

Liability of Administration in Tort

“*Salus Populis Suprema Lex*” – regard for public welfare is the highest law

Article 300 of the Constitution of India deals with the extent of liability of the Union of India and the State Governments in tort. This article instead of laying down the liability in specific terms, refers back to Section 176 of the Government of India Act, 1935. This section again refers back to Section 32 of the Government of India Act, 1915. There is further reference to Section 65 of the Government of India Act, 1858. This section laid down that on the assumption of the Government of India by the British Crown, the Secretary of State for India-in-Council would be liable to the same extent as the East India Company. This is certainly a strange way of determining the liability of administration by the Constitution.

The doctrine of Sovereign immunity (king can do no wrong) as obtained in England, therefore, did not extend to the East India Company ruling India prior to 1858 when the administration of India was directly assumed by the Queen. Though, dual status was conferred to the East India Co. i.e. as a “trustee” of the British Crown under the Charter Act, 1833.

Sovereign and Non-Sovereign Functions

The provision of Section 65 of the Government of India Act, 1858 came for consideration before the Calcutta Supreme Court for interpretation in the famous case *P. & O. Steam Navigation Co Vs. Secretary of State for India*¹. It was made clear by Peacock, C.J. in the judgement that state would not be held liable for the tortious acts committed by its servants while performing sovereign functions of the State. In *Secretary of State for India Vs. Hari Bhanji*² wherein *P&O Steam*

¹ (1861) 5 Bom. HCR App 1

² (1882) ILR 5 Mad 273.

Navigation case was interpreted for Sovereign function to cover only “acts of State”.

Cases after Independence

The important cases decided by the court are: *State of Rajasthan Vs. Smt. Vidhyawati*³, harassment by the officers. The Court qualified this amount of Rs. 25,000/- as “exemplary costs”. *Kasturilal Vs. State of U.P.*⁴; *Lala Bishambar Nath Vs. Agra Nagar Mahapalika*⁵ and *Shyam Sunder Vs. State of Rajasthan*⁶. In *B.K.D. Patil Vs. State of Mysore*,⁷ it was held by the Supreme Court that if there is no prima facie defence of due care, the court can order the payment of the value of the property in order to meet the ends of justice. In this case to provide justice remedy was searched under the Criminal Procedure Code. Similarly, on the principle of social justice the Supreme Court in *State of Haryana Vs. Darshana Devi*⁸, awarded compensation. In this case a widow and daughter claiming compensation for the killing of the sole bread winner by the State Transport Bus; and the Haryana Government instead of acting on social justice and generously settling the claim fights like cantankerous litigant, even by avoiding adjudication through the device of asking for court fee from the pathetic plaintiff.

In *Rudul Shah Vs. State of Bihar*⁹ the petitioner was acquitted by court of session in June 1968. However, he was released only after more than 14 years in October 1983. This had happened after a *Habeas Corpus* petition was filed in the Supreme Court under Art. 32. In the instant case the Supreme Court awarded compensation of Rs. 35,000/- against the state for illegal act done by officials of the State government. In *Devaki Nandan Prasad Vs. State of Bihar*,¹⁰

³ AIR 1962 S.C. 933

⁴ AIR 1965 S.C. 1039.

⁵ (1973) 1 SCC 788.

⁶ (1974) 1 SCC 690.

⁷ (1977) 4 SCC 358.

⁸ (1979) 2 SCC 237.

⁹ AIR 1983 SC 1086.

¹⁰ AIR 1988 SC 1134.

the writ of mandamus was not carried out by the government for 12 years and the petitioner, after running from pillar to post, ultimately approached the Supreme Court under Article 32. The Supreme Court issued the writ of mandamus and also awarded damages to him for “intentional, deliberate and motivated” action of the government.

In *Sebastian M. Hongray Vs. Union of India*,¹¹ two persons were allegedly arrested by the Army Jawans in the State of Manipur in March 1982, and their whereabouts were not known. A Habeas Corpus petition was filed before the Supreme Court under Article 32. The case was adjourned twice but they were not produced. The Court found from the record that the respondents had misled it and committed a wilful disobedience to its writ. The Court awarded rupees One Lakh each to be paid to the wives of the untraceable persons. In *Bhim Singh Vs. State of J&K*¹², the Supreme Court awarded Rs. 50,000/- as compensation to Mr. Bhim Singh, MLA for illegal detention and high handedness by the State Police.

In *Thangrajan Vs. Union of India*,¹³ it was held that, “It would be cruel to tell the injured boy that he was not entitled to any relief as he had the privilege of being hit by a lorry which was driven in exercise of sovereign function of State.” Compensation in the form of exgratia was paid. In *Saheli (A Women’s Resoruce Centre) Vs. Commr. of Police*,¹⁴ compensation was awarded for police brutalities committed on citizens and it was to be recovered from the salaries of the responsible policemen. In *S. Krishna Murthi Vs. District Revenue Officer*,¹⁵ recovery of costs from delinquent officers for disobedience of High Court order. It was observed, “in view of the irresponsible, illegal and high handed action of the officers concerned”.

There seems to be a definite trend in the judicial attitude towards personal liability and accountability of the State officials for their tortuous, arbitrary and

¹¹ AIR 1984 SC 1026.

¹² AIR 1986 SC 494. See also *Khatri Vs. State of Bihar* AIR 1981 SC 928.

¹³ AIR 1975 Mad. 32 See also *R. Gandhi Vs. Union of India*, AIR 1989 Mad. 205 and *Peoples’ Union for Democratic Rights Vs. Police Commissioner* (1989) 4 SCC 730.

¹⁴ AIR 1990 SC 513.

¹⁵ AIR 1990 Mad. 19.

malicious actions. In *M. S. Chokkalingam Vs. State of Karnataka*,¹⁶ the forest department of the State government purchased logs of rosewood from the petitioner during 1978-1980 but he was not paid for more than nine years. The High Court held that the State was liable for the tortuous act of its officials for nonpayment. In addition to the payment of price of rosewood along with interest the court awarded cost of Rs. 1000/- to the petitioner and left it open to the state to recover this amount from the officials responsible for the delay in payment. The Court also thought it to be a fit case in which the government could take an action against the officials responsible for their culpability in the performance of their duties. In *Lucknow Development Authority vs. M.K. Gupta*¹⁷, it was observed that when a complainant is entitled to compensation for harassment or mental agony or oppression then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries.

In *Nilabati Behera (Smt.) Vs State of Orissa*¹⁸ Rs.1,50,000/- was awarded as compensation for custodial death. It was held that in case of violation of fundamental right by State's instrumentality or servants, Court can direct the state to pay compensation to the victim or his heir by way of monetary amends and redressal. The principle of sovereign immunity was held inapplicable in such cases. This remedy is apart from private law remedy.

“It follows that “a claim is 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. It is distinct and in addition to the remedy in private law for damage for the ‘tort’ resulting from the contravention of the fundamental right. The defence of the sovereign

¹⁶ AIR 1991 Kat. 116.

¹⁷ (1994) 1 SCC 243.

¹⁸ (1993) 2 SCC 746. See also *D. K. Basu Vs. State of W.B.* (1997) 1 SCC 416; *Chairman Railway Board and Ors, Vs. Chandrima Das (Mrs.)* (2000) 2 SCC 465 and *Ajab Singh Vs. State of U.P.* (2000) 3 SCC 521.

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 exercise of their power.”

In *Nagendra Rao Vs. State of A.P.*¹⁹, the Supreme Court held that the state was liable to pay compensation to its citizens for any harm suffered by them due to negligence by the bureaucracy or the police. In the instant case a consignment of fertilizers confiscated by the authority was not usable when it was returned to him. The lower courts had rejected his plea on the ground that the State was entitled to sovereign immunity. It was observed by the Supreme Court as follows:

“No civilised system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The concept of public interest has changed with structural change in the society. 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 by negligent act of officers of the state without any remedy. From sincerity, efficiency and dignity of state as a juristic person, propounded in nineteenth century as sound sociological basis for state immunity the circle has gone round and the emphasis now is 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 government on par with any other juristic legal entity. Any water tight compartmentalization of the functions of the state as “sovereign and non-sovereign” or “governmental or non-governmental” is not sound. It is contrary to modern jurisprudential thinking”.

The outcome of this decision may be placed as follows:

1. Distinction between sovereign and non-sovereign functions no longer survives.

¹⁹ (1994) 6 SCC 205.

2. Negligent public officers are being personally liable and the state is vicariously.
3. State is immune only in cases of “acts of state” like defence of the country, administration of justice, maintenance of law and order and repression of crime except when Article 21 breached.

In *Delhi Development Authority Vs. Skipper Construction and Ors*,²⁰ public land was auctioned and possession was handed over to the respondent bidder before receiving the auction amount in full. Extensions of time were also granted and building constructed on the land. Advertisement was given by respondent for booking the premises in the building in violation of court’s order in connivance with officers of DDA. The matter was inquired and it was found that connivance and collusion of several senior officers of IAS cadre were responsible for flouting orders of the then Lt. Governor and acted against interest of DDA and helped the respondent in achieving its nefarious design to defraud both the DDA and innocent people. It was held by the Supreme Court that disciplinary action for imposing major penalty (except in one case) should be initiated against the officers who indulged in such acts. It was further directed that no court or authority shall be competent to interdict or otherwise interfere with the disciplinary or other proceedings that may be taken against the aforesaid authorities pursuant to this order.

In *Chairman, Railway Board Vs. Chandrima Das (Mrs.)*²¹ it was held by the Supreme Court that right to life under articles 21 and 51 includes Right to live with human dignity. Right to life is recognized as a basic human right and the court read it in consonance with Universal Declaration of Human Rights, 1948, Declaration on the Elimination of Violence against Women and Declaration and Covenants of Civil and Political Rights and Covenants of Economic, Social and Cultural Rights to which India is a party in their ratification. In the instance case a lady who arrived at Hawarh Railway Station from Bangladesh with a view to catch a train for Ajmer, was raped by the railway employees in a room in Yatri

²⁰ (1996) 1 SCC 272.

²¹ (2000) 2 SCC 465

Niwas which was booked in advance in the name of a railway employee. The Supreme Court extended the protection of Article 21 to the lady and awarded Rs. 7 lakhs as compensation to her. The Railway employees were held personally accountable for their illegal and inhuman act.

In *Ajab Singh and Ors. Vs. State of U.P. and Ors.*,²² the Supreme Court awarded Rs. 5 lakh to the deceased. In the instant case deceased was earning Rs. 5000/- per month when he was lodged in jail. His wife had already died and he had three minor children. He was remanded to judicial custody and while in jail removed to hospital where he died. According to postmortem report cause of death was shock and haemorrhage due to antemortem injuries. The CBI was directed to investigate into the circumstances of the death. On the basis of the CBI report, the State Government was held responsible in law for the death of the deceased. It was further held that the direction to pay compensation was without prejudice to the right of legal representatives of the deceased to claim compensation in private law proceedings against those found responsible for death. The State Government was also directed to take disciplinary proceedings against those responsible for the death.

Urgent Need of Legislation

Parliament was seized with the matter in 1965 when a Bill, Government (Liability in Tort) Bill was introduced. It was reintroduced in 1967 and referred to a Joint Select Committee of Parliament. Committee reported back to the House in 1969. No action could be taken due to dissolution of the Lok Sabha in 1970. Since then nothing has been heard at the measure. However, it is apparent from the provisions of the Bill that the Government did not fully appreciate the significance of governmental accountability in democratic Republic.

²² (2003) 3 SCC 521, See also *D. K. Basu Vs. State of West Bengal*, (1997) 1 SCC 416 and *M.P. Electricity Board Vs. Shail Kumari* (2002) 2 SCC 162.