made by the disciplinary committee of the Bar Council of India at the specific request of the learned counsel appearing for the present appellant at the hearing of the appeal. This was not adequately countered by Miss Thomas, appearing for the appellant. The judgment under appeal shows that Mr. Pramod Swarup appeared for the second complainant when the appeal was heard. His statement must carry weight with us.

15. There is also one more reason why we are not inclined to interfere in this case. The appellant did not choose to appear before the disciplinary committee of the State Bar Council and submit his version of the matter. On the contrary he apparently won over his cousin Chhotey Singh, one of the complainants and offered him as a witness on his behalf. He did not take oath in support of his statement. He did not offer himself for cross-examination. He simply watched the proceedings. Serious allegations were made against the advocate by no less a person than his own near-relation and now he has filed an affidavit in this Court after the matter was heard for some time which we consider worthless. Miss Thomas urged that we must finally dispose of the matter because the appellant is being interviewed for some post in judicial service in the State of Uttar Pradesh and therefore she had moved for early hearing of the appeal. We are not disposed to accede to this request for the simple reason that the Advocates Act was a legislative response to the demands of the legal profession that a defaulting advocate shall be tried not by judges sitting in courts but his own peers. We, therefore do not propose to interpose ourselves as the order under challenge is an order of remand and the appellant can appear before the disciplinary committee of the State Bar Council and make good his defence. We accordingly find no merit in this appeal and the same is dismissed with no order as to costs.

(1983) 4 Supreme Court Cases 141

(BEFORE Y.V. CHANDRACHUD, C.J. AND AMARENDRA NATH SEN AND RANGANATH MISRA, JJ.)

RUDUL SAH . Petitioner ;

Versus

STATE OF BIHAR AND ANOTHER . Respondents.

Writ Petition (Criminal) No. 1387 of 1982†,
decided on August 1, 1983

†Under Article 32 of the Constitution of India

Constitution of India — Articles 32 and 21 — Compensation for illegal detention can be granted under Article 32 without affecting his right to sue for damages — Proper affidavit furnishing satisfactory explanation not filed on behalf of the State — Writ petition allowed and State directed to pay compensation of Rs 30,000 to the petitioner

Constitution of India — Article 32 — Habeas corpus petition — Affidavit of State — Should be filed by senior officers — Complete information supported by relevant data should be furnished — Affidavit filed by Jailor, in response to Supreme Court's show-cause notice, furnishing vague explanation — Inference of unlawful detention can be drawn in the circumstances

The petitioner filed a habeas corpus petition under Article 32 seeking his release from detention in jail on ground that his detention after his release by the Sessions Court on June 3, 1968 was illegal, and also seeking ancillary reliefs viz. compensation for his illegal detention in jail for over 14 years, his medical treatment at government expense and ex gratia payment for his rehabilitation. By the time the petition came up before the court on November 22, 1982, the petitioner was already released from jail on October 16, 1982 and thus the relief regarding his release became infructuous. But the court issued show-cause notice to the State regarding the ancillary reliefs. On April 16, 1983 the Jailor filed an affidavit stating that while acquitting the petitioner the Sessions Judge had ordered that he should be detained in the jail "till further order of the State Government and I.G. (Prisons), Bihar", that he was of unsound mind at the time of passing the said order by the Sessions Court but later on February 18, 1977 the Civil Surgeon certified him to be normal, that the Civil Surgeon's report was communicated to the Law Department on February 21, 1977 and that the petitioner was released on October 16, 1982 in compliance with the Law Department's letter dated October 14, 1982

Held :

Although 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, such as money claims, the Supreme Court in exercise of its jurisdiction under this Article can 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. The petitioner can be relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim But where the court has already found, as in the present case, that the petitioner's prolonged detention in prison after his acquittal was wholly unjustified and illegal, there can be no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of the Supreme Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 will be denuded of its significant content if the power of the Supreme Court were limited to passing orders of release from illegal detention. The only effective method open to the judiciary to prevent violation of that right and secure due compliance with the mandate of Article 21, is to mulct its violators in the payment of monetary compensation. The right to compensation is thus some palliative for the unlawful acts of instrumentalities

of the State. Therefore, the State must repair the damage done by the officers to the petitioner's rights. It may have recourse against these officers.
(Paras 9 and 10)

In the present case the concerned Department of the Government of Bihar has not shown courtesy to the Supreme Court or displayed 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. Moreover, the Jailor's affidavit left much to be desired. It disclosed no data on the basis of which he was adjudged insane, the specific measures taken to cure him of that affliction and whether it took 14 years to set right his mental imbalance. There is nothing to show that the petitioner was found insane on the very date of his acquittal. And, if he was insane on that date, he could not have been tried at all since an insane person cannot enter upon his defence. It is also not clear why the petitioner was not released for over five and a half years after the report of Civil Surgeon and why the Law Department took so many years in advising the petitioner's release. In these circumstances, the conclusion is that the petitioner was not released from the jail upon his acquittal and that he was wrongly reported to be insane. (Paras 6 and 7)

Taking into consideration the great harm done to the petitioner by the Government of Bihar, as an interim measure, the State must pay to the petitioner a further sum of Rs 30,000 in addition to the sum of Rs 5000 already paid by it. But this order will not preclude the petitioner from bringing a suit to recover appropriate damages from the State and its erring officials. (Paras 11 and 12)

The High Court of Patna should itself examine this matter and call for statistical data from the Home Department of the Government of Bihar on the question of unlawful detentions in the State jails in order to be in a position to release prisoners who are in unlawful detention in the jails and to ask the State Government to take steps for their rehabilitation by payment of adequate compensation wherever necessary (Para 7)

Writ petition allowed R-M/6261/CR

Advocates who appeared in this case :

Mrs K. Hingorani, Advocate, for the Petitioner ;
D. Goburdhan, Advocate, for the Respondents.

The Judgment of the Court was delivered by

CHANDRACHUD, C.J.—This writ petition discloses a sordid and disturbing state of affairs. Though the petitioner was acquitted by the Court of Session, Muzaffarpur, Bihar, on June 3, 1968 he was released from the jail on October 16, 1982, that is to say, more than 14 years after he was acquitted. By this habeas corpus petition, the petitioner asks for his release on the ground that his detention in the jail is unlawful. He has also asked for certain ancillary reliefs like rehabilitation, reimbursement of expenses which he may incur for medical treatment and compensation for the illegal incarceration.

2. This petition came up before us on November 22, 1982 when we were informed by Shri Goburdhan, counsel for the State of Bihar, that the petitioner was already released from the jail. The relief sought

by the petitioner for his release thus became infructuous but despite that, we directed that a notice to show cause be issued to the State of Bihar regarding prayers 2, 3 and 4 of the petition. By prayer 2 the petitioner asks for medical treatment at government expense, by prayer 3 he asks for an ex gratia payment for his rehabilitation, while by prayer 4 he asks for compensation for his illegal detention in the jail for over 14 years.

3. We expected a prompt response to the show-cause notice from the Bihar Government at least at this late stage, but they offered no explanation for over four months. The writ petition was listed before us on March 31, 1983 when Shri Goburdhan restated that the petitioner had been already released from the jail. We passed a specific order on that date to the effect that the release of the petitioner cannot be the end of the matter and we called upon the Government of Bihar to submit a written explanation supported by an affidavit as to why the petitioner was kept in the jail for over 14 years after his acquittal. On April 16, 1983, Shri Alakh Deo Singh, Jailor, Muzaffarpur Central Jail, filed an affidavit in pursuance of that order. Shorn of its formal recitals, the affidavit reads thus :

> 2. That the petitioner was received on March 25, 1967 from Hazaribagh Central Jail and was being produced regularly before the Additional Sessions Judge, Muzaffarpur and on August 30, 1968 the learned Judge passed the following order :
>
> The accused is acquitted but he should be detained in prison till further order of the State Government and I.G. (Prisons), Bihar.
>
> (A true copy of the same is attached as Annexure I).
>
> 3. That accused Rudul Sah was of unsound mind at the time of passing the above order. This information was sent to the Law Department in Letter No. 1838 dated May 10, 1974 of the Superintendent, Central Jail, Muzaffarpur through District Magistrate, Muzaffarpur.
>
> 4. That the Civil Surgeon, Muzaffarpur, reported on February 18, 1977 that accused Rudul Sah was normal and this information was communicated to the Law Department on February 21, 1977.
>
> 5. That the petitioner Rudul Sah was treated well in accordance with the rules in the Jail Manual, Bihar, during the period of his detention.
>
> 6. That the petitioner was released on October 16, 1982 in compliance with the letter No. 11637 dated October 14, 1982 of the Law Department.

4. The writ petition came up before us on April 26, 1983 when we adjourned it to the first week of August 1983 since it was not clear either from the affidavit filed by the Jailor or from the order of the learned Additional Sessions Judge, Muzaffarpur, which is annexed to the affidavit as Annexure I, as to what was the basis on which it was stated in the affidavit that the petitioner was of unsound mind or the reason why the learned Additional Sessions Judge directed the detention of the petitioner in jail, until further orders of the State Government and the Inspector General of Prisons.

5. The writ petition has come up for hearing once again before us today. If past experience is any guide, no useful purpose is likely to be served by adjourning the petition in the hope that the State authorities will place before us satisfactory material to explain the continued detention of the petitioner in jail after his acquittal. We apprehend that the present state of affairs, in which we are left to guess whether the petitioner was not released from the prison for the benign reason that he was insane, is not likely to improve in the near future.

6. The Jailor's affidavit leaves much to be desired. It narrates with an air of candidness what is notorious, for example, that the petitioner was not released from the jail upon his acquittal and that he was reported to be insane. But it discloses no data on the basis of which he was adjudged insane, the specific measures taken to cure him of that affliction and, what is most important, whether it took 14 years to set right his mental imbalance. No medical opinion is produced in support of the diagnosis that he was insane nor indeed is any jail record produced to show what kind of medical treatment was prescribed for and administered to him and for how long. The letter (No. 1838) dated May 10, 1974 which, according to paragraph 3 of the affidavit, was sent to the Law Department by the Superintendent of the Central Jail, Muzaffarpur, is not produced before us. There is nothing to show that the petitioner was found insane on the very date of his acquittal. And, if he was insane on the date of acquittal, he could not have been tried at all for the simple reason that an insane person cannot enter upon his defence. Under the Code of Criminal Procedure, insane persons have certain statutory rights in regard to the procedure governing their trial. According to paragraph 4 of the affidavit, the Civil Surgeon, Muzaffarpur, reported on February 18, 1977 that the petitioner was normal and that this information was communicated to the Law Department on February 21, 1977. Why was the petitioner not released for over five and a half years thereafter? It was on October 14, 1982 that the Law Department of the Government of Bihar directed that the petitioner should be released. Why was the Law Department so insensitive to justice?

We are inclined to believe that the story of the petitioner's insanity is an afterthought and is exaggerated out of proportion. If indeed he was insane, at least a skeletal medical record could have been produced to show that he was being treated for insanity. In these circumstances, we are driven to the conclusion that, if at all the petitioner was found insane at any point of time, the insanity must have supervened as a consequence of his unlawful detention in jail. A sense of helplessness and frustration can create despondency and persistent despondency can lead to a kind of mental imbalance.

7. 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. Instead, the Jailor has been made a scapegoat to own up vicariously the dereliction of duty on the part of the higher officers who ought to have known better. This is not an isolated case of its kind and we feel concerned that there is darkness all around in the prison administration of the State of Bihar. The Bhagalpur blindings should have opened the eyes of the prison administration of the State. But that bizarre episode has taught no lesson and has failed to evoke any response in the Augean Stables. Perhaps, a Hercules has to be found who will clean them by diverting two rivers through them, not the holy Ganga though. We hope (and pray) that the higher officials of the State will find time to devote their personal attention to the breakdown of prison administration in the State and rectify the grave injustice which is being perpetrated on helpless persons. The High Court of Patna should itself examine this matter and call for statistical data from the Home Department of the Government of Bihar on the question of unlawful detentions in the State jails. A tabular statement from each jail should be called for, disclosing how many convicts have been in jail for more than 10 year, 12 years, 14 years and for over 16 years. The High Court will then be in a position to release prisoners who are in unlawful detention in the jails and to ask the State Government to take steps for their rehabilitation by payment of adequate compensation wherever necessary.

8. That takes us to the question as to how the grave injustice which has been perpetrated upon the petitioner can be rectified, insofar as it lies within our power to do in the exercise of our writ jurisdiction under Article 32 of the Constitution. That Article confers power on the Supreme Court to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III. The

right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III is "guaranteed", that is to say, the right to move the Supreme Court under Article 32 for the enforcement of any of the rights conferred by Part III of the Constitution is itself a fundamental right.

9. It is true 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. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can 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. The instant case is illustrative of such cases. The petitioner was detained illegally in the prison for over 14 years after his acquittal in a full-dressed trial. He filed a habeas corpus petition in this Court for his release from illegal detention. He obtained that relief, our finding being that his detention in the prison after his acquittal was wholly unjustified. He contends that he is entitled to be compensated for his illegal detention and that we ought to pass an appropriate order for the payment of compensation in this habeas corpus petition itself.

10. We cannot resist this argument. We see no effective answer to it save the stale and sterile objection that the petitioner may, if so advised, file a suit to recover damages from the State Government. Happily, the State's counsel has not raised that objection. The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. 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 infringements

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 civilisation is not to 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.

11. Taking into consideration the great harm done to the petitioner by the Government of Bihar, we are of the opinion that, as an interim measure, the State must pay to the petitioner a further sum of Rs 30,000 (Rupees thirty thousand) in addition to the sum of Rs 5000 (Rupees five thousand) already paid by it. The amount shall be paid within two weeks from today. The Government of Bihar agrees to make the payment though, we must clarify, our order is not based on their consent.

12. This order will not preclude the petitioner from bringing a suit to recover appropriate damages from the State and its erring officials. The order or compensation passed by us is, as we said above, in the nature of a palliative. We cannot leave the petitioner penniless until the end of his suit, the many appeals and the execution proceedings. A full-dressed debate on the nice points of fact and law which takes place leisurely in compensation suits will have to await the filing of such a suit by the poor Rudul Sah. The Leviathan will have liberty to raise those points in that suit. Until then, we hope, there will be no more Rudul Sahs in Bihar or elsewhere.

(1983) 4 Supreme Court Cases 148

(BEFORE Y.V. CHANDRACHUD, C.J. AND A. VARADARAJAN AND A.N. SEN, JJ.)

JIWAN MAL KOCHAR .. Appellant;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Civil Appeal No. 859 (NCS) of 1978†,
decided on August 9, 1983

Labour and Services — Departmental enquiry — Findings of fact of enquiry officer when cannot be interfered with by courts — Writ petition

†Appeal by Special Leave from the Judgment and Order dated May 27, 1975 of the Delhi High Court in L.P.A. No. 119 of 1971