MONEY COMPENSATION FOR ADMINISTRATIVE WRONGS THROUGH ARTICLE 32

THREE CASES of the Supreme Court, reported in the November issue of *All India Reporter* 1983, deal with the problem of compensation to be paid to the victims of administrative wrongs but all the three adopt a different approach. In two of the cases the administrative wrong was of such a magnitude that it shocked the conscience of the judges to such an extent that even without caring for the technicalities of the law they awarded compensation to the victims, but took different routes to reach the result. In the third case, however, the court went by the technicalities and denied money relief to the victim.

Two of the cases also reflect the alarming trend discernible for sometime—the executive paying a scant regard for the orders of the highest court.[1] This is the most dangerous development for the Indian polity and if allowed to continue it would destroy the edifice of democracy, leading to chaos and anarchy. Justice E.S. Venkataramiah has rightly said: "Law is the giver of life, sustainer of life and *when ignored will be destroyer of life.*"[2] It is hoped, faintly though, that the eighties would avoid the characterization as the most dangerous decade. This is a remark in passing as the present comment is not concerned with this aspect of the matter.

Let us consider the three cases, though not necessarily in the same sequence as mentioned in the first paragraph.

In *Jiwan Mal Kochar* v. *Union of India*,[3] the petitioner claimed damages against the Union of India, the State of Madhya Pradesh and other officials involved for the loss, humiliation and indignity suffered by him, as they were responsible for certain remarks passed by the courts in his absence. The Supreme Court merely contented itself by passing the order that those remarks "shall not be taken into consideration in any proceeding" against the petitioner. It followed the traditional approach in denying the relief of damages/compensation by saying that the relief prayed for "cannot be granted in this proceeding under Article 32 of the Constitution."

The facts in *Rudul Sah* v. *State of Bihar*[4] reveal "a sordid and disturbing state of affairs" for which the responsibility squarely lay on the administ-

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1. See Rajeev Dhavan, *Contempt of Court and the Press* 93-96 (1982) (Indian Law Institute).

2. From an address delivered by him at the Golden Jubilee Celebrations of the High Court Bar Association at Cuttack on 10 December 1983. Emphasis added.

3. A.I.R. 1983 S.C. 1107. Decided on 9 August 1983. The bench consisted of Chandrachud, C.J., and A. Vardarajan and A.N. Sen JJ.

4. A.I.R. 1983 S. C. 1086. Decided on 1 August 1983. The bench consisted of Y.V. Chandrachud C.J., and A.N. Sen and Ranganath Misra JJ.

ration. The petitioner was acquitted by the court of session, Muzaffarpur, Bihar, in June 1968 but was released from jail only on 16 October 1982, *i.e.*, 14 years after his acquittal. The state authorities failed to place before the court any satisfactory material for his continued detention for such a long period.[5] The question before the Supreme Court was whether it could grant some compensation under article 32 for his wrongful detention, as it had been the policy of the court under the jurisdiction conferred by this article not to pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. Under the traditional approach, the only remedy is to file a suit to recover damages from the government, but the difficulties of a suitor filing a suit for damages are innumerable, particularly when the claim for damages is against the government. In an opinion delivered by Chandrachud C.J., the court felt that if it refuses to pass an order of compensation in favour of the petitioner, "it will be doing merely lip service to his fundamental right to liberty which the State Government has so grossly violated."[6] Such a course will denude the right to life and personal liberty under article 21 of its significant content. The court decided as an interim measure that the state must pay a sum of Rs. 35,000 by way of compensation for the deprivation of his liberty,[7] without precluding the petitioner from bringing a suit to recover appropriate damages from the state and its erring officials. This was a bold departure from the existing legal position. But one should not forget that alarming situations call for new strategies and methods to solve them. In view of the gross violation of the petitioner's personal liberty for as long a period as 14 years, if legal technicalities were made to stand in the way, it would have amounted to surrendering to the lawlessness of the state, showing cold indifference to the personal liberty of the individual, and his immense sufferings, certainly not contemplated by the Constitution makers in independent India. The courts have to mould their tools to deal with such dangerous situations instead of retreating under the shelter of self-imposed limitations evolved by themselves for certain purposes.

5. The government paid scant regard to the court's directive to offer written explanation supported by an affidavit as to why the petitioner was kept in jail for 14 years after his acquittal. To this the court reacted by saying: "The concerned Department of the Government of Bihar could have afforded to show a little more courtesy to this Court and to display a greater awareness of its responsibilities by asking one of its senior officers to file an affidavit in order to explain the callousness which pervades this case." *Id.* at 1088.

6. *Id.* at 1089.

7. In *Oraon* v. *State of Bihar*, decided on 12 August 1983, a bench of the Supreme Court consisting of P.N. Bhagwati and S. Mukharji JJ. awarded compensation of Rs. 15,000 to an undertrial prisoner who was detained in a lunatic asylum for six years after he had been certified as fit for discharge. See *The Hindustan Times* (13 August 1983). The case has not been reported anywhere and the author was unable to obtain a copy of the judgment from the registry of the court.

But perhaps the court in *Rudul Sah* could have achieved the same end by changing its line of attack without in any way compromising with the existing legal rules. This is shown by *Devaki Nandan Prasad* v. *State of Bihar*.[8] In this case two facts were in common with *Rudul Sah*. The case came from Bihar and the situation of state lawlessness was equally alarming. However, the fact situation in the case was different. This case reveals the utter disregard by the functionaries of the government of the court's peremptory directions to the government. In 1971 a Constitution bench of the court presided over by Sikri C.J. had issued the mandamus directing the government to pay to the petitioner his withheld pension. But the government failed to comply with the mandamus for a long period of 12 years "during which abominably long period the mandamus of...[the] Court has been treated as a scrap of paper."[9] Being in a helpless situation, the petitioner had to approach the court a second time. It may be interesting to note that his pension was not paid in spite of the efforts of the then Chief Minister Kedar Pandey. The court, in an opinion delivered by D.A. Desai J., issued the mandamus second time with a warning that "the slighest failure or deviation in the time schedule in carrying out this mandamus will be unquestionably visited with contempt action."[10] The court was also constrained to award exemplary costs of Rs. 25,000 to be paid to the petitioner as the officers of the state had harassed the petitioner which was intentional and deliberate. It is clear that recourse to exemplary costs is to be taken in exceptional situations where the administrative authority acts in a grossly oppressive or arbitrary manner.

Is there any express authority of statutory law which empowers the court to award exemplary costs in such cases? There seems to be none—neither in the Supreme Court rules, nor in the Code of Civil Procedure (C.P.C.) assuming that by analogy the court may apply those provisions to writ petitions.[11] The exemplary costs are nothing but "punitive damages" in substance though not in form. But where technicalities are involved the form does matter to an extent—without these technicalities, of course, becoming a means of oppression. Leaving aside article 32, under which the Supreme Court can issue orders (apart from writs) for the enforcement of fundamental rights, but it does not do so because of self-imposed limitations—there is article 142 which empowers the court to "make such order as is necessary for doing complete justice" in a matter before it. This seems to confer an inherent power on the court to pass an order of "exemplary costs".

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8. A.I.R. 1983 S.C. 1134. Decided on 22 April 1983. The bench consisted of D.A. Desai and Chinnappa Reddy JJ.

9. *Ibid.*

10. *Id.* at 1136.

11. S. 35A of the C.P.C. does speak of compensatory costs. But this is subject to two limitations—it is available if a party in any suit or other proceeding knowingly makes false and vexatious pleas, and the maximum compensatory costs are Rs. 3,000.

There is now the question of percolation of the Supreme Court judgment in *Devaki Nandan*. What about the powers of the subordinate courts and the High Courts to award exemplary costs? Section 151 of the C.P.C. does speak of the inherent powers of the court, but in view of the provisions of section 35A of the Code with regard to compensatory costs, "the inherent power", it seems, does not give authority to the court to award "exemplary costs" beyond what is contained in this section. In fact the subordinate courts do not need the weapon of exemplary costs to meet such situations as presented by *Rudul Sah* and *Devaki Nandan*, as in a suit for damages the court while quantifying damages can certainly take into account the sufferings and harassment of the individual on account of the oppressive or arbitrary action of the functionaries of the state. This leaves us with the question of the power of the High Courts to award exemplary costs. Since section 35A does not apply to writ petitions,[12] but on the basis of analogy the principle contained in section 151 will apply to petitions under article 226, the High Courts, it seems, would have the inherent power to award exemplary costs. But it has to be cautioned that such costs are to be awarded only when the administration acts in a high-handed manner.

Finally, there is the question of quantifying exemplary costs. This is again a difficult question. Both in *Rudul Sah* and *Devaki Nandan* no basis is indicated in quantifying the amounts. Perhaps the judges went by their intuition rather than any rational basis. The omission appears to be due to the fact that this was for the first time the Supreme Court was evolving a new principle, and once it becomes an integral part of our jurisprudence, the task of quantification could be performed by the subsequent cases.

The ultimate result in both *Rudul Sah* and *Devaki Nandan* is commendable and supportable. However, the legal approach in *Devaki Nandan* is to be preferred as it saves existing legal technicalities and to that extent maintains consistency in law.

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12. C.P.C. does not apply to writ proceedings. See explanation to s. 141 of the :ode.

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