except a general averment that various instrumentalities of State including MCD are liable to pay damages, no specific averment of allegation has been made against MCD. It is also submitted that Mr. Naresh Kumar, Deputy Commissioner (South) NCT who was appointed by the Lt. Governor immediately after the incident to conduct an enquiry, had submitted a report which also primarily deals with the omissions and commissions of the Licensee, the Licencing Authority, Delhi Fire Force, Delhi Vidyut Board and does not fix any specific responsibility on MCD. Similarly the report of the Commissioners appointed by the Delhi High Court (consisting of an Advocate and Professors from engineering institutions) submitted its report dated 30.11.2000 which also does not fix any liability on MCD.

22. MCD next pointed out that even the impugned judgment of Delhi High Court while exhaustively covering the roles of the Licensee, Vidyut Board, the

licensing authority, Delhi Fire Force, makes only a passing reference to MCD. The High Court holds MCD liable only on the ground that it did not take any action in regard to the unauthorised raising of parapet wall adjoining the transformer from three feet height to roof level. According to Delhi High Court on account of the raising of the height of the parapet wall in the year 1973, the noxious fumes/smoke from the burning of the transformer oil, diesel and the fuel in the tanks of the cars and the burning of cars themselves could not escape into open atmosphere, and as a consequence, the noxious fumes and smoke funneled into the stairwell to reach the air-conditioning ducts providing air-conditioning to the balcony and the landing near the balcony exit, resulting in asphyxiation of 57 patrons. It is submitted that except the reference to the parapet wall there is absolutely no reference to the role of the MCD. It is contended that in 1973 it had no role to play to check the construction as at that time, it was the responsibility of the Executive Engineer, PWD. And by the time it came into the picture in 1994 replacing the Executive Engineer, PWD, the structure was in existence for more than two decades and therefore there was no question of MCD objecting to the said wall.

23. MCD submitted that it could easily demonstrate from the relevant enactment and Rules that it had no role to play in regard to the raising the height of the parapet wall by the theatre owner, nor any liability for such action

by the theatre owner and as a consequence they should have been exonerated. It was pointed out that under the Cinematograph Act the Licensing Authority grants a cinematograph licence enabling a theatre owner to run cinema shows in the theatre. The Cinematographic Rules, 1953 contemplated the licensing authority obtaining clearances/consents from the Executive Engineer PWD and Electrical Inspector. Even the Delhi Cinematographic Rules of 1983 contemplated certificates/consents being obtained by the Licensing Authority from the Public Works Department, Electrical Inspector and Chief Fire Officer every year before renewing the licence. Even in regard to the design and construction of the cinema theatre, the rules under the Cinematographic Act applied and prevailed and the municipal bye-laws did not contain any provision as to the construction of cinema theatre but on the other hand, clearly provided that the matter will be governed by the Cinematograph Rules. Thus, the MCD had no role to play either in construction of the cinema theatre or in the grant of licence or periodical renewal thereof. It was only on 3.5.1994 by virtue of amendment of the Delhi Cinematography Rules, 1981, substituted in place of the Executive Engineer of PWD, that MCD was required to give a report in regard to the structure/building which was one of the requirements for the licensing authority to grant or renew any cinema licence. From 1994, the limited role of MCD was to furnish a report regarding the structures and whether there were any deviations. But in fact its reports could not even be

acted upon by the licensing authority, in view of the order of stay obtained by the Licensee against the licensing authority on 28.6.1983, made absolute on 25.3.1986. In view of such stay, the licensing authority was not issuing any licences but was only granting temporary bi-monthly permits for running of the theatre. Even the report given by the MCD pointing out the various defects/violations was not of any assistance to the Licensing Authority. This was because in the year 1993 itself, the licensing authority had made an application for vacating the interim stay but on account of the time taken by the Licensees for filing objections thereto and thereafter for hearing, the application was not heard even on the date of the incident and thereafter the entire matter became infructuous. In the circumstances it is submitted that the MCD had no role to play even in the matter of inspection and giving of reports regarding condition of the premises.

24. As far as the parapet wall is concerned it is contended that it had not sanctioned any plan for increasing the height of the parapet wall from 3 ft. to roof level. It was contended even if it granted any licence for construction or given any report or no objection certificate, in exercise of its statutory functions, it could not be made liable for any compensation on the ground of grant of such licence or NOC or report in regard to the parapet wall, as no

knowledge can be attributed to the Corporation about the possible consequences of raising the height of parapet wall.

25. Lastly it was contended by MCD that when in exercise of its statutory powers of regulating the constructions of buildings within its jurisdictional area or in complying with the request of the Licensing Authority for any report as per Cinematograph Rules, it acts bona fide and in accordance with the relevant rules and bye-laws, in the absence of malafides, it can not be made liable even if there were any errors or irregularities or violations. It was submitted that it cannot also be made liable for any violation by the theatre owner in putting up the construction in accordance with the plan sanctioned by the MCD or any violation of the rules or licence terms or negligence in running the cinema theatre.

26. It was contended by the victims Association that the liability of the Municipal Corporation arises from the fact that it was one of the authorities which was required to give Reports/No Objection Certificates (NOCs) to the licensing authority every year, for construction and grant of renewal of licence. As admitted by the MCD itself the responsibility of granting a certificate in regard to the condition of the structure of the building and the violations in construction thereof was entrusted to the MCD on 3.5.1994. It was contended

that if the Municipal Corporation had discharged its functions as was expected of them by thorough inspection of the theatre building and pointed out to the licensing authority any violations or deviations or unauthorised constructions, the temporary permit for running the theatre which was being issued by the licensing authority, could have been stopped and the calamity could have been averted. It was pointed out that on the other hand, when the Licensing Authority sought its report/NOC, by its communication dated 11.3.1996, seeking inspection and report, MCD represented by its Administrative Officer sent a report dated 25.9.1996 to the Deputy Commissioner of Police, (Licensing Authority) stating that it had no objection for the renewal of annual Cinematograph licence of the Uphaar Theatre. It was submitted that the purpose of seeking a No Objection Certificate from the Municipal Corporation was not an empty formality; and that if statutory authorities like MCD, ignore the relevance and importance of such no objection certificate and routinely grant such certificates, as if it is a formality to be complied with mechanically, the licensing process would become a mockery. It was contended that statutory authorities like MCD should function diligently relating to public safety and if they fail to do so, they should be liable for the consequences.

27. We agree with the MCD that it had no role to play in regard to increasing the height of the parapet wall. The sanction for licence to

construction granted in 1972 was in regard to a three feet high parapet wall. The height of the said wall was increased by the Theatre owners in or about 1973. The MCD was not the inspecting authority till 1994. There was no structural change, modification or deviation after 1994. When MCD inspected the theatre, it would have seen a theatre which was running for more than 20 years and that there was no recent change. In the circumstances, MCD cannot be found fault with for not complaining about the wall.

28. The Delhi Cinematographic Rules, 1981 as originally framed had no role for MCD in the grant of licences by the licensing authority. Rule 14 provided that before granting or renewing an annual licence the Licensing Authority shall call upon: (i) the Executive Engineer, PWD, to examine the structural features of the building and report whether the rules thereto had duly been complied with; (ii) the Electrical Inspector to examine the electrical equipments used in the building and report whether they complied with the requirements of the Electricity Act and the Rules thereunder and whether all precautions had been taken to protect the spectators and employees from electric shock and to prevent the introduction of fire in the building through the use of electrical equipments; and (iii) the Chief Fire Officer to ensure that proper means of escape and safety against fire and to

report whether proper fire extinguishers appliances have been provided. All defects revealed by such inspections were required to be brought to the notice of the licensee and the licensing authority who may refuse to grant or renew the licences unless and until they are remedied to its satisfaction. In fact even for granting a temporary licence, Rule 15 required the licensing authority to call upon the Executive Engineer, PWD, to inspect the building and report whether it is structurally safe for cinematographic exhibition. The said rules were amended by Cinematograph Amendment Rules, 1994 by notification dated 3.5.1994. By virtue of the said amendment wherever the term 'Executive Engineer' appeared it was to be substituted by the words 'concerned local body'. The term concerned local body was also defined as referring to MCD, DDA, NDMC, Cantonment Board, as the case may be in whose jurisdiction the place of cinematographic exhibition was situated. Therefore on and after 3.5.1994, the report/certificate of the MCD about the structural features of the building and whether the Rules in that behalf had been duly complied with, was a condition precedent for renewing the annual license or even granting a temporary lease by the licensing authority. This showed that as far as the structural features and deviations and defects, the Licensing Authority relied upon the MCD, for expert opinion after 3.5.1994. The question is whether MCD can be made liable to compensate the victims of the fire tragedy, on the ground that it was required to give an inspection

report or on the ground that it gave a no objection certificate on 25.9.1996 for renewal of licence for 1996-97.

Contentions of the Licensing Authority

29. The Licensing Authority contended that the High Court committed an error in holding it responsible for having contributed to the spreading of fire and smoke by its acts of omission and commission and consequently making it liable to pay compensation. The licence was granted initially in the year 1973. At that time the District Magistrate was the licensing authority. The power to grant licence and renew it yearly was transferred from the District Magistrate to the Deputy Commissioner of Police (Licensing) on 25.3.1986. The licensing authority was not an expert on Cinema Theatres nor technically qualified to assess whether a licence of a cinema theatre should be renewed or not. He was required to obtain the reports/NOCs from the PWD (from MCD from the year 1994), Fire Force and Electrical Inspector. On the basis of such reports and on personal inspections, the licensing authority was required to consider and decide whether a theatre owner was entitled to a licence or renewal of licence to exhibit cinematograph films in the theatre. The Licensing Authority was empowered to cancel the licence or refuse to renew it (if he was considering an application for renewal) if the applicant for licence did not fulfill the

requirements. The theatre owners had filed a writ petition and obtained an interim order of stay in the year 1983 against the cancellation/suspension of their cinematographic licence. While making the interim order absolute on 25.3.1986, the High Court had made it clear that if there were any violations by the theatre owner, the licensing authority was at liberty to take such steps as were necessary to ensure that the violations or deviations were set right. The said interim order made it clear that if there were any violations, he can also move the High Court for vacating the interim order. The Licensing Authority moved an application on 19.4.1993 citing several serious violations committed by the licensee. But the High Court did not vacate the stay. Therefore the Licensing Authority had to issue temporary licences inspite of any irregularities. Therefore the Licensing Authority could not be held responsible.

30. While sparking in the Delhi Vidyut Board transformer due to negligence in maintenance, started the fire, the impact of this fire would not have been so tragic, (i) if the cars not been parked in front of and very close to the transformer in a haphazard manner; (ii) if adequate exits had been provided on both sides of the balcony; (iii) if the owners of the theatre had not closed top right exit of the balcony to provide a private box for the owners resulting in an exit only on one side of the balcony; (iv) if the owners had not constructed an illegal wall the poisonous fumes would not have been funneled towards the

balcony; and as every second's delay in exiting to safer environment was vital, if the exits been located on both sides of the balcony, precious minutes would have been saved in getting out and loss of several innocent lives avoided. It should be remembered that none of the patrons from the main hall (ground floor) of the cinema died or were injured. Even those who were on the second floor escaped. It was only the occupants of the balcony who were affected and the deaths were due to asphyxiation on account of the noxious fumes/smoke. The theatre owner and DVB have been held liable. The question is whether the Licensing Authority and MCD can be held liable for improper discharge of statutory functions.

The Legal position :

31. In *Rabindra Nath Ghosal Vs. University of Calcutta and Ors*. - (2002) 7 SCC 478 this Court held:

> "The Courts having the obligation to satisfy the social aspiration of the citizens have to apply the tool and grant compensation as damages in a public law proceedings. Consequently when the Court moulds the relief in proceedings under Articles 32 and 226 of the Constitution seeking enforcement or protection of fundamental rights and grants compensation, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizens. ***But it would not be correct to assume that every minor infraction of public duty by every public officer would commend the Court to grant compensation in a petition under Articles 226 and 32 by applying the principle of public law proceeding. The Court in exercise of extraordinary power under Articles 226 and 32 of the Constitution, therefore, would not award damages against public authorities merely because they have made***

> ***some order which turns out to be ultra vires, or there has been some inaction in the performance of the duties unless there is malice or conscious abuse.*** Before exemplary damages can be awarded it must be shown that some fundamental right under Article 21 has been infringed by arbitrary or capricious action on the part of the public functionaries and that the sufferer was a helpless victim of that act."
>
> (emphasis supplied)

This Court in *Rajkot Municipal Corporation v. M.J. Nakum* (1997) 9 SCC 552 dealing with a case seeking damages under law of torts for negligence by municipality, held as follows:

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

In *Geddis v. Proprietors of Bonn Reservoir* (1878) 3 Appeal Cases 430, the House of Lords held:

> "For I take it, without citing cases, that is now thoroughly well established that ***no action will lie for doing that which the legislature has authorized, if it be done without negligence, although it does occasion damage to anyone;*** but an action does lie for doing that which the legislature has authorized, if it be done 'negligently."

In *X (Minors) v. Bedfordshire County Council* [(1995) 3 All ER 353] the House of Lords held that in cases involving enactments providing a

framework for promotion of social welfare of the community, it would require exceptionally clear language to show a parliamentary intention that those responsible for carrying out the duties under such enactment should be liable in damages if they fail to discharge their statutory obligations. It was held:

> "….a common law duty of care cannot be imposed on a statutory duty if the observance of such a common law duty of care would be inconsistent with or have a tendency to discourage the due performance of the statutory duties by the local authority."

In *R v. Dy Governor of Parkhurst Prison* (Ex.P.Hague) – [(1991) 3 All ER 733], the House of Lords held that the legislature had intended that the Prisons Act, 1952 should deal with the administration and management of prisons, but had not intended to confer on prisoners a cause of action in damages. The Prison Rules 1964 were regulatory in nature to govern prison regime, but not to protect prisoners against loss, injury, or damage nor to give them any right of action.

In *John Just v. Her Majesty The Queen* -- (1989) 2 SCR 1228, the Canadian Supreme Court considered the question whether the department of Highways is liable for payment of damages to a person who was hit by a boulder on a highway on the ground it was duty of the department to maintain the highway in a safe and secure manner. The Canadian Supreme Court held:

> "Prior to the accident the practice had been for the Department of Highways to make visual inspections of the rock cuts on Highway. These were carried out from the highway unless here was evidence or history of instability in an area in which case the rock engineer would climb the slope. In addition there were numerous informal inspections carried out by highway personnel as they drove along the road when they would look for signs of change in the rock cut and for rocks in the ditch…....In order for a ***private duty to arise in this case, the plaintiff would have to establish that the Rockwork Section, having exercised its discretion as to the manner or frequency of inspection, carried out the inspection without reasonable care or at all. There is no evidence or indeed allegation in this regard***……I would therefore dismiss the appeal."
>
> *(emphasis supplied)*

In *Roger Holland v. Government of Saskatchewan & Ors*. (2008) 2 SCR 551 the Canadian Supreme Court held:

> ***"The law to date has not recognized an action for negligent breach of statutory duty. It is well established that mere breach of a statutory duty*** does not constitute negligence: The Queen in *right of Canada* v. *Saskatchewan Wheat Pool* (1983) 1 SCR 205. The proper remedy for breach of statutory duty by a public authority, traditionally viewed, is judicial review for invalidity."

In *Union of India v. United India Insurance Co.Ltd*. – (1997) 8 SCC 683 this Court held:

> "…….But in East Suffolk Rivers Catchment Board v. Kent 1941 AC 74, Lord Romer had stated:
>
> *Where a statutory authority is entrusted with a mere power it cannot be made liable for any damage sustained by a member of the public by reason of its failure to exercise that power.*
>
> In *Anns v.Merton London Borough* [1977 (2) All ER 492] this principle was somewhat deviated from. As stated earlier the plaintiff in *Anns* had sued for losses to flats in a new block which had been damaged by subsidence caused by inadequate foundations. The contention that the Council was negligent in the exercise of statutory powers to inspect foundations of new buildings giving rise to a claim for economic damage suffered was upheld. This principle was however not accepted in Murphy

> to the extent economic looses were concerned. According to Lord Hoffman, Anns was not overruled in *Murphy Brentwood District Council* [1990 (2) All ER 908] so far as physical injury resulting from omission to exercise statutory powers was concerned (p. 410). A duty of care at common law can be derived from the authority's duty in public law to give proper consideration to the question" whether to exercise power or not (p.411). ***This public law duty cannot by itself give rise to a duty of care. A public body almost always has a duty in public law to consider whether it should exercise its powers but that did not mean that it necessarily owed a duty of care which might require that the power should be actually exercised. A mandamus could require future consideration of the exercise of a power. But an action for negligence looked back at what the authority ought to have done***. Question is as to when a public law duty to consider exercise of power vested by statute would create a private law duty to act, giving rise to a claim for compensation against public funds '(p. 412). One simply cannot derive a common law "ought" from a statutory "may". The distinction made by Lord Wilberforce in *Anns* between 'policy' and 'operations' is an inadequate tool with which to discover whether it was appropriate to impose a duty of care or not. But leaving that distinction, it does not always follow that the law should superimpose a common law duty of care upon a discretionary statutory power (p.413). *Apart from exceptions relating to individual or societal reliance on exercise of statutory power, - it is not reasonable to expect a service to be provided at public expense and also a duty to pay compensation for loss occasion by failure to provide the service. An absolute rule to provide compensation would increase the burden on public funds.*
>
> *(emphasis supplied)*

32. It is evident from the decision of this Court as also the decisions of the English and Canadian Courts that it is not proper to award damages against public authorities merely because there has been some inaction in the performance of their statutory duties or because the action taken by them is ultimately found to be without authority of law. In regard to performance of statutory functions and duties, the courts will not award damages unless there is malice or conscious abuse. The cases where damages have been

awarded for direct negligence on the part of the statutory authority or cases involving doctrine of strict liability cannot be relied upon in this case to fasten liability against MCD or the Licensing Authority. The position of DVB is different, as direct negligence on its part was established and it was a proximate cause for the injuries to and death of victims. It can be said that in so far as the licensee and DVB are concerned, there was contributory negligence. The position of licensing authority and MCD is different. They were not the owners of the cinema theatre. The cause of the fire was not attributable to them or anything done by them. Their actions/omissions were not the proximate cause for the deaths and injuries. The Licensing Authority and MCD were merely discharging their statutory functions (that is granting licence in the case of licensing authority and submitting an inspection report or issuing a NOC by the MCD). In such circumstances, merely on the ground that the Licensing Authority and MCD could have performed their duties better or more efficiently, they cannot be made liable to pay compensation to the victims of the tragedy. There is no close or direct proximity to the acts of the Licensing Authority and MCD on the one hand and the fire accident and the death/injuries of the victims. But there was close and direct proximity between the acts of the Licensee and DVB on the one hand and the fire accident resultant deaths/injuries of victims. In view of the well settled principles in regard to public law liability, in regard to

discharge of statutory duties by public authorities, which do not involve malafides or abuse, the High Court committed a serious error in making the licensing authority and the MCD liable to pay compensation to the victims jointly and severally with the Licensee and DVB.

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

Re: Questions (iii) and (iv)

34. The licensee argued that the entire liability should be placed upon the DVB. It was contended that DVB have installed a transformer of a capacity of 1000 KV without obtaining the statutory sanction/approval and without providing all the safety measures which it was duty bound to provide under the relevant Electricity Rules, and therefore, DVB alone should be responsible for the tragedy. This contention has no merit. In fact none in the main hall (ground floor of the theatre) died. Those on the second floor also escaped. It is only those in the balcony caught in noxious fumes, who died of asphyxiation. The deaths were on account of the negligence and greed on the part of the licensee in regard to installation of additional seats, in regard to closing of an exit door, parking of cars in front of transformer room by increasing parking from 15 to 35 and other acts. We therefore reject the contention that DVB should be made exclusively liable to pay the compensation. We have already held that the Licensing Authority and MCD are not liable. Therefore, the liability will be 85% (Licensee) and 15% (DVB).

35. We may next consider whether the compensation awarded in this case is proper and in accordance with the principles of public law remedy. As

noticed above, the High Court has awarded compensation to the legal heirs of 57 deceased victims at the rate of Rs.18 lakhs where the deceased was aged more than 20 years and Rs.15 lakhs where the deceased was aged 20 years or less. It awarded Rs.1 lakh for each of the 103 injured. In regard to the death cases, the High Court adopted the following rationale : Each person who was sitting in the balcony class where the rate of admission was Rs.50 per ticket, can be assumed to belong to a strata of society where the monthly income could not be less than Rs.15,000. Deducting one-third for personal expenses, the loss of dependency to the family would be Rs.10,000 p.m. or Rs.120,000/- per annum. Applying a common multiplier of 15 in all cases where the deceased was more than 20 years, the compensation payable would be Rs.18 lakhs. The High Court deducted Rs.3 lakhs and awarded compensation at a flat rate of Rs.15,00,000/- where the deceased was 20 years or less. The High Court also awarded interest at 9% per annum on the compensation amount from the date of filing of the writ petition (14.7.1997) to the date of payment.

36. Having awarded the said amounts the High Court proceeded to hold as follows :

> "97. We have arrived at the compensation on the basis of our estimation of the income of the victims of the unfortunate incident as we had no means to know their exact income. We, therefore, leave it open to the injured as

> well as relatives of the deceased to claim compensation based on the exact income of the victims by filing a suit or any other proceeding as may be permissible in law and if a suit or any other proceedings claiming such compensation are initiated within one year of this judgment, the same shall not be dismissed only on the ground of limitation. The amount directed by us to be payable under this judgment shall be **adjusted** against the amount which may ultimately be granted in favor of such persons in the proceedings mentioned above."

37. The contention of the Licensee is what could be awarded as a public law remedy is only a nominal interim or palliative compensation and if any claimants (legal heirs of the deceased or any injured) wanted a higher compensation, they should file a suit for recovery thereof. It was contended that as what was awarded was an interim or palliative compensation, the High Court could not have assumed the monthly income of each adult who died as being not less than Rs.15,000 and then determining the compensation by applying the multiplier of 15 was improper. This gives rise to the following question : Whether the income and multiplier method adopted to finally determine compensation can be arrived while awarding tentative or palliative compensation by way of a public law remedy under Article 226 or 32 of the Constitution?

37.1) *Rudul Sah vs. State of Bihar* [1983 (4) SCC 141] was one of the earliest decisions where interim compensation was awarded by way of

public law remedy in the case of an illegal detention. This Court explained the rationale for awarding such interim compensation thus:

> "This order will not preclude the petitioner from bringing a suit to recover appropriate damages from the state and its erring officials. The order of 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."

37.2) In *Nilabati Behera alias Lalita Behera vs. State of Orissa* [1993 (2) SCC 746] this court observed :

> "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 wrong doer 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."

37.3) In *Sube Singh vs. State of Haryana* [2006 (3) SCC 178] this court held:

> "It is now well-settled that award of compensation against the State is an appropriate and effective remedy for redressal of an established

> infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 of Cr. PC. Award of compensation as a public law remedy for violation of the fundamental rights enshrined in Article 21 of the Constitution, in addition to the private law remedy under the law of torts, was evolved in the last two-and-a-half decades."

38. Therefore what can be awarded as compensation by way of public law remedy need not only be a nominal palliative amount, but something more. It can be by way of making monetary amounts for the wrong done or by way of exemplary damages, exclusive of any amount recoverable in a civil action based on tortuous liability. But in such a case it is improper to assume admittedly without any basis, that every person who visits a cinema theatre and purchases a balcony ticket should be of a high income group person. In the year 1997, Rs.15,000 per month was rather a high income. The movie was a new movie with patriotic undertones. It is known that zealous movie goers, even from low income groups, would not mind purchasing a balcony ticket to enjoy the film on the first day itself. To make a sweeping assumption that every person who purchased a balcony class ticket in 1997 should have had a monthly income of Rs.15,000 and on that basis apply high multiplier of 15 to determine the compensation at a uniform rate of Rs.18 lakhs in the case of persons above the age of 20 years and Rs.15 lakhs for

persons below that age, as a public law remedy, may not be proper. While awarding compensation to a large group of persons, by way of public law remedy, it will be unsafe to use a high income as the determinative factor. The reliance upon *Neelabati Behera* in this behalf is of no assistance as that case related to a single individual and there was specific evidence available in regard to the income. Therefore the proper course would be to award a uniform amount keeping in view the principles relating to award of compensation in public law remedy cases reserving liberty to the legal heirs of deceased victims to claim additional amount wherever they were not satisfied with the amount awarded. Taking note of the facts and circumstances, the amount of compensation awarded in public law remedy cases, and the need to provide a deterrent, we are of the view that award of Rs.10 lakhs in the case of persons aged above 20 years and Rs.7.5 lakhs in regard to those who were 20 years or below as on the date of the incident, would be appropriate. We do not propose to disturb the award of Rs.1 lakh each in the case of injured. The amount awarded as compensation will carry interest at the rate of 9% per annum from the date of writ petition as ordered by the High Court, reserve liberty to the victims or the LRs. of the victims as the case may be to seek higher remedy wherever they are not satisfied with the compensation. Any increase shall be borne by the Licensee (theatre owner) exclusively.

39. Normally we would have let the matter rest there. But having regard to the special facts and circumstances of the case we propose to proceed a step further to do complete justice. The calamity resulted in the death of 59 persons and injury to 103 persons. The matter related to a ghastly fire incident of 1997. The victims association has been fighting the cause of victims for more than 14 years. If at this stage, we require the victims to individually approach the civil court and claim compensation, it will cause hardship, apart from involving huge delay, as the matter will be fought in a hierarchy of courts. The incident is not disputed. The names and identity of the 59 persons who died and 103 persons who were injured are available and is not disputed. Insofar as death cases are concerned the principle of determining compensation is streamlined by several decisions of this court. (See for example *Sarla Verma v. Delhi Transport Corporation* (2009) 6 SCC 121. If three factors are available the compensation can be determined. The first is the age of the deceased, the second is the income of the deceased and the third is number of dependants (to determine the percentage of deduction for personal expenses). For convenience the third factor can also be excluded by adopting a standard deduction of one third towards personal expenses. Therefore just two factors are required to be ascertained to determine the compensation in 59 individual cases. First is the annual income of the deceased, two third of which becomes the annual loss of

dependency the age of the deceased which will furnish the multiplier in terms of *Sarla Verma*. The annual loss of dependency multiplied by the multiplier will give the compensation.

40. As this is a comparatively simple exercise, we direct the Registrar General of Delhi High Court to receive applications in regard to death cases, from the claimants (legal heirs of the deceased) who want a compensation in excess of what has been awarded that is Rs.10 lakhs/Rs.7.5 lakhs. Such applications should be filed within three months from today. He shall hold a summary inquiry and determine the compensation. Any amount awarded in excess of what is hereby awarded as compensation shall be borne exclusively by the theatre owner. To expedite the process the concerned claimants and the Licensee with their respective counsel shall appear before the Registrar without further notice. For this purpose the claimants and the theatre owner may appear before the Registrar on 10.1.2012 and take further orders in the matter. The hearing and determination of compensation may be assigned to any Registrar or other Senior Judge nominated by the Learned Chief Justice/Acting Chief Justice of the Delhi High Court. As far as the injured are concerned if they are not satisfied with the sum of Rs.1 lakh which has been awarded it is open to them to approach the civil court for claiming higher compensation and if they do so within 3 months from today,

the same shall be entertained and disposed of in accordance with law. It is not possible to refer the injury cases for summary determination like death cases, as the principles are different and determination may require a more detailed enquiry.

Re: Punitive damages

41. We may next deal with the question of award of punitive damages of Rs.2,50,00,000/- against the licensee. Before examining whether such punitive damages could be awarded at all, we have to notice the apparent mistake in arriving at the sum of Rs.2.5 crores. The High Court has stated that the licensee should be made liable to pay punitive damages to the extent of profit which it would have earned by selling tickets in regard to extra seats unauthorisedly and illegally sanctioned by the authorities and installed by the Licensee. The High Court has not stated the arithmetical calculation of arriving at Rs.2,50,00,000/- but it has indicated that the said sum has been assessed as the income earned by them by selling tickets for additional 250 seats between 1979 and 1996. The High Court has apparently calculated the ticket revenue at the rate of Rs.50/- per ticket for 52 additional seats for three shows a day to arrive at a sum of Rs.7,800/- per day. For 17 years, this works out to Rs. Rs.4,83,99,000/-. Presumably, the High Court deducted Rs. Rs.2,33,99,000/- towards entertainment tax etc., to arrive at Rs.2.5 crores as

profit from these additional seats. Initially the seats were 250. Forty three additional seats were sanctioned on 30.9.1976. Subsequently, the additional seats were cancelled. However, the Delhi High Court permitted the continuance of such number of seats which were permissible as per Rules. Therefore, all the 52 seats cannot be held to be illegal. What were illegal seats were the 15 seats that were added by securing an order dated 4.10.1980. The remaining 37 seats were found to be valid by the authorities. Therefore, if at all the licensee is to be made liable to reimburse the profits earned from illegal seats, it should be only in regard to these 15 seats and the eight seats in the Box which was the cause for closing one of the exits. In so far as the eight seats in the owner's box, though it is alleged that they were intended to be used only as complimentary seats, for the purpose of award of punitive damages, they are treated at par with other balcony seats. The High Court also wrongly assumed that the ticket value to be Rs.50/- from 1979 to 1996, because it was Rs.50/- in the year 1997 for a balcony seat. Another erroneous assumption made is that for all shows on all the days, all these additional seats would be fully occupied. On a realistic assessment, (at a net average income of Rs.12/- per seat with average 50% occupancy for 23 seats) the profits earned from these seats for 17 years would at best Rs.25,00,000/-. Be that as it may.

42. We may next consider the appropriateness and legality of award of punitive damages. In this context, we may refer to the decision in *M C Mehta vs. Union of India* – 1987 (1) SCC 395 wherein this Court considered the question as to what should be the measure of liability of an enterprise which is engaged in a hazardous or inherently dangerous industry, if by reason of an accident occurring in such industry, persons die or are injured. This Court held:

> "…In a modem industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to carry out part of the developmental programme. This rule evolved in the 19th Century at a time when all these developments of science and technology had not taken place cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and the needs of the present day economy and social structure. We need not feel inhibited by this rule which was evolved in this context of a totally different kind of economy. Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialized economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order. We are certainly prepared to receive light from whatever source it comes but we have to build up our own jurisprudence and we cannot countenance an argument that merely because the new law does not recognise the rule of strict and absolute liability in cases of hazardous or dangerous liability or the rule as laid down in *Rylands v. Fletcher* as is developed in England recognises certain limitations and responsibilities. We in India cannot hold our hands back and I venture to evolve a new principle of liability which English courts have not done. 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 on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been

> so done in England. We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part……
>
> ….Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. We would therefore hold that where an 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* (supra).
>
> We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be correlated to the magnitude and capacity *of the enterprise because such compensation must have deterrent effect.* The larger and more prosperous the enterprise the greater must be the amount of compensation payable by it, for the harm caused on account of an accident in carrying on all the hazardous or inherently activity by the enterprise."

43. What has been awarded is not exactly punitive damages with reference to the magnitude or capacity of the enterprise. All that the High Court pointed out was that the Licensee has installed additional seats

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

General observations and suggestions

44. The Parliament has enacted the Disaster Management Act, 2005. Section 1(3) thereof provides that it shall come into force on such dates as the Central Government may by notification in the Official Gazette appoint; and different dates may be appointed for different provisions of the Act for

different States, and any reference to commencement in any provisions of the Act in relation to any State shall be construed as a reference to the commencement of that provision in that State. All the provisions of the Act have not been brought into effect in all the States. Having regard to the object of the Act, bringing the Act into force promptly would be in public interest. In so far as Delhi is concerned, by notification dated 19.3.2008, the Government of NCT of Delhi has established the Delhi Disaster Management Authority for the national capital territory of Delhi. A disaster management helpline number has been made operational. Emergency operating centre and relief centres have been established, A State Disaster Response Force has been established. Several volunteers have been given training in disaster management. Attempts are being made to hold regular mockdrills in regard to various types of disasters (like earthquakes, flood, fire, road accidents, industrial and chemical disasters, terrorists attacks, gas leaks etc.). Steps are taken to contact the public in regard to several natural and man-made disasters. The key to successfully meeting the consequences of disasters is preparedness. There can be no complacency. Human tendency is to be awake and aware in the immediate aftermath of a disaster. But as the days pass, slowly the disaster management equipment and disaster management personnel allowed to slip away from their readiness. Only when the next disaster takes place, there is sudden awakening. In regard to

preparedness to meet disasters there could be no let up in the vigil. The expenditure required for maintaining a high state of alert and readiness to meet disasters may appear to be high and wasteful regarding 'non-disaster periods' but the expenditure and readiness is absolutely must. Be that as it may.

45. While affirming the several suggestions by the High Court, we add the following suggestions to the government for consideration and implementation :

(i) Every licensee (cinema theatre) shall be required to draw up an emergency evacuation plan and get it approved by the licensing authority.

(ii) Every cinema theatre shall be required to screen a short documentary during every show showing the exits, emergency escape routes and instructions as to what to do and what not to do in the case of fire or other hazards.

(iii) The staff/ushers in every cinema theatre should be trained in fire drills and evacuation procedures to provide support to the patrons in case of fire or other calamity.

(iv) While the theatres are entitled to regulate the exit through doors other than the entry door, under no circumstances, the entry door (which can act as an emergency exit) in the event of fire or other emergency) should be bolted from outside. At the end of the show, the ushers may request the patrons to use the exit doors by placing

a temporary barrier across the entry gate which should be easily movable.

(v) There should be mandatory half yearly inspections of cinema theatres by a senior officer from the Delhi Fire Services, Electrical Inspectorate and the Licensing Authority to verify whether the electrical installations and safety measures are properly functioning and take action wherever necessary.

(vi) As the cinema theatres have undergone a change in the last decade with more and more multiplexes coming up, separate rules should be made for Multiplex Cinemas whose requirements and concerns are different from stand-alone cinema theatres.

(vii) An endeavour should be made to have a single point nodal agency/licensing authority consisting of experts in structural Engineering/building, fire prevention, electrical systems etc. The existing system of police granting licences should be abolished.

(viii) Each cinema theatre, whether it is a multiplex or stand-alone theatre should be given a fire safety rating by the Fire Services which can be in green (fully compliant), yellow (satisfactorily compliant), red (poor compliance). The rating should be prominently displayed in each theatre so that there is awareness among the patrons and the building owners.

(ix) The Delhi Disaster Management Authority, established by the Government of NCT of Delhi may expeditiously evolve standards to manage the disasters relating to cinema theatres and the guidelines in regard to ex gratia assistance. It should be directed to conduct mock drills in each cinema theatre at least once in a year.

Conclusions

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

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

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

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

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

(v) CA No.6748 of 2004 is allowed in part and the judgment of the High Court is modified as under :

(a) The compensation awarded by the High Court in the case of death is reduced from Rs.18 lacs to Rs.10 lacs (in the case of those aged more than 20 years) and Rs.15 lacs to Rs. 7.5 lacs (in the case of those aged 20 years and less). The said sum is payable to legal representatives of the deceased to be determined by a brief and summary enquiry by the Registrar General (or nominee of learned Chief Justice/Acting Chief Justice of the Delhi High Court).

(b) The compensation of Rs.One lakh awarded by the High Court in the case of each of the 103 injured persons is affirmed.

(c) The interest awarded from the date of the writ petition on the aforesaid sums at the rate of 9% per annum is affirmed.

(d) If the legal representatives of any deceased victim are not satisfied with the compensation awarded, they are permitted to file an application for compensation with supporting documentary proof (to show the age and the income), before the Registrar General, Delhi High Court. If such an application if filed within three months, it shall not be rejected on the ground of delay. The Registrar General or such other Member of Higher Judiciary nominated by the learned Chief Justice/Acting Chief Justice of the High Court shall decide those applications in accordance with paras above and place the matter before the Division Bench of the

Delhi High Court for consequential formal orders determining the final compensation payable to them.

(e) The injured victims who are not satisfied with the award of Rs.One lakh as compensation, may approach the civil court in three months, in which event the claims shall not be dismissed on the ground of delay.

(f) While disbursing the compensation amount, any ex gratia payment by the Central Government/Delhi Government shall not be taken into account. But other payments on account shall be taken note of.

(g) As a consequence, if DVB has deposited any amount in excess it shall be entitled to receive back the same from any amount in deposit or to be deposited.

(h) The punitive damages ordered to be paid by the Licensee, to the Union of India, (for being used for setting up a Central Accident Trauma Centre) is reduced from Rs.2.5 crores to Rs.25 lakhs.

(i) The decisions of the High Court and this Court having been rendered in a public law jurisdiction, they will not come in the way of any pending criminal proceedings being decided with reference to the evidence placed in such proceedings.

K. S. Radhakrishnan J.

1. I fully endorse the reasoning as well as the conclusions reached by my esteemed brother. All the same, I would like to add a few thoughts which occurred to my mind on certain issues which arose for consideration in these matters.

2. Private law causes of action, generally enforced by the claimants against public bodies and individuals, are negligence, breach of statutory duty, misfeasance in public office etc. Negligence as a tort is a breach of legal duty to take care which results in damage or injury to another. Breach of statutory duty is conceptually separate and independent from other related torts such as negligence though an action for negligence can also arise as a result of cursory and malafide exercise of statutory powers. Right of an aggrieved person to sue in ordinary civil courts against the State and its officials and private persons through an action in tort and the principles to be followed in considering such claims are well settled and require no further elucidation. We are in these appeals concerned with the claims resulting in the death of 59 patrons and injury to 103 patrons in a fire erupted at Uphaar Cinema Theater, South Delhi on 13.6.1997.

3. We are primarily concerned with the powers of the Constitutional Courts in entertaining such monetary claims raised by the victims against the violation of statutory provisions by licensing authorities, licensees, and others affecting the fundamental rights guaranteed to them under the Constitution. Constitutional Courts in such situations are expected to vindicate the parties constitutionally, compensate them for the resulting harm and also to deter future misconduct. Constitutional Courts seldom exercise their constitutional powers to examine a claim for compensation, merely due to violation of some statutory provisions resulting in monetary loss to the claimants. Most of the cases in which Courts have exercised their constitutional powers are when there is intense serious violation of personal liberty, right to life or violation of human rights. But, even in private law remedy against the State and its instruments they claim immunity on the plea that they are discharging sovereign functions, even in cases where there is violation of personal liberty.

4. This Court in ***State of Rajasthan v. Vidyawati*** AIR 1962 SC 933, rejected claim of the State sovereign immunity and upheld the award of compensation in tort for the death of a pedestrian due to the rash and negligent driving of a Government jeep. In ***Kasturi Lal v. State of U.P.*** AIR 1965 SC 1039, drawing distinction between sovereign and non-

sovereign functions, the apex Court rejected the plea of arrest in violation of the U.P. Police Regulation on the ground that the arrest was made as a part of the sovereign powers of the State. Kasturi Lal was a Constitution Bench judgment. However, in ***N. Nagendra Rao v. State of A.P.***, AIR 1994 SC 2663, a three Judge Bench of this Court drew a distinction between the sovereign and non sovereign functions of the State and held as follows:-

> "No legal or political system today can place the State above "Law" as it is unjust and unfair for a citizen to be deprived of his property illegally when negligent act by the officers of the State without any remedy. From sincerity, efficiency and dignity of the State as a juristic person, propounded in the nineteenth century as sound sociological basis for State immunity, the circle has gone round and the emphasis is now more on liberty, equality and the rule of law. The modern social thinking of progressive societies and the judicial approach is to do away with archaic State protection and place the State or the Government on a par with any other juristic legal entity. Any watertight compartmentalization of the functions of the State as "sovereign and non-sovereign" or "governmental and non-governmental" is not sound. It is contrary to modern jurisprudential thinking. The need of the State to have extraordinary powers cannot be doubted. But with the conceptual change of statutory power being statutory duty for the sake of the society and the people, the claim of a common man or ordinary citizen cannot be thrown out, merely because it was done by an Officer of the State even though it was against law and negligent. Needs of the State; duty of its officials and right of the citizens are required to be reconciled, so that the rule of law in a Welfare State is not shaken".

The Court further held:

> "The determination of vicarious liability of the State being linked with the negligence of his officers, if they can be sued personally for which there is no dearth of authority and law of misfeasance in discharge of public duty having marched ahead, there is no rationale for the proposition that even if the officer is liable, the State cannot be sued."

5. The Court further opined that the ratio of ***Kasturi Lal*** is available to those rare and limited cases where the statutory authority acts as a delegate of such functions for which it cannot be sued in a court of law. The court opined that the same principle would not be available in large number of other activities carried on by the State by enacting a law in its legislative competence.

6. The general principle of law enunciated in ***Rylands* v. *Fletcher,*** *(*1868) LR 3 HL 330, ***Donoghue* v. *Stevenson***, [1932] AC 562, however, still guides us. In several situations, where officials are dealing with hazardous or explosive substance, the maxim *re ipsa* loquitor applies. Reference may be made to the decision in ***Lloyde v. Westminster***, [1972] All E.R. 1240, ***Henderson v. eHenry Jenkins & Sons***, [1969] 2 All E.R. 756. Principles laid down in ***Donoghue v. Stevenson***, which highlighted the neighbour principle as a test to determine whether a potential duty of care exists, however is held to be not applicable to all fact situations. Lord Weilberfoce enunciated a dual test in ***Anns v. Merton London Borough Council*** [1978] AC 728, of existence of proximity and reasonable foreseeability and a failure to take care that causes harm to the claimant. The House of Lords, however, in ***Murphy v. Brentwood Dsitrict Council*** ***[***1990] 3 WLR 414, however, overruled ***Anns*** on the ground that there was

no duty to take care on the legal authority to prevent power economic loss occurring. House of Lords, however, in ***Caparo Industries plc v. Dickman*** [1990] 2 AC 605 = 1990 All E.R. 568 laid down three tests i.e. the claimants must show that harm was reasonably foreseeable, the relationship between the parties was proximate and that the imposition of liability would be just, fair and reasonable. Later in ***X (Minors)*** *v.* ***Bedfordshire County Council***, [1995] 2 A.C. 633, Lord Browne-Wilkinson stated that an administrative act carried out in the exercise of a statutory discretion can only be actionable in negligence if the act is so unreasonable that it falls outside the proper ambit of that discretion. In effect, this would require that the act to be unlawful in the public law sense under the Wednesbury principle. House of Lords further held in ***Barrett v. Enfield London Borough Council*** [2001] 2 AC 550 that where a plaintiff claims damages for personal injuries which he alleges have been caused by decisions negligently taken in the exercise of a statutory discretion, and provided that the decisions do not involve issues of policy which the courts are ill-equipped to adjudicate upon, it is preferable for the courts to decide the validity of the plaintiff's claim by applying directly the common law concept of negligence than by applying as a preliminary test the public law concept of Wednesbury unreasonableness to determine if the decision fell outside the ambit of the statutory discretion.

7. Later, House of Lords speaking through Lord Slynn stated as follows: "the House decided in ***Barrett v Enfield London Borough Council*** *(supra)* that the fact that acts which are claimed to be negligent are carried out within the ambit of a statutory discretion is not in itself a reason why it should be held that no claim for negligence can be brought in respect of them. It is only where what is done has involved the weighing of competing public interests or has been dictated by considerations on which Parliament could not have intended that the courts would substitute their views for the views of Ministers or officials that the courts will hold the issue is non-justiciable on the ground that the decision was made in the exercise of a statutory discretion." Both ***Barrett*** and ***Phelps***, it may be noted, have highlighted the fact that a public body may be liable for acts done which fell within its ambit of discretion without the claimant also having to show that the act done was unlawful in the public law sense, so long as the decision taken or act done was justiciable.

8. Above decisions would indicate that in England also there is a lot of uncertainty when claims are raised against public bodies for negligence or violation of statutory duties. It is worth noticing that the Law Commission, U.K. in its consultation paper on "Administrative Redress" proposed that Judges should apply a 'principle of modified corrective justice' when

deciding negligence claims against public bodies. (Law Commission Consultation Paper No.187 (2008). The Law Commission consequently proposed the introduction of a new touchstone of liability: 'serious fault'. The Law Commission's most far-reaching reform proposals relate to "court based redress" which suggests 'the creation of a specific regime for public bodies' based around a number of common elements such as Judges would apply a standard of 'serious fault' in both judicial review and negligence proceedings.

9. Richard Mullender in an essay on Negligence, Public Bodies and Ruthlessness which appeared in "The Modern Law Review" (2009) 72 (6) MLR 961-98, argues for a reform of negligence law (as it applies to public bodies) that is different from that proposed by the Law Commission, such as application of the proportionality principle at the third stage of the duty of care test applied in ***Caparo Industries*** case.

10. Development taking place in U.K. has been highlighted only to show the uncertainty that one faces while deciding claims against public bodies and its officials. But when we look at the issues from the point of violation of fundamental rights, such as personal liberty, deprivation of life etc., there is unanimity in approach by the Courts in India, U.K. and U.S.A. and various other countries, that the Constitutional Courts have a duty to protect

those rights and mitigate the damage caused. Violation of such rights often described as constitutional torts.

11. The concept of Constitutional Tort and Compensatory jurisprudence found its expression in ***Devaki Nandan Prasad*** *v.* ***State of Bihar*** *1983 (4) SCC 20* where the petitioner's claim for pension was delayed for over twelve years. This Court awarded Rs.25,000/- as against authorities after having found that the harassment was intentional, deliberate and motivated. Liability to compensate for infringement of fundamental rights guaranteed under Article 21 was successfully raised in ***Khatri & Others v. State of Bihar & Others*** (1981) 1 SCC 627 (**Bhagalpur Blinded prisoners case)**. In ***Rudal Shah v. State of Bihar***, (1983) 4 SCC 141, this Court found that the petitioner's prolonged detention in the prison after his acquittal was wholly unjustified and illegal and held that Article 21 will be denuded of its significant content if the power of the Supreme Court was limited to passing orders of release from illegal detention. Court ordered that to prevent violation of that right and secure due compliance with the mandate of Article 21, it has to mulct its violators in the payment of monetary compensation. Court held that right to compensation is thus some palliative for the unlawful acts of instrumentalities of the State which act in the name of public interest and which present for their protection the powers of the State as shield.

Reference may also be made to the judgments of this Court in ***Sebastian M. Hongray v. Union of India***, AIR 1984 SC 1026, ***Bhim Singh v. State of J. & K.*** (AIR 1986 SC 494), ***Saheli v. Commissioner of Police, Delhi,*** (AIR 1990 SC 513), ***Inder Singh v. State of Punjab*** (AIR 1995 SC 1949), ***Radha Bai v. Union Territory of Pondicherry*** AIR 1995 SC 1476, ***Lucknow Development Authority v. M.K. Gupta*** (AIR 1994 SC 787), ***Delhi Domestic Working Women's Forum v. Union of India***, (1995) 1 SCC 14, ***Gudalure M.J. Cherian v. Union of India*** 1995 Supp (3) SCC 387, **Sube Singh** v. **State of Haryana** 2006 (3) SCC 178 etc. Specific reference may be made to the decision of this Court in ***Nilabati Behera v. State of Orissa*** (AIR 1993 SC 1960), wherein this Court held that the concept of sovereign immunity is not applicable to the cases of violation of fundamental rights and summarized as follows:

> "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."

12. Courts have held that due to the action or inaction of the State or its offices, if the fundamental rights of a citizen are infringed then the liability of the State, its officials and instrumentals is strict. Claim raised for compensation in such a case is not a private law claim for damages, under which the damages recoverable are large. 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.

13. This Court in ***Union of India v. Prabhakaran*** *(2008)* ***(9) SCC 527***, 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** (supra) a woman fell on a railway track and was fatally run over and her husband demanded compensation. 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 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 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 falls 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.

14. 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 officers functioning under the statutes like Companies Act, Cooperative Societies Act and such similar legislations. When we look at the various provisions of the Cinematographic 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.

CONSTITUTIONAL TORTS – MEASURE OF DAMAGES

15. Law is well settled that a Constitutional Court can award monetary compensation against State and its officials for its failure to safeguard fundamental rights of citizens but there is no system or method to measure the damages caused in such situations. Quite often the courts have a difficult task in determining damages in various fact situations. The yardsticks normally adopted for determining the compensation payable in a private tort claims are not as such applicable when a constitutional court determines the compensation in cases where there is violation of fundamental rights guaranteed to its citizens. In ***D.K. Basu*** vs. ***Union of India*** (1997) 1 SCC 416, a Constitution Bench of this Court held that there is no strait jacket formula for computation of damages and we find that there

is no uniformity or yardstick followed in awarding damages for violation of fundamental rights. In ***Rudal Shah's*** *case* (supra) this Court used the terminology "Palliative" for measuring the damages and The formula of "Ad hoc" was applied in ***Sebastian Hongary***'s **case** (supra) the expression used by this Court for determining the monetary compensation was "Exemplary" cost and the formula adopted was "Punitive" . In ***Bhim Singh's*** *case*, the expression used by the Court was "Compensation" and method adopted was "Tortious formula". In ***D.K. Basu*** v**. *Union of India*** *(supra)* the expression used by this Court for determining the compensation was "Monetary Compensation". The formula adopted was "Cost to Cost" method. Courts have not, therefore, adopted a uniform criteria since no statutory formula has been laid down.

16. Constitutional Courts all over the world have to overcome these hurdles. Failure to precisely articulate and carefully evaluate a uniform policy as against State and its officials would at times tend the court to adopt rules which are applicable in private law remedy for which courts and statutes have evolved various methods, such as loss earnings, impairment of future earning capacity, medical expenses, mental and physical suffering, property damage etc. Adoption of those methods as such in computing the damages for violation of constitutional torts may not be proper. In **Delhi**

Domestic Working Women's Forum v. ***Union of India*** (supra) the apex Court laid down parameters in assisting the victims of rape including the liability of the State to provide compensation to the victims and held as follows :-

> "It is necessary, having regard to the directive principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incurred substantial financial loss. Some, for example were too traumatized to continue in employment. Compensation for victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account the pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of the child but if it is occurred as a result of rape."

17. Legal liability in damages exist solely as a remedy out of private law action in tort which is generally time consuming and expensive and hence when fundamental rights are violated claimants prefer to approach constitutional courts for speedy remedy. Constitutional courts, of course, shall invoke its jurisdiction only in extraordinary circumstances when serious injury has been caused due to violation of fundamental rights especially under Article 21 of the Constitution of India. In such circumstances the Court can invoke its own methods depending upon the facts and circumstances of each case.

Constitutional Torts and Punitive Damages

18. Constitutional Courts' actions not only strive to compensate the victims and vindicate the constitutional rights, but also to deter future constitutional misconduct without proper excuse or with some collateral or improper motive. Constitutional courts can in appropriate cases of serious violation of life and liberty of the individuals award punitive damages. However, the same generally requires the presence of malicious intent on the side of the wrong doer, i.e. an intentional doing of some wrongful act. Compensatory damages are intended to provide the claimant with a monetary amount necessary to recoup/replace what was lost, since damages in tort are generally awarded to place the claimants in the position he would have been in, had the tort not taken place which are generally quantified under the heads of general damages and special damages. Punitive damages are intended to reform or to deter the wrong doer from indulging in conduct similar to that which formed the basis for the claim. Punitive damages are not intended to compensate the claimant which he can claim in an ordinary private law claim in tort. Punitive damages are awarded by the constitutional court when the wrong doer's conduct was egregiously deceitful. Lord Patrick Devlin in leading case on the point ***Rookes v. Barnard*** [1964] All E.R. 367 delineated certain circumstances which satisfy

the test for awarding punitive damages such as the conduct must have been oppressive, arbitrary, or unconstitutional, the conduct was calculated to make profit for the wrong doer and that the statute expressly authorizes awarding of punitive damages. Above principles are, however, not uniformly followed by English Courts though the House of Lords in a decision in Attorney-General Vs. Blake [2001] 1 AC 268, awarded punitive damages when it was found the defendant had profited from publishing a book and was asked to give an account of his profits gained from writing the book. In this case where the wrong doer was made to give up the profits made, through restitution for wrongs, certainly the claimant gained damages. In United States, in a few States, punitive damages are determined based on statutes. But often criticisms are raised because of the high imposition of punitive damages by courts. The Supreme Court of United States has rendered several decisions limiting the awards of punitive damages through the due process of law clauses of the Fifth and Fourteenth Amendments. In ***BMW of North America Inc. v. Gore*** 517 U.S. 559 (1996) the Court ruled that the punitive damages must be reasonable, as determined based on the degree of reprehensibility of the conduct, the ratio of punitive damages to compensatory damages and any criminal or civil penalties applicable to the conduct. In ***Philip Morris USA v. Williams*** 549 U.S. 346 (2007), the Court ruled that the award of punitive damages cannot be imposed for the direct

harm that the misconduct caused to others, but may consider harm to others as a function of determining how reprehensible it was. There is no hard and fast rule to measure the punitive damages to determine such a claim. In United States in number of cases the Court has indicated that the ratio 10:1 or higher between punitive and compensatory damages is held to be unconstitutional. Several factors may gauge on constitutional court in determining the punitive damages such as contumacious conduct of the wrong doer, the nature of the statute, gravity of the fault committed, the circumstances etc. Punitive damages can be awarded when the wrongdoers' conduct 'shocks the conscience' or is 'outrageous' or there is a willful and 'wanton disregard' for safety requirements. Normally, there must be a direct connection between the wrongdoer's conduct and the victim's injury.

Need for legislation

19. Need for a comprehensive legislation dealing with tortious liability of State, its instrumentalities has been highlighted by this Court and the academic world on various occasions and it is high time that we develop a sophisticated jurisprudence of Public Law Liability.

20. Due to lack of legislation, the Courts dealing with the cases of tortious claims against State and his officials are not following a uniform pattern

while deciding those claims and this at times leads to undesirable consequences and arbitrary fixation of compensation amount.

21. Government of India on the recommendations of the first Law Commission introduced two bills on the Government liability in torts in the years 1965-67 in the Lok Sabha but those bills lapsed. In ***Kasturi Lal's*** case (supra), this Court has highlighted the need for a comprehensive legislation which was reiterated by this Court in various subsequent decisions as well.

22. Public Authorities are now made liable in damages in U.K. under the Human Rights Act, 1998. Section 6 of the Human Rights Act, 1998 makes a Public Authority liable for damages if it is found to have committed breach of human rights. The Court of Appeal in **England in Anufijeva** Vs. **London Borough Southwork** 2004 (2) WLR 603, attempted to answer certain important questions as to how the damages should be awarded for breach of human rights and how should damages be assessed. Further, such claims are also dealt by Ombudsmen created by various Statutes, they are independent and impartial officials, who investigate complaints of the citizens in cases mal-administration. The experience shows that majority of the Ombudsman's recommendations are complied in practice, though they are not enforceable in Courts.

23. The European Court of Justice has developed a sophisticated jurisprudence concerning liability in damages regarding liability of public bodies for the loss caused by administrative Acts. We have highlighted all these facts only to indicate that rapid changes are taking place all over the world to uphold the rights of the citizens against the wrong committed by Statutory Authorities and local bodies.

24. Despite the concern shown by this Court, it is unfortunate that no legislation has been enacted to deal with such situations. We hope and trust that utmost attention would be given by the legislature for bringing in appropriate legislation to deal with claims in Public Law for violation of fundamental rights, guaranteed to the citizens at the hands of the State and its officials.

……J
[R. V. Raveendran]

……J
[K. S. Radhakrishnan]

New Delhi;
October 13, 2011.