

THE HIGH COURT OF MEGHALAYA
AT SHILLONG.

W.P. (C) NO.144/2010

Smti. Glotilda Syiem
W/o (L) Dennis Nongsiej,
aged about 33 years,
R/o Mawsikar Village,
Raid Mynsaw,
West Khasi Hills District, Meghalaya.

:::: Petitioner

-Vs-

1. The Union of India,
represented by Secretary,
Ministry of Home Affairs,
Govt. of India, New Delhi.
2. State of Assam,
represented by the Secretary and Commissioner (Home),
Govt. of Assam, Dispur, Guwahati, Assam
3. Director General of Police,
Govt. of Assam, Dispur, Guwahati, Assam
4. Superintendent of Police,
Kamrup District, Assam.
5. Deputy Commissioner,
Kamrup District Kamrup, Assam.
6. Officer-in-Charge Police Outpost Langpih,
Govt. of Assam, Langpih.
7. State of Meghalaya,
represented by Secretary & Commissioner (Home),
Govt. of Meghalaya, Shillong.
8. Director General of Police,
Govt. of Meghalaya, Shillong.
9. Superintendent of Police,
West Khasi Hills District, Nongstoin.

10. Deputy Commissioner,
West Khasi Hills District, Nongstoin.
11. Nongstoin Police Station,
West Khasi Hills District, Meghalaya. :::: Respondents.

W.P. (C) NO.145/2010

Smti. Ledina Sohshang,
W/o (L) Ekrose Rani,
aged about 28 years,
R/o Wawdiangsnam Village,
Raid Mynsaw,
West Khasi Hills District, Meghalaya. :::: Petitioner

-Vs-

1. The Union of India,
represented by Secretary,
Ministry of Home Affairs,
Govt. of India, New Delhi.
2. State of Assam,
represented by the Secretary and Commissioner (Home),
Govt. of Assam, Dispur, Guwahati, Assam
3. Director General of Police,
Govt. of Assam, Dispur, Guwahati, Assam
4. Superintendent of Police,
Kamrup District, Assam.
5. Deputy Commissioner,
Kamrup District Kamrup, Assam.
6. Officer-in-Charge Police Outpost Langpih,
Govt. of Assam, Langpih.
7. State of Meghalaya,
represented by Secretary & Commissioner (Home),
Govt. of Meghalaya, Shillong.
8. Director General of Police,
Govt. of Meghalaya, Shillong.
9. Superintendent of Police,
West Khasi Hills District, Nongstoin.

10. Deputy Commissioner,
West Khasi Hills District, Nongstoin.
11. Nongstoin Police Station,
West Khasi Hills District, Meghalaya. :::: Respondents.

W.P. (C) NO.146/2010

Smti. Pairen Rynniaw,
W/o (L) Charles Lyngkhoi,
aged about 30 years,
R/o Mawlan A Village,
Raid Mynsaw,
West Khasi Hills District, Meghalaya.

-Vs-

1. The Union of India,
represented by Secretary,
Ministry of Home Affairs,
Govt. of India, New Delhi.
2. State of Assam,
represented by the Secretary and Commissioner (Home),
Govt. of Assam, Dispur, Guwahati, Assam
3. Director General of Police,
Govt. of Assam, Dispur, Guwahati, Assam
4. Superintendent of Police,
Kamrup District, Assam.
5. Deputy Commissioner,
Kamrup District Kamrup, Assam.
6. Officer-in-Charge Police Outpost Langpih,
Govt. of Assam, Langpih.
7. State of Meghalaya,
represented by Secretary & Commissioner (Home),
Govt. of Meghalaya, Shillong.
8. Director General of Police,
Govt. of Meghalaya, Shillong.

9. Superintendent of Police,
West Khasi Hills District, Nongstoin.
10. Deputy Commissioner,
West Khasi Hills District, Nongstoin.
11. Nongstoin Police Station,
West Khasi Hills District, Meghalaya. :::: Respondents.

W.P. (C) NO.147/2010

Smti. Makdalena Langte,
W/o (L) Columbus Hoojon,
aged about 28 years,
R/o Umyiap Village,
Raid Mynsaw,
West Khasi Hills District, Meghalaya. :::: Petitioner

-Vs-

1. The Union of India,
represented by Secretary,
Ministry of Home Affairs,
Govt. of India, New Delhi.
2. State of Assam,
represented by the Secretary and Commissioner (Home),
Govt. of Assam, Dispur, Guwahati, Assam
3. Director General of Police,
Govt. of Assam, Dispur, Guwahati, Assam
4. Superintendent of Police,
Kamrup District, Assam.
5. Deputy Commissioner,
Kamrup District Kamrup, Assam.
6. Officer-in-Charge Police Outpost Langpih,
Govt. of Assam, Langpih.
7. State of Meghalaya,
represented by Secretary & Commissioner (Home),
Govt. of Meghalaya, Shillong.
8. Director General of Police,
Govt. of Meghalaya, Shillong.

- | | | |
|-----|--|-------------------|
| 9. | Superintendent of Police,
West Khasi Hills District, Nongstoin. | |
| 10. | Deputy Commissioner,
West Khasi Hills District, Nongstoin. | |
| 11. | Nongstoin Police Station,
West Khasi Hills District, Meghalaya. | Respondents. |

**BEFORE
HON'BLE THE CHIEF JUSTICE MR P.C. PANT
THE HON'BLE MR. JUSTICE T. NANDAKUMAR SINGH**

For the Petitioners	:	Mr. HL Shangreiso, Adv
For the Respondents	:	Mr.R Debnath, CGC for respdt.No.1 Mr.H Abraham, Adv for respdt.No.2-6 Mr.KS Kynjing, Advocate General for respdt. No.7-11.
Date of hearing	:	<i>29.01.2014</i>
Date of Judgment & Order	:	<i>31.01.2014</i>

Mr.R Debnath, CGC for respdt.No.1
Mr.H Abraham, Adv for respdt.No.2-6
Mr.KS Kynjing, Advocate General for
respdt. No.7-11.

29.01.2014

31.01.2014

JUDGMENT AND ORDER

(Justice T. Nandakumar Singh)

Four writ petitions for the same incident on 14.05.2010, in which four persons had been killed due to the firing by the Assam Police personnel, seeking similar relief against the same respondents are taken up for being disposed of by a common judgment and order. Accordingly, by this common judgment and order, these four writ petitions are being disposed of.

2. The names of the four persons killed in the said incidents are (L) Dennis Nongsiej, (L) Ekrose Rani, (L) Charles Lyngkhoi and (L) Columbus Hoojon. The writ petitioner Smti.Glotilda Syiem of Writ Petition No.144/2010 is the wife of (L) Dennis Nongsiej, writ petitioner Smti.Ledina Sohshang of Writ Petition No.145/2010 is the wife of (L) Ekrose Rani, writ petitioner Smti.Pairen Rynniaw of Writ Petition No.146/2010 is the wife of (L) Charles Lyngkhoi and writ petitioner Smti. Makdalena Langte of Writ Petition No.147/2010 is the wife of (L) Columbus Hoojon.

3. Heard Mr. HL Shangreiso, learned counsel appearing for the writ petitioners. Also heard Mr. R Deb Nath, learned CGC appearing for the respondent No.1, Mr. H Abraham, learned counsel appearing for the respondents No.2-6 and Mr. KS Kynjing, learned Advocate General, Meghalaya appearing for the respondents No.7-11.

4. In order to avoid repetition of facts in deciding the four writ petitions by this common judgment and order, it would be profitable to refer to the facts leading to the filing of one of the writ petitions; and accordingly, the fact, in gist, leading to the filing of the Writ Petition No.144/2010 is recapitulated. The petitioner is a bonafide citizen of India belonging to Khasi Scheduled Tribes Community of Meghalaya and she is the legally married wife of (L) Dennis Nongsiej. The petitioner is the permanent resident of Mawsikar Village, Raid Mynsaw, West Khasi Hills District, Police Station Nongstoin, Meghalaya. The indigenous Khasi Community at Langpih, Raid Mynsaw used to organize traditional market day once in every week and all the interested farmers and others used to participate in the aforesaid traditional weekly market at Langpih and the said market used to commence at around 8:00 am in each market day. On 14.05.2010, the husband of the writ petitioner, who was one of the farmers,

brought his crops from his native village to sell the same in the said weekly market and many people also participated as sellers and purchasers of the crops in the said weekly market.

5. On 14.05.2010, 2(two) Nepali migrants had heated exchange of words with some of the participants of the said weekly market and created some problems for the reason best known to them and immediately, they went to the Police Outpost established by the Assam Police. The Police personnel of the said Police Outpost established by the Assam Police without giving any warning and provocations fired indiscriminately to the unarmed civilians. In the said indiscriminate firing, husbands of the writ petitioners of the of the four writ petitions whose particulars have been mentioned above were shot dead and also a large numbers of peoples had suffered bullet injuries. For the said firing incident, an ejahar was lodged by one Shri. P Wahlang, Langpih, West Khasi Hills District, Nongstoin with the Officer-in-Charge, Nongstoin Police Station, West Khasi Hills District.

6. The indiscriminate firing at Langpih by the Assam Police is highly arbitrarily, irrational and unconstitutional and therefore, the respondents State of Assam should accept the liabilities of the illegal indiscriminate firing of the Assam Police at Langpih. The Assam Police killed the husband of the writ petitioner in the name of maintaining law and order but no law has conferred powers upon the Police to take away the life of the innocent's citizens without due process of law. The Govt. of Meghalaya also failed to maintain the Police Outpost at Langpih and to protect the life of the residents of Meghalaya and as such, gross-negligence on the part of the Govt. of Meghalaya is highly uncalled for and unconstitutional. The age of the petitioner (L) husband was only 38 years at the time of killing in the said indiscriminate firing by the Police personnel of the Assam Police and (L)

husband was the sole earning member of the family. The Police personnel of the Assam Police who had fired indiscriminately without any provocations leading to the death of four persons are not immune from the strict liability under the public law and as such, they are very much answerable to the law of the land. Hence, this writ petition seeking prayer which is quoted below:-

“It is therefore prayed that your Lordship may be pleased to consider the above and after hearing the parties be pleased to issue rule upon the respondents to show cause as to why a Writ of Mandamus directing the respondents to initiate independent judicial inquiry into the indiscriminate firing at Langpih on 14th May 2010 thereby killing (L) Dennis Nongsiej, the husband of the writ petitioner by the Assam Police, Police Outpost, Langpih, West Khasi Hills District, Meghalaya to take appropriate actions against the police personnels/perpetrators in accordance with law and please to declare the failure on the part of the respondents No.7-11 to protect and safeguard the life of the husband of the writ petitioner and aforesaid indiscriminate firing on 14.05.2010 by the Assam Police is illegal and unconstitutional and further direct the respondents No.2-11 to award suitable compensation to the tune of Rs.10,00,000/- (Rupees Ten Lakhs) only to the writ petitioner and further pass such order/orders as your Lordship may deem fit and proper.”

7. The respondents No.2, 3 and 4 i.e. the State of Assam, Director General of Police, Govt. of Assam, Dispur, Guwahati, Assam, and Superintendent of Police, Kamrup District, Assam filed their joint affidavit-in-opposition sworn by one Shri.Jishnu Barua, Commissioner & Secretary to the Govt. of Assam, Home & Political Department, Dispur, Guwahati. In the said joint affidavit-in-opposition, the respondent No.2-4 are not denying that the husbands of the writ petitioners were killed in the firing incident of the Assam Police personnel on 14.05.2010. Their versions of the said incident on 14.05.2010 is that the Assam Police personnel belong to Lampi Border Outpost had to resort to firing as a mob comprising of local khasi people attacked Nepali people living in the areas without provocations besides attacking the Border Outpost itself. The incident on 14.05.2010 in which the said four persons had been killed took place

at a place called Lower Lampi within the territorial boundary of the State of Assam. There is a boundary disputes between the State of Assam and Meghalaya. This dispute between the States of Assam and Meghalaya is to be resolved/decided by the Supreme Court in exercise of its original jurisdiction under Article 131 of the Constitution of India to the exclusion of all other courts and therefore, the present writ petition is clearly barred by Article 131 of the Constitution of India.

8. It is further stated in their joint affidavit-in-opposition that the two Border Outposts were set up by the Govt. of Assam at Lower Lampi and Upper Lampi respectively under Boko Police Station, District Kamrup within the territorial boundary of Assam. Those Border Police Outposts were manned by personnel of the 4th APBN. On 14.05.2010, the local populace as well as villagers from the neighbouring villages had come to Lower Lampi as it was the weekly market day. At about 12:30 pm a mob comprising of Khasi people suddenly started attacking the Nepali people without any provocations. The volume gradually increased and they attacked any Nepali came across irrespective of age or gender. At the time of incident, some personnel of Lower Lampi Border Outpost who had gone to the market in civilian clothing were also attacked by the mob. In order to save themselves from the fury of the marauding mob, the Nepalis as well as the Border Outpost personnel ran for shelter to the Lower Lampi Border Outpost. The said mob also attacked personnel of Border Outpost with catapults and daos and in the process a number of Police personnel sustained injuries. Having no alternative and faced with imminent threat to their lives as well as to Govt. property, the Police personnel resorted to effective firing. At this, the mob retreated and took up position in the surrounding hillocks overlooking the Border Outpost. The battalion personnel confined themselves to

the Border Outpost until the arrival of the reinforcement from Boko and in the course of the said firing, the said four persons i.e. the husbands of the writ petitioners were killed.

9. The writ petitioner filed rejoinder affidavit wherein, it is stated that the respondents No.2-4 had admitted the killing of the said four persons in the firing incident on 14.05.2010. Further it is stated that the writ petitioner is not seeking for a solution of the border disputes between the two States i.e. State of Assam and Meghalaya in the writ petition. But the only prayer is for awarding suitable monetary compensation for taking away the life of her husband by the Police personnel belonging to the State of Assam on 14.05.2010. It would be more convenient to reproduce para 2 of the rejoinder affidavit which reads as follows:-

“2. That the averments made in paragraphs No.1 & 2 of the affidavit-in-opposition filed by the respondents State of Assam are strongly denied by the deponent and beg to state that there is no disputed facts involved in the instant case. The respondents State of Assam on records and also openly admitted the inhuman killing of four persons including the husband (L) Dennis Nongsiej of the deponent by its Police personnels even at the time of joint meeting held on 15.05.2010 between the Ministers and high ranking officials from both the respondents State of Assam and Meghalaya for which the representatives from the respective Governments agreed and announced to constitute judicial enquiry commission into the matter. Further the deponent is not seeking for a solution of the border disputes between the two respondents States in this writ petition but praying for awarding suitable monetary compensation for unconstitutional taken away the life of her late husband by the police personnels belonging to the respondents State of Assam on 14.05.2010 at Langpih. Therefore, contentions contrary to the above are arbitrary and illegal.”

10. During the pendency of these writ petitions, the State of Meghalaya had paid a sum of Rs.3 lakhs each as ex-gratia for the death of the said four persons and also the State of Assam had also paid a similar amount i.e. Rs. 3

lakhs each as ex-gratia for the death of four persons. Accordingly, each of the writ petitioners had already received a sum of Rs.6 lakhs in total for the death of their husbands.

11. In the above circumstances, this Court is not called for deciding as to whether the writ petitioner is entitled to the relief quoted above except monetary compensation. Therefore, this Court is deciding as to the maintainability of the present writ petition for seeking a direction to the respondents to pay monetary compensation.

12. The Apex Court in ***Babubhai Muljibhai Patel vs. Nandalal Khodidas Barot & Ors: (1974) 2 SCC 706*** (SCC para 10, p.715) held that “ A writ petition under Article 226, it needs to be emphasized, is essentially different from a suit and it would be incorrect to assimilate and incorporate the procedure of a suit into the proceedings of a petition under Article 226. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner’s right of relief, questions of facts may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is no doubt discretionary, but the discretion must be exercised on sound judicial principles. When the petition arises complex questions of fact, which may for their determination require oral evidence to be taken, on that account, the High Court may decline to try a petition.

13. No doubt, the doctrine of “strict liability” has its origin in English Common Law when it was propounded in the celebrated cases of ***Reyland vs.***

Fletcher: (1868) 3 HL 330 that “the rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does so, he is prima facie answerable for the damages which is the natural consequences of its escape. The rule of ‘strict liability’ has been proved and followed in subsequent decisions in England. The said doctrine of ‘strict liability’ gained approval in India.

14. The Constitution Bench of the Apex Court in the celebrated case of ***MC Mehta & Anr vs. Union of India & Ors: (1987) 1 SCC 395*** held that ‘strict liability’ is not subject to any of the exception which operate vis-à-vis the purpose of law of strict liability under the Rules in *Reyland vs. Fletcher’s case (Supra)*. In a case where the 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.

15. The Apex Court in ***Rudul Sah vs State of Bihar: (1983) 4 SCC 141*** had considered the important question as to whether the Apex Court in exercise of its jurisdiction under Article 32 can pass an order for payment of money as compensation for deprivation of fundamental rights; and answered the question, thus, awarding compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principles of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. The

ratio laid down in *Rudul Sah's* case (*Supra*) was also followed in ***Bhim singh vs. State of J & K: (1985) 4 SCC 677.***

16. The Apex Court in ***Nilabati Behera vs. State of Orrisa: (1993) 2 SCC 746*** held that “the public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation damages, in proceedings under Article 32 by (the Supreme) Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on strict liability for contravention of the guaranteed basis and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting ‘compensation’ in proceedings under Articles 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalizing the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making ‘monetary awards’ under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of ‘exemplary damages’ awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort.

17. It is now well settled that award of compensation is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21 of the Constitution of India. This court also considered some of the important cases wherein the Apex Court exercising its jurisdiction under Article 32 awarded compensation, i.e. ***D.K. Basu vs. State of W.B.:*** (1997) 1 SCC 416, ***Sube Singh vs. State of Haryana & Ors:*** (2006) 3 SCC 178.

18. The Apex Court in ***D.K. Basu vs. State of West Bengal:*** (1997) 1 SCC 416 (para 9 and 22 of the SCC) held as follows:-

“9. The importance of affirmed rights of every human being needs no emphasis and, therefore, to deter breaches thereof becomes a sacred duty of the Court, as the custodian and protector of the fundamental and the basic human rights of the citizens. Custodial violence, including torture and death in the lock ups, strikes a blow at the rule of law, which demands that the powers of the executive should not only derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law enforcing officers is a matter of deep concern in a free society. These petitions raise important issues concerning police powers, including whether monetary compensation should be awarded for established infringement of the Fundamental Rights guaranteed by Articles 21 and 22 of the constitution of India. The issues are fundamental.

22. Custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law. The rights inherent in Articles 21 and 22(1) of the Constitution require to be jealously and scrupulously protected. We cannot wish away the problem. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law-breakers, it is bound to breed Issue notice calling upon the respondents to show cause as to why contempt proceedings under Article 215 of the

Constitution of India read with Contempt of court's Act, 1971 should not be initiated as prayed for; or why such further or other orders should for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchanism. No civilized nation can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policemen arrests him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal cord of human rights' jurisprudence. The answer, indeed, has to be an emphatic "N. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law.

19. The Apex Court in **Sube Singh Vs State of Haryana & Ors: (2006)**

3 SCC 178 (para 31, 32 and 34 of the SCC) held as follows:

31. *Though illegal detention and custodial torture were recognized as violations of the fundamental rights of life and liberty guaranteed under Article 21, to begin with, only the following reliefs were being granted in the writ petitions under Article 32 or 226:*

(a) direction to set at liberty the person detained, if the complaint was one of illegal detention.

(b) Direction to the Government concerned to hold an inquiry and take action against the officers responsible for the violation.

(c) If the enquiry or action taken by the department concerned was found to be not satisfactory, to direct an inquiry by an Independent agency, usually the Central Bureau of Investigation.

Award of compensation as a public law remedy for violation of the fundamental rights enshrines 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.

32. *In the Bhagalpur Blinding case (Khatri (II) v State of Bihar : (1981) 1 SCC 627) Bhagwati, J. (as he then was), speaking for the Bench, posed the following question while considering the relief that could be given by a court for violation of constitutional rights guaranteed in Article 21 of the Constitution : (SCC p. 630, para 4)*

“(B)ut if life or personal liberty is violated otherwise than in accordance with such procedure, is the court helpless to grant relief to the person who has suffered such deprivation?”

Why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of precious fundamental right to life and personal liberty.”

The question was expanded in a subsequent order in **Bhagalpur Blinding case (Khatri (IV) v. State of Bihar: (1981) 2 SCC 493)** thus: (SCC p. 504, para 7)

“If an officer of the State acting in his official capacity threatens to deprive a person of his life or personal liberty without the authority of law, can such person not approach the court for injuncting the State from acting through such officer in violation of the fundamental right under Article 21? Can the State urge in defence in such a case that it is not infringing the fundamental right of the petitioner under Article 21, because of the officer who is threatening to do so is acting outside the law and therefore beyond the scope of his authority and hence the State is not responsible for his action? Would this not make a mockery of Article 21 and reduce it to nullity, a mere rope of sand, for, on this view, if the officer is acting according to law there would exconcessionis be no breach of Article 21 and if he is acting without the authority of law, the State would be able to contend that it is not responsible for his action and therefore there is no violation of Article 21. So also if there is any threatened invasion by the State of the fundamental right guaranteed under Article 21, the petitioner who is aggrieved can move the court under Article 32 for a writ injuncting such threatened invasion and if there is any continuing action of the State which is violative of the fundamental right under Article 21, the petitioner can approach the Court under Article 32 and ask for a writ striking down the continuance of such action, but where the action taken by the State has already resulted in breach of the fundamental right under Article 21 by deprivation of some limb of the petitioner, would the petitioner have no remedy under Article 32 for breach of the fundamental right guaranteed to him? Would the court permit itself to become helpless spectator of the violation of the fundamental right of the petitioner by the State and tell the petitioner that though the Constitution has guaranteed the fundamental right to him and has also given him the fundamental right of moving the court for enforcement of his fundamental right, the court cannot give him any relief.”

34. In **Rudul Sah vs. State of Bihar: (1983) 4 SCC 141** the petitioner therein approached this Court under Article 32 of the Constitution alleging that though he was acquitted by the Sessions Court on 03.06.1968, he was released from jail only on 06.10.1982, after 14 years, and sought compensation for his illegal detention. This Court while recognizing that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of courts, civil and criminal raised for consideration the important question as

to whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for payment of money, as compensation for the deprivation of a fundamental right. This Court answered the question thus while awarding compensation: (SCC pp.147-48, para 10).

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

Rudul Shal vs. State of Bihar: (1982) 4 SCC 141 was followed in Bhim Singh v. State of J&K: (1985) 4 SCC 677 and Peoples’ Union for Democratic Rights vs. Police Comnr: (1989) 4 SCC 730.”

20. The Apex Court in ***D.K. Basu vs. State of W.B.:(1997) 1 SCC 416*** (SCC p.439 para 45) held that “The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim- civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the

only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family.

21. From the above discussions, we are of the considered view that the writ petitions of this nature for a direction to pay monetary compensation for the deprivation of the fundamental rights of the citizen and for the death of citizen as a result of Police firing is maintainable inasmuch as a remedy for payment of monetary compensation is available in public law based on strict liability for contravention of the fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort.

22. For deciding the amount of compensation to be paid under the public law realm, we have given our anxious consideration to the age of the said four persons and their earnings which are mentioned in the writ petitions and we are of the considered view that each of the writ petitioners should be paid further amount of Rs.2 lakhs as compensation over and above, the amount of 6 lakhs which are already been received by each of the petitioners as ex-gratia. The respondents No.2 State of Assam, represented by the Secretary and Commissioner (Home) Govt. of Assam, Dispur, Guwahati, Assam and the respondent No.3, the Director General of Police, Govt. of Assam, Dispur, Guwahati, Assam have to pay the said amount of Rs. 2 lakhs each to the writ petitioners within a period of three months from the date of receipt of a certified copy of this judgment and order inasmuch as, the respondents No.2, 3 & 4 had already admitted that the said four persons were killed in the said firing by the Police personnel of the Assam Police. The respondents No.2 & 3 have to deposit the said amount in the Registry of this High Court within the period indicated

above and the Registry in its turn shall release the said amount to the petitioners after proper verification of their identities through their respective counsel. Further, it is made clear that the said amount of compensation are awarded in exercise of public law jurisdiction to meet the ends of justice in addition to other remedies available to the writ petitioners in the ordinary course of law.

23. The writ petitions are allowed to the extent indicated above. Parties are directed to bear their own costs.

JUDGE
(Justice T Nandakumar Singh)

CHIEF JUSTICE
(Justice P.C. Pant)

Lam