

A SABEEHA FAIKAGE & ORS.  
v.  
UNION OF INDIA & ORS.  
(Writ Petition (Civil) No. 505 of 2006)

B OCTOBER 18, 2012  
[A.K. PATNAIK AND SWATANTER KUMAR, JJ.]

C *Constitution of India, 1950 – Articles 32, 21 and 142 –*  
*Recruitment of Indian seafarers – On the vessel of a foreign*  
*country – Through Recruitment and Placement Service*  
*providers – The vessel, comprising of 10 Indian seafarers,*  
*went missing in the high seas on 5.9.2005 – Service providers*  
*informed the Director General of Shipping about the missing*  
*of vessel on 10.10.2005 – The Director General on*  
*19.10.2005 requested the country, to which the vessel*  
*belonged, to carry out the investigation into the casualty –*  
*Indian government communicated to the relatives of the*  
*Indian seafarers on the vessel certifying that they were*  
*presumed to be dead – Writ of mandamus by relatives of the*  
*Indian seafarers on the vessel, seeking investigation to the*  
*disappearance of the seafarers and inquiry to find out on*  
*account of what, Indian Government certified that their*  
*relatives were presumed to be dead – Supreme Court initially*  
*issued notice limited to the question whether Maritime*  
*Administration of India was invited to take part in the marine*  
*casualty investigation as provided in Para 4 of M.S. Notice*  
*26 of 2002 – By subsequent order, the Court called upon the*  
*State to furnish details with regard to Conventions and Codes*  
*relating to marine casualty incidents, and called upon the*  
*service providers to release interim compensation amount at*  
*the rate of 40,000 US Dollars for the Officers and 25,000 US*  
*Dollars for non-officers, to be deposited with the Court – Held:*  
*State was not liable for violation of right to life under Article*  
*21 and hence not liable to pay any compensation – The court*  
*cannot award punitive damages, as there was no inaction with*

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ORS.

*malicious intent, or conscious abuse or intentional doing of some wrongful act or negligence on part of the State – The service providers, being private individuals, protection under Article 21 is not available to them – Further they are not liable to pay compensation because as per Shipping Act of the flag country of the vessel, the liability to pay compensation is on the vessel owner/salvors or their insurers – Even if the service providers are guilty of violation of Rules 2005 having not reported the casualty to the Director General of Shipping within 48 hours, the Court cannot give any direction as their licence stands already withdrawn as per rule 6 of 2005 Rules in relation to some other case – The amount of compensation, already deposited, cannot be said to be inadequate in absence of material to show age, income of seafarers and other relevant factors – The service providers also cannot be directed to pay compensation as per Collective Bargaining Agreements unless it is shown that they were bound by collective Bargaining Agreements – The lacuna in respect of quantum of insurance coverage in 2005 Rules cannot be filled up in exercise of powers under Article 142 because numerous factors are to be taken into consideration in making such law – As the State has indicated setting up of Indian Maritime Causality Investigation Cell and amendment of 2005 Rules, State directed to expedite the proposal – Clarified that compensation received by the relatives of the seafarers is without prejudice to their claim for higher compensation in any appropriate proceedings – Merchant Shipping (Recruitment and Placement of Seafarers) Rules, 2005 – Shipping Act, 2004 of Saint Vincent and Grenadines – ss. 332, 333, 334 and 335.*

*P.D. Shamdasani v. Central Bank of India AIR 1952 SC 59: 1952 SCR 391 – followed.*

*Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy and Ors. AIR 2012 SC 100: 2011 SCR 1 – relied on.*

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A *Lata Wadhwa and Ors. v. State of Bihar and Ors.* (2001) 8 SCC197: 2001 (1) Suppl. SCR 578 – distinguished.

B *Indian Council for Enviro-Legal Action v. Union of India and Ors.*(2011) 8 SCC 161: 2011 (9) SCR 146 ; *Union of India v. Associationfor Democratic Reforms and Anr.* (2002) 5 SCC 294: 2002 (3) SCR 696 ; *Ashok Kumar Gupta and Anr. v. State of U.P. and Ors.* (1997) 5 SCC 201: 1997 (3) SCR 269 ; *Vineet Narain and Ors. v. Union of India and Anr.* (1998) 1 SCC 226: 1997 (6) Suppl. SCR 595 – referred to.

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Case Law Reference:

	2011 (9) SCR 146	Referred to	Para 9
	2002 (3) SCR 696	Referred to	Para 9
D	1997 (3) SCR 269	Referred to	Para 9
	1997 (6) Suppl. SCR 595	Referred to	Para 9
	1952 SCR 391	Followed	Para 12
E	2011 SCR 1	Relied on	Para 14

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 505 of 2006.

Under Article 32 of the Constitution of India.

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H.P. Raval, ASG, Rajeev Dutta, Ashok Bhan, P. Soma Sundaram, R. Krishna Kumar, B. Vinodh Kanna, P.B. Suresh, Vipin Nair (For Temple Law Firm), Rahul Dhawan, Pukhrambam Ramesh Kumar, Asha G. Nair, A. Dev Kumar, S.S. Rawat, D.S. Mahra, David C. Gomes, O.P. Gaggar for the

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Appearing Parties.

The Order of the Court was delivered by

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A.K. PATNAIK, J. 1. The petitioners have lost their husbands/sons in a marine casualty and have filed this writ

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petition under Article 32 of the Constitution complaining of the breach of the fundamental right to life under Article 21 of the Constitution.

2. The facts very briefly are that the husbands of petitioner nos. 1, 2 and 3 and the sons of petitioner nos. 4 and 5 were recruited and placed through respondent nos. 4 and 5 to work as Seafarers on tugboat Jupiter-6 carrying the flag of Saint Vincent and the Grenadines. On 21.08.2005, Jupiter-6 along with its crew comprising 10 Indians and 3 Ukrainians, left Walvis Bay in Namibia and was towing a dead ship Satsung on its way to Alang in Gujarat in India. On 05.09.2005, Jupiter-6 went missing in the high seas. On 10.10.2005, respondent no. 4 informed the Director General of Shipping, Bombay, that it had received a distress signal from Jupiter-6 via its life saving radio equipment on board and a search was conducted from the place where distress signal originated, which was 220 nautical miles South of Port Elizabeth, South Africa, but Jupiter-6 could not be located. Pursuant to reports in a section of the media about the missing of Jupiter-6 since 08.10.2005, the Director General of Shipping, Bombay, issued a press release on 15.10.2005 that the Ministry of Shipping and Road Transport and Highways had alerted the Indian Coast guard which, in turn, has alerted the South African Search and Rescue Region as Jupiter-6 was last sighted near Cape Town in South Africa and that all efforts are being made to trace the crew members. On 25.04.2006, however, the respondent no. 4 sent a letter to the petitioners saying that all efforts to search the missing Jupiter-6 and her 13 crew members have proved unproductive and that the owners of the vessel are coordinating with the underwriters for nomination of local P & I correspondent who will deal with them for requisite compensation package and on getting further information from the local P & I correspondent, the petitioners will be informed of the further follow-up action to process the claims. Finally, the petitioners received the communication dated 17.08.2006 from the Government of India, Ministry of Shipping, Government Shipping Office, Mumbai, certifying that their husbands/sons were presumed to be dead.

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A 3. The petitioners have prayed for *inter alia* a writ of  
mandamus/direction to the respondents to conduct an  
investigation into the mysterious disappearance of their  
husbands/sons who were on board Jupiter-6. The petitioners  
have also prayed for an enquiry to find out what transpired  
B between the Government of India and the Saint Vincent and the  
Grenadines on account of which the Government of India has  
certified that their husbands/sons are presumed to be dead.  
After perusing the Merchant Shipping Notice No.26 of 2002  
dated 10.10.2002 issued by the Government of India, Ministry  
of Shipping, Directorate of the Director General of Shipping,  
C (for short "M.S. Notice 26 of 2002"), this Court issued notice  
on 10.11.2006 in the writ petition to the respondents confined  
to the question as to whether the Maritime Administration of the  
State (India) was invited to take part in the marine casualty  
investigation as provided in para 4 of M.S. Notice 26 of 2002.  
D In response to the notice, a counter affidavit was filed on  
03.01.2008 on behalf of respondent nos. 1, 2 and 3 stating  
therein that they became aware of the casualty for the first time  
when they received a communication dated 10.10.2005 about  
the incident from respondent no.4 and that the administration  
E of the State (India) was not invited to participate in the  
investigation as per para 4 of M.S. Notice 26 of 2002.

F 4. The matter was thereafter heard and on 24.09.2008 this  
Court passed an order, paragraph 4 of which is extracted  
hereinbelow:

G 4. The office of Director General of Shipping has issued  
M.S.Notice No.26 of 2002 dated 10.10.2002 in regard to  
the procedure to be followed in the event of marine  
casualties and incidents involving Indian citizens on board  
of foreign flag vessels. To ascertain whether there is any  
basis for the grievance put forth by the petitioners, we,  
therefore, direct the Directorate to collect, analyze and  
prepare a report with reference to the following information  
and file the same with an affidavit of a responsible officer  
H from the office of the Director General of Shipping.

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(a) How many reports of marine casualties have been received by the Indian Government after 10.10.2002 involving Indian citizens on board of foreign flag vessels and how many are received within 48 hours of the occurrence of the incident as required by the Directorate? A

(b) In how many of such cases reports have been received by the Directorate from the manning agents of the ships in India who recruited the seafarers as required by clause 5(a) and (b) of M.S. Notice dated 10.10.2002? B

(c) In how many cases, Indian Government has been invited to participate in the marine casualty investigation by the lead State or the flag State (as required by paras 5.2, 6.3 and 9.1 of the Code for the Investigation of Marine Casualties and Incidents)? C

(d) In how many cases the Indian Government has sent its comments within 30 days from the date of receiving the draft of the final report from the lead investigating State (as required by clause 12.1 of the Code for the Investigation of Marine Casualties and Incidents) to enable the lead investigating State to incorporate/ amend / modify the final report? D E

(e) In how many cases the Indian Government has made available to the public the final report in regard to marine casualty incidents and, if so, the period and the manner in which it has been so made public (as required by clause 12.3 of the Code for the Investigation of Marine Casualties and Incidents)? F

(f) In how many cases Indian Government has taken action against the recruiting agents/manning agents/managers of the foreign flag ships which employed Indian crew and in what manner it has safeguarded the interest of the Indian crew (particularly in view of its M.S. Notice No.13 of 2005 dated 25.10.2005 of the Directorate which admits the receipt of several complaints about the failure of shipping G H

A companies and recruiting agents of Indian seafarers in reporting marine casualties involving them to the Government and the family members) for non-compliance with its direction?

B The above information, if made available, will enable us to decide whether there is really implementation or compliance of the Conventions and Codes relating to marine casualty incidents. We find that the counter affidavit filed by the Indian Government does not furnish necessary and sufficient details.

C Learned counsel for the petitioner and learned counsel for the ship managers and the learned ASG may also submit their suggestions for proper and better implementation of the existing Conventions and Codes.

D The pendency of this petition or any further investigation in the matter by any agency should not come in the way of either the Insurers/owners/managers of the tug paying compensation to the family members of the missing crew. In fact, learned counsel for respondent No.4 and 5 stated that they have offered interim compensation to the families. The petitioners deny that any such offer was made. The learned counsel for respondents 4 and 5 stated that even now respondents 4 and 5 are willing and ready to make the interim payment without prejudice to the rights and contentions of both the parties and the same will be despatched within 10 days from today and that they will get in touch with the insurers for release of the amounts to the missing crew family members expeditiously. We make it clear that receipt of any amount by the family members of the missing crew may receive any compensation tendered or paid by the managers or insurers will be without prejudice and receipt of such payment will not prejudice their case in any manner.”

H 5. A reading of the para 4 of the order dated 24.09.2008 would show that this Court limited the scope of the writ petition

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to two issues: (i) the safety of Indian citizens on board of foreign flag vessels and (ii) in case such Indian citizens on board a foreign flag vessel lost their lives, the compensation payable to their kith and kin. On the first issue, the Court called upon the Union of India to furnish the necessary and sufficient details with regard to implementation of the Conventions and Codes relating to marine casualty incidents and on the second issue, the Court called upon respondents 4 and 5 to release interim compensation to the family members of the missing crew and clarified that the compensation paid by respondents 4 and 5 or the insurers will be without prejudice to the claim of the family members of the crew.

6. Pursuant to the aforesaid order passed on 24.09.2008, respondents 1, 2 and 3 filed affidavits from time to time referring to the steps taken by the Government of India to ensure the safety and security of seafarers including a chart showing the position of various welfare measures and safety measures relating to seafarers in 2006 and 2011. Pursuant to the order passed on 24.09.2008 of this Court, the respondent nos. 4 and 5 also informed this Court that M/s James Mckintosh Company Pvt. Ltd., Mumbai, have on behalf of the owners of Jupiter-6 offered to pay a compensation at the rate of 40,000 US Dollars for the death of each of the officers on board Jupiter-6 and at the rate of 25,000 US Dollars for the death of each of the non-officers on board Jupiter-6. They further informed this Court that out of the thirteen crew members of Jupiter-6, the three Ukrainian nationals have been paid compensation by the owners of the vessel and the widow of one non-officer Mr. Subhash Das has been paid compensation of 25,000 US Dollars. Accordingly, on 15.11.2010 the Court directed that a sum of 2,85,000 US Dollars for the remaining nine Indian seafarers (four officers and five non-officers) be deposited in Court for payment to their family members without prejudice to their claims for higher compensation. Thereafter, a sum of Rs.1,29,29,386/- equivalent to 2,85,000 US Dollars was deposited by respondents 4 and 5 and by order dated

A 28.03.2011, the Court permitted the legal heirs/representatives of the officers/seamen to lodge their claims for disbursement of compensation with the Registrar (Judicial) who was required to verify the claims and submit a report to this Court with regard to disbursement. Registrar (Judicial) is now in the process of  
 B verifying the claims and disbursing the amounts to the legal heirs of the deceased Indian seafarers.

7. At the hearing of the writ petition, learned counsel for the petitioners Mr. P. Soma Sundaram and Mr. Vipin Nair submitted that under Article 21 of the Constitution every person  
 C has been guaranteed the right to life and this right has been violated in the case of the seafarers on board Jupiter-6. They submitted that though Jupiter-6 went missing in the high sea on 05.09.2005, the respondent no.4 informed the Government about the loss of Jupiter-6 35 days after 05.09.2005, i.e. on  
 D 10.10.2005, and the Government did not conduct any investigation into the incident and issued death certificates on 17.08.2006 saying that the crew members of Jupiter-6 are presumed to be dead. They submitted that under M.S. Notice 26 of 2002 the manning agents who have recruited the  
 E seafarers on board the foreign flag vessel, in the present case respondent nos.4 and 5, were required to inform the Government about the marine casualty within three days of the incident and as the Indian nationals were involved in the marine casualty, the Government of India was required to conduct a  
 F marine casualty investigation forthwith. They submitted that under the Merchant Shipping (Recruitment and Placement of Seafarers) Rules, 2005 (for short 'the Rules 2005) and in particular Rule 3 thereof, the Government was also required to conduct an investigation when a complaint is received against the Recruitment and Placement service providers, but no such  
 G enquiry has been conducted by the Government on the complaint regarding missing of Jupiter-6 despite complaints having been made to the Government. They also referred to the Flag State Report of the Maritime Investigation Branch, Saint Vincent and the Grenadines, Report No.5 of September 2005,  
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which states that disappearance of Jupiter-6 along with her crew remains an enigma. They submitted that this report would go to show that respondent nos. 4 and 5 had been indicted for the incident and yet no action has been taken by the Government against respondent nos. 4 and 5.

8. Learned counsel for the petitioners next submitted that under Rule 4 (3)(a) of the Rules 2005 read with Form-III prescribed by the Rules 2005, it is mandatory for the Recruitment and Placement service providers to provide insurance cover to the seafarers they employ. They submitted that it will be clear from the declaration to be filed by the Recruitment and Placement service providers in Form-III along with the application for licence that they are required to ensure that all seafarers recruited and placed with the ship owners are adequately covered by insurance cover. They submitted that under Rule 3 (1)(j) of the Rules 2005, the Recruitment and Placement service providers also have the legal obligation to inform the seamen's employment office concerned and next of kin of the seafarer of each death or disability of the seafarer within forty-eight hours of such death or disability as well as the details of the insurance coverage of the seafarers but in spite of such legal requirements, respondent nos. 4 and 5 have not disclosed the details of the insurance coverage to the seafarers. They submitted that respondent nos. 4 and 5 are responsible for providing adequate insurance coverage as they had assumed the responsibility for operation of the ship as Managers and were actually the ship owners and were thus liable for the compensation payable to the petitioners. They argued that the insurance amounts of 40,000 US Dollars for each of the officers and 25,000 US Dollars for each of the non-officers deposited by respondent nos. 4 and 5 in this Court are not adequate and the compensation amounts should have been much higher as indicated in the Model Collective Bargaining Agreements for Indian seafarers filed along with the letter dated 02.11.2010 of the Government of India addressed to the Registrar of this Court annexed to the affidavit filed on behalf

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A of respondent nos.1, 2 and 3 on 19.07.2011. They relied on  
 the decision of this Court in *Lata Wadhwa & Ors. v. State of  
 Bihar & Ors.* [(2001) 8 SCC 197] in which this Court, while  
 exercising its powers under Article 32 of the Constitution,  
 directed payment of higher compensation for each of the  
 B claimants on account of deaths in a fire tragedy by Tata Iron  
 and Steel Company Limited. They also relied on the recent  
 decision of this Court in *Municipal Corporation of Delhi v.  
 Association of Victims of Uphaar Tragedy & Ors.* [AIR 2012  
 SC 100] in which this Court enhanced the compensation  
 payable to the claimants on account of death and injury in a fire  
 C tragedy in Uphaar Cinema Hall. They submitted that similar  
 directions for determination of the higher compensation by the  
 Registrar of this Court may be given in this case also.

9. Learned counsel for the petitioners finally submitted that  
 D though Rules 2005 mandates that insurance coverage has to  
 be provided to Indian seafarers, it does not mention the amount  
 for which the insurance coverage is to be done. According to  
 the learned counsel for the petitioners, this lacuna in law in  
 respect of quantum of insurance coverage should be filled up  
 E by this Court by invoking its powers under Article 142 of the  
 Constitution. In support of this submission, they relied on the  
 judgments of this Court in *Indian Council for Enviro-Legal  
 Action v. Union of India & Ors.* [(2011) 8 SCC 161], *Union of  
 India v. Association for Democratic Reforms and Anr.* [(2002)  
 5 SCC 294], *Ashok Kumar Gupta & Anr. v. State of U.P. &  
 Ors.* [(1997) 5 SCC 201] and *Vineet Narain & Ors. v. Union  
 of India & Anr.* [(1998) 1 SCC 226]. They submitted that this  
 F Court should declare that in case of a marine casualty involving  
 Indian citizens, the amount payable in case of death of an officer  
 would be 89,100 plus US Dollars and the amount payable in  
 G case of death of a child of an officer under 18 years would be  
 17,820 US Dollars and the amount payable in case of death  
 of a non-officer would be 82,500 US Dollars plus and the  
 amount payable in case of death of a child of a non-officer  
 under 18 years 16,500 US Dollars.

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10. Mr. Rajeev Dutta, learned counsel appearing for respondent nos.4 and 5, submitted that notice in the writ petition was initially limited to the question as to whether the Maritime Administration of the State (India) was invited to take part in the marine casualty investigation as provided in para 4 of M.S. Notice 26 of 2002, but subsequently by order dated 24.09.2008 of this Court the scope of the enquiry in the writ petition has been widened to include the safety of the seafarers and disbursement of compensation to the seafarers on board Jupiter-6 who have lost their lives. Relying on the counter affidavit filed by respondent no.4, he submitted that respondent no.4 came to know about Jupiter-6 going missing on 08.10.2005 at about 2100 hrs. Indian Standard Time (Saturday) and immediately thereafter, respondent no.4 informed the Director General of Shipping on 10.10.2005 at about 1100 hrs. Indian Standard Time (Monday) about the incident, i.e. within the stipulated time as per M.S. Notice 26 of 2002. He argued that there was, therefore, no delay on the part of respondent no.4 to inform the Government of India about the incident. He submitted that the seafarers, who were employed and placed on board Jupiter-6, were bound by the terms of the employment contract which provided that they will be governed by the law of Flag State and the employment contract did not stipulate for compensation in case of death or disability nor was the employment contract governed by the provisions of the Collective Bargaining Agreements. He submitted that under Section 338 of the Shipping Act, 2004 of Saint Vincent and the Grenadines, the Flag State of Jupiter-6, the limits of liability of the ship owner have been fixed for claims arising on any distinct occasion and the compensation deposited in this Court at the rate of 40,000 US Dollars in case of death of officers and 25,000 US Dollars in case of death of non-officers is in accordance with the provisions of Section 338 of the Shipping Act, 2004 of Saint Vincent and the Grenadines. He vehemently argued that since the aforesaid compensation amount has been deposited for disbursement to the legal heirs of the deceased seafarers, respondent nos.4 and 5 are not liable for any amount

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A of compensation and this Court should not, therefore, direct for any higher amount of compensation than what has been deposited.

11. Mr. H.P. Raval, learned Additional Solicitor General for respondent nos.1, 2 and 3, submitted that the Merchant Shipping Act, 1958 does not apply to seamen on board of a ship or a vessel of a foreign country. He referred to the counter affidavit filed on behalf of respondent nos.1, 2 and 3 on 03.01.2008 and the annexure thereto and submitted that the respondent no.4 by its letter dated 10.10.2005 informed the Director General of Shipping about the Jupiter-6 going missing and on 19.10.2005, the Surveyor Incharge-cum-Deputy Director General of Shipping requested Saint Vincent and the Grenadines to carry out investigation into the casualty as Indian nationals were involved in the casualty. He referred to the additional affidavit filed on behalf of the Union of India in December 2009 in which the various measures taken by the Government of India for the safety of the seafarers have been detailed. He submitted that the Rules 2005 make it obligatory for Recruitment and Placement service providers to declare that all seafarers recruited and placed on board by them would be adequately covered by insurance cover, but the quantum of compensation for which the seafarers are to be insured in case of injury or death have not been indicated therein and this has resulted in variable amounts of compensation being paid to Indian seafarers working in different shipping companies, often resulting in exploitation of categories which are lesser in demand. He also referred to the affidavit filed on behalf of respondent nos.1, 2 and 3 on 20. 09.2011 in which a chart has been extracted to show how the Government of India proposes to improve the welfare and safety measures relating to seafarers over what existed in 2006. He finally submitted that so far as respondent no.4 is concerned its application for registration as Recruitment and Placement service providers has been rejected by the speaking order dated 16.06.2008 of the Director, Seamen's Employment Office, Department of

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Shipping, for default in paying compensation to the crew of a vessel other than Jupiter-6, namely, M.V. RAZZAK, which also went missing. A

12. We have considered the submissions of learned counsel for the parties and we find that in *P.D. Shamdasani v. Central Bank of India* [AIR 1952 SC 59] a Constitution Bench of this Court has held that right to life and personal liberty guaranteed under Article 21 of the Constitution is only available against the State and that Article 21 was not intended to afford protection to life and personal liberty against violation by private individuals. Hence, the main question that we have to really decide in this case is whether the Union of India (not respondent no.4 nor respondent no.5) was liable for violation of the right to life guaranteed under Article 21 of the Constitution and was liable for any compensation to the petitioners for not causing a marine casualty investigation when Jupiter-6 went missing in the high seas. Jupiter-6 was carrying the flag of Saint Vincent and the Grenadines, although it had on its board some Indian seafarers. The Director General of Shipping has issued M.S. Notice 26 of 2002, which lays down the procedure with regard to marine casualty investigation involving Indian citizens on board foreign flag vessels. M.S. Notice 26 of 2002 states that India is a major supplier of manpower to global shipping and in the recent past it has been observed with concern that many of the accidents/ incidents at sea involving Indian citizens on board foreign flag vessels have not been reported to the Indian Maritime Administration. It also states that the Code for Investigation of Marine Casualties and Incidents had been adopted on 27.11.1997 by the IMO Assembly in its 20th Session and the code provides for casualty investigation with the involvement of different interested States. It has been further clarified in para 2 of M.S. Notice 26 of 2002 that this Code applies to either one or more interested States that are substantially interested in marine casualty and the substantially interested States includes the State whose nationals have lost their lives or received serious injuries as a result of the marine B  
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A casualty. It is provided in para 2 of M.S. Notice 26 of 2002 that the onus of conducting the investigation into the marine casualty lies with the flag State or the coastal State within whose territorial sea the casualty has occurred. Para 4 of M.S. Notice 26 of 2002, however, states that for the purpose of effective  
 B casualty investigation, it is imperative that the Maritime Administration of the State, whose nationals are involved in the marine casualty, by virtue of being ship's crew, is required to be invited to take part in the marine casualty investigation, as a substantially interested State, by the State conducting the  
 C investigation. It is also stated in para 4 of M.S. Notice 26 of 2002 that our Maritime Administration should be proactively involved in the investigation and should take part in it as a substantially interested State in order to facilitate effective investigation and proper analysis of all marine casualties involving Indian nationals and for correctly identifying the causes  
 D of said casualties.

13. In the counter affidavit filed on behalf of respondent nos. 1, 2 and 3 on 03.01.2008, it is stated that on receipt of the letter dated 10.10.2005 from respondent no.4, Surveyor Incharge-cum-Deputy Director General of Shipping by letter dated  
 E 19.10.2005 requested Saint Vincent and the Grenadines to carry out the investigation into the casualty and submit the investigation report along with the findings of the casualty as that would alleviate the sufferings of the families of the Indian  
 F crew members. It is further stated in the aforesaid counter affidavit of respondent nos. 1, 2 and 3 that the maritime investigation branch, Saint Vincent and the Grenadines sent a report of the investigation which was carried out in September 2005, but in this report it is stated that no definite conclusion  
 G could be ascertained about the events but there could be following possible scenarios:

- "1. The crew was trying to reconnect the tow again under conditions of significant swell, the tug capsized and sunk.

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Released EPIRB signal 33 days after m.v. "JUPITER 6" disappearance cannot be connected with this scenario. A

2. Piracy/hijacking

Piracy/hijacking is not common in this area. B

Suspicion of Piracy/hijacking remains valid as there was 180 MT of diesel oil on board the tug.

For the time being our conclusion about the Manager's actions regarding this accident are as follows: C

The disappearance of m.v. "Jupiter 6" along with her crew remains an enigma."

Thus, respondent nos. 1, 2 and 3 became aware of the casualty for the first time when they received the communication dated 10.10.2005 about the incident from respondent no.4 and the Surveyor Incharge-cum-Deputy Director General of Shipping by letter dated 19.10.2005 requested Saint Vincent and the Grenadines to carry out the investigation into the casualty as Indian nationals were part of the crew of Jupiter-6. On these facts, it is difficult for us to hold that the Union of India was guilty of violation of the right to life and was liable for compensation to the petitioners. D E

14. In *Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy & Ors.* (supra) cited by the learned counsel for the petitioners, the Delhi High Court had held the theatre owner (licensee), Delhi Vidyut Board (DVB), Municipal Corporation of Delhi (MCD) and the licensing authority liable for the fire incident in Uphaar Cinema Hall and severely compensated the victims of the accident, but this Court held that the MCD and the licensing authority could not be held liable for compensation merely because there has been some inaction in performance of the statutory duties or because the action taken by them is ultimately found to be without authority of law and they would be liable only if there was some malice F G H

A or conscious abuse on their part. This Court, however, held in  
the aforesaid case that DVB was liable because direct  
negligence on its part had been established and this  
negligence was a proximate cause for the injuries to and death  
of the victims. Para 32 of the opinion of R.V. Raveendran, J.,  
B in the aforesaid case is quoted hereinbelow:

C “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  
D 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  
E proximate cause for the injuries to and death of victims. It  
can be said that insofar 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  
F 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  
G 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.  
H 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 *mala fides* 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.”

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K.S. Radhakrishnan, J, while fully endorsing the reasoning as well as the conclusions reached by R.V. Raveendran, J, was also of the view that Constitutional Courts can, in appropriate cases of serious violation of life and liberty of individuals, award punitive damages, but the same generally requires the malicious intent on the side of the wrong doer, i.e., an intentional doing of some wrongful act. In the facts of the present case, as we have noticed, the Surveyor Incharge-cum-Deputy Director General of Shipping has requested the flag State to carry out the investigation into the casualty within nine days of the information received about the casualty and we are not in a position to hold that there was any inaction with malicious intent or conscious abuse or intentional doing of some wrongful act or negligence on the part of respondent nos. 1, 2 and/or 3 which was the proximate cause of the disappearance or death of the Indian seafarers on board Jupiter-6.

15. In *Lata Wadhwa & Ors. v. State of Bihar & Ors.* (supra) the petitioners had filed a writ petition under Article 32 of the Constitution on the ground that right to life under Article 21 of the Constitution had been violated and had prayed for *inter alia* a writ of mandamus or any other writ or direction in prosecution of the Tata Iron and Steel Company and their agents and servants, for the alleged negligence in organizing the function, held on 03.03.1989 in Jamshedpur in which fire accident took place and to direct that appropriate compensation be provided to the victims by the State Government as well as the Company.

A When the writ petition came up before this Court, the senior  
counsel appearing for the company stated before the Court that  
notwithstanding several objections, which have been raised in  
the counter affidavit, the company did not wish to treat the  
litigation as an adverse one and left it to the Court for  
B determining the monetary compensation to be paid after taking  
into consideration all the benefits and facilities already extended  
to the victims or their family members. On the aforesaid  
submission made by the company, the Court directed the  
Registry of the Court to determine the compensation taking into  
C account the enhancement made in the judgment. In the facts of  
the present case, respondent nos. 4 and 5 have deposited in  
this Court the compensation amount made available by the  
insurers of Jupiter-6 and their counsel has not made any  
submission before the Court that they are prepared to pay to  
D the petitioners any enhanced compensation as may be fixed  
by this Court. As a matter of fact, it appears from the provisions  
of the Shipping Act, 2004 of Saint Vincent and the Grenadines  
and, in particular, Sections 332, 333, 334 and 335 thereof that  
the liability for compensation of any claim in respect of life or  
E personal injuries is of the ship owners/salvors or their insurers  
and respondent nos. 4 and 5 are neither the ship owners/salvors  
nor their insurers.

16. As far as respondent nos. 4 and 5 are concerned, they  
are holding a recruitment and placement service licence issued  
F under Rule 4 of the Rules 2005. Rule 3(1)(j) provides that the  
inspecting authority shall carry out an inspection of recruitment  
and placement service so as to ensure that the seamen's  
employment office concerned and next of kin of the seafarer is  
informed of each death or disability of the seafarer within 48  
G hours of such death or disability in Form-V. Rule 6 of the Rules  
2005 further provides that where there is an adverse report of  
the inspecting authority or complaint by a seafarer or otherwise,  
the Director General of Shipping can authorize the Director to  
issue a show cause notice in Form-VII to the recruitment and  
H placement service licence provider requiring it to show cause  
within a period of thirty days from the date of issue of such

notice as to why the licence shall not be suspended or withdrawn and to suspend or withdraw the licence after considering the reply. In this case, the licence of respondent no.4 has already been withdrawn by the speaking order dated 16.06.2008 of the Director General, Seamen's Employment Office, Department of Shipping, for default in paying compensation to crew of vessel M.V. RAZZAK. Hence, even if respondent no.4 has not reported the casualty to the Director General of Shipping, Mumbai, within a period of 48 hours as stipulated in the Rules 2005 as alleged by the petitioners in the writ petition, no further direction can be given by this Court in this case because the licence of respondent no.4 already stands withdrawn.

17. On the quantum of compensation, Rule 4(3) of the Rules 2005, provides that the application for recruitment and placement service licence shall be accompanied by a declaration in Form III and Form III requires the application to *inter alia* make the following declaration:

“(xi) I/We shall ensure that all ships on which seafarers are recruited and placed are covered adequately by the P & I Insurance.”

All that the aforesaid declaration requires is that all ships on which seafarers are recruited and placed are covered adequately by the P & I Insurance. In the present case, Jupiter-6 was a ship bearing the flag of Saint Vincent and the Grenadines and was also covered by insurance and the insurers have deposited Forty Thousand Dollars (40,000 Dollars) for each deceased officer seafarer and Twenty Five Thousand Dollars (25,000 Dollars) for each deceased non-officer seafarer. 40,000 Dollars is equivalent to Rs.18,14,800/- and 25,000 Dollars is equivalent to Rs.11,34,250/- as mentioned in the report of Registrar (J). It is difficult for us to hold that the aforesaid amount of compensation is not adequate in the absence of sufficient materials produced before us to show the age, income of the seafarers and all other factors which are relevant for determination of compensation in the case of death

A of seafarers (officers and non-officers). We cannot also direct  
respondent nos.3 and 4 to pay the compensation as per the  
Collective Bargaining Agreements in the absence of any  
materials placed before the Court to show that the respondent  
nos. 4 and 5 were bound by the Collective Bargaining  
B Agreements.

18. Regarding the submission of the learned counsel for  
the petitioners that this Court should declare law in exercise of  
its powers under Article 142 of the Constitution, we do not think  
that we should venture to do so in this case considering the  
C numerous factors which are to be taken into consideration in  
making the law relating to maritime casualty and the  
compensation payable in case of death of Indian seafarers. We  
have, however, taken note of the additional affidavit filed on  
behalf of respondent nos. 1, 2 and 3 on 19.07.2011 in which  
D the proposal for setting up an Indian Maritime Casualty  
Investigation Cell and for amending the 2005 Rules have been  
indicated. In our view, it will be enough for us to recommend to  
the respondent no.1 to expedite the proposals which have been  
under consideration of the Government and to take immediate  
E steps to amend the Merchant Shipping Act, 1958 and the Rules  
2005 in a manner they deem proper to ensure that the life of  
seafarers employed in different ships in high seas are made  
more secure and safe and in case of loss of life, their kith and  
kin are paid adequate amount of compensation.

F 19. This writ petition is disposed of with the aforesaid  
observations and with a direction to the Registrar (J) to expedite  
the payment of compensation to the legal heirs of the victims  
in accordance with the orders passed in this case as early as  
possible, in any case, within a period of four months from today.  
G We make it clear that the compensation received by the legal  
heirs of the Indian seafarers on board Jupiter-6 will be without  
prejudice to their claim for higher compensation in any  
appropriate proceedings.

H K.K.T.

Writ Petition disposed of.