

ITEM NO.6

COURT NO.2

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Civil) No(s). 338/2006

SANJAY GUPTA & ORS

Petitioner(s)

VERSUS

STATE OF U.P. & ORS

Respondent(s)

(with appln.(s) under section 340 read with section 195 of the Cr.P.C. against respondent Nos. 10, 11 & 12 and intervention and office report)

Date : 26/04/2017 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Petitioner(s) Mr. Rishi Malhotra, AOR
Ms. Astha Sharma, Adv.

Mr. Prem Malhotra, AOR

For Respondent(s) Mr. Anuvrat Sharma, AOR

Mr. Gunnam Venkateswara Rao, AOR

Mr. Kamlendra Mishra, AOR

Mr. Manoj K. Mishra, AOR

Mr. Sandeep Kumar Dwivedi, Adv.

Mr. Umesh Dubey, Adv.

Mr. S.K. Pathak, Adv.

Mr. P. Parmeswaran, AOR

Dr. Rajeev Dhavan, Sr. Adv.

Mr. Ashutosh Kumar Sharma, Adv,

Mr. Ravi Prakash Mehrotra, AOR

Mr. R. D. Upadhyay, AOR

Mr. Shanti Bhushan, Sr. Adv.

Mr. Rohit Kumar Singh, AOR

Mr. Kartik Seth, Adv.

Mr. Saurabh Trivedi, AOR

Mr. Sunando Raha, Adv.

Mr. Sunil Kumar Jain, AOR

Mr. P.K. Dey, AOR

Mr. Mulkul Singh, Adv.

Mr. M.K. Maroria, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Heard Mr. Rishi Malhotra, learned counsel for the petitioner, Dr. Rajeev Dhavan, learned senior counsel along with Mr. Ravi Prakash Mehrotra, learned counsel for the State of Uttar Pradesh, Mr. Shanti Bhushan, learned senior counsel along Mr. Rohit Kumar Singh, learned counsel appearing for respondent nos.10 to 12 and Mr. P.K. Dey, learned counsel for the Central Bureau of Investigation.

This Court, after hearing learned counsel for the parties, had delivered the judgment on 31.7.2014. In the said judgment, the Court had observed :-

"10. In view of the aforesaid enunciation of law, it is difficult to sustain the report. We are obliged to state here that in course of hearing, we had asked the learned counsel for the parties that in case the report of the Commission would be set aside, the Commission has to proceed after following the provisions of the Act. The said position was acceded to. On a further suggestion being made, learned counsel for the parties had fairly agreed for appointment of another retired Judge as Commission. Learned counsel for the parties had suggested certain names in sealed covers but there was no commonality. Regard being had to the gravity of the situation and the magnitude of the tragedy, on due deliberation we appoint Justice S.B. Sinha, formerly a Judge of this Court, as the one man Commission. It is agreed by the learned counsel for the parties that the witnesses, who were examined by the previous Commission and not cross-examined by respondents 10 to 12, their depositions shall be treated as examination-in-chief and they shall be made available for cross-examination by the respondent. It has also been conceded that the documents which have been marked as exhibits,

unless there is a cavil over the same, they shall be treated as exhibited documents. Mr. Shanti Bhushan, learned senior counsel, submitted that the contractors who were engaged by the organizers, as they were summoned by Justice O.P. Garg Commission, should be summoned by the present Commission. Appreciating the said submission, we think it apposite that the Commission should issue notices to the contractors so that the proceeding under the Act can continue in accordance with the provisions of the Act. Needless to say, they shall have the similar opportunity that has been made available to the organizers. The organizers as well as the contractors would be at liberty to adduce evidence in support of their respective pleas. The Commission shall record the evidence at Meerut and hear the arguments in Delhi. It needs no special emphasis to say that the State shall provide the requisite infrastructure, secretarial staff to the Commission for its smooth functioning and pay the fees of the Commission which shall be fixed by the Commission. The Commission is requested to submit the report by the end of January, 2015."

And thereafter :-

"27. We have referred to aforesaid authorities as Mr. Bhatia has impressed upon us for apportionment at this stage. The principle of apportionment can be thought of only after the Commission's report is received, but, a pregnant one, the victims and the families cannot be left on the lurch. As we find, there has been statutory violations and negligence on the part of the authorities in not taking due care while granting permission and during the exhibition was in progress, we intend to direct payment of compensation, by way of interim measure, by the State. Regard being had to the facts and circumstances of the case and taking note of the fact that some amount has already been given, we direct, as an interim measure, that the legal representatives of the deceased shall be paid Rs.5 lakhs more and the seriously injured persons would be paid a further sum of Rs.2 lakhs each and the persons who have suffered minor injuries would be paid an additional sum of Rs.75,000/-. The said amount shall be deposited before the District Judge, Meerut within two months hence. The learned District Judge may nominate an

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

28. We are absolutely conscious about the fixation of liability, the quantification and their apportionment as has been held in Uphaar Tragedy and Dabwali Fire Tragedy cases. Our direction to the State Government, at present, is only to see that the victims do not remain in a constant state of suffering and despair. We have taken note of the submission of Mr. Shanti Bhushan and observed hereinbefore that we will address the issue of maintainability of the writ petition after submission of the report. Needless to say, in any event the issue of apportionment is kept open. But the organizers cannot be allowed to remain as total strangers in this regard. In course of hearing we had observed that the organizers should deposit certain amount before the Registry of this Court and regard being had to the said observation we direct the respondents 10 to 12 to deposit a sum of Rs.30 lakhs before the Registry of this Court within a period of two months. The said amount shall be kept in a fixed deposit on an interest bearing account. We repeat at the cost of repetition that this arrangement is absolutely interim in nature and without prejudice to the contentions to be raised by the learned Additional Advocate General for the State and Mr. Shanti Bhushan, learned senior counsel for the respondent Nos. 10 to 12.

29. As we have fixed the date i.e. 31.1.2015 for submission of the report by the Commission, let the matter be listed on 11th February, 2015. In case the report is submitted earlier, the registry shall list the matter immediately before the Court."

Thereafter, certain orders were passed for facilitating the learned Commissioner to submit the report. The report has been submitted by Mr. Justice S.B. Sinha on 29.6.2015 to this Court and has already been taken on record.

Having heard learned counsel for the parties, we think it appropriate that a copy of Mr. Justice Sinha's report shall be handed over to Mr. Ravi Prakash Mehrotra, learned counsel for the State so that he can send it to the competent authority of the State which shall apprise this Court about its view on the report of the Commission. The objections filed by the respondent nos.10 to 12 shall also be handed over to Mr. Ravi Prakash Mehrotra. The State, upon perusal of the report of Mr. Justice S.B. Sinha as well as the objections filed thereto by the respondents 10 to 12 shall file an affidavit with regard to its view and the action it intends to take. The exercise in this regard be completed within 10 weeks.

Though we are sending the matter to the State for its view, yet the amount of Rs.30,00,000/- (Rupees thirty lac only) that has been deposited by Respondent Nos. 10 to 12 before this Court shall be sent to the learned District Judge, Meerut for *pro rata* distribution. When we say *pro rata* distribution, it means the amount that has been given by the Central Government and the State Government to the deceased, the amount shall be disbursed in proportion and similarly the amount that has been given to the people who have suffered injuries, grievous or simple, the *pro rata* sum shall be distributed. Needless to say, the disbursement of the amount amongst the legal heirs of the deceased persons and the victims who have suffered injuries shall be subject to final adjudication of the writ petition.

Let the matter be listed on 12.7.2017

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master