

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WRIT PETITION NO: 9513/2024

Between:

1.G R M JEWELLERS, 72/2, SOUTH LINE, 3 ROADS, SALEM,
TAMILNADU-636009, REP. BY ITS PROPRIETOR C. GOVINDARAJ.

...PETITIONER

AND

1. THE ASSISTANT COMMISSIONER OF STATE TAX, KURNOOL-2 CIRCLE, FLOOR, C.T. COMPLEX, NEAR INDUS SCHOOL, N.H.-7, GOOTY ROAD, KURNOOL - 518002, KUMMOOL DIVISION, ANDHRA PRADESH.
2. THE STATION HOUSE OFFICER, KUMMOOL TALUKA UPS, B. THANDRAPADU VILLAGE, KUMMOOL MANDAL, KUMMOOL DISTRICT, ANDHRA PRADESH, REP. BY THE PUBLIC PROSECUTOR, A.P. HIGH COURT, AMARAVATI.
3. THE STATE OF ANDHRA PRADESH, REP. BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT, REVENUE (CT) DEPARTMENT, A.P. SECRETARIAT BUILDINGS, VELAGAPUDI, GUNTUR DISTRICT, ANDHRA PRADESH.
4. THE STATE OF ANDHRA PRADESH, , REP. BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT, HOME DEPARTMENT, A.P. SECRETARIAT BUILDINGS, VELAGAPUDI, GUNTUR DISTRICT, ANDHRA PRADESH.
5. THE JOINT COMMISSIONER ST, GROUND FLOOR, CT COMPLEX, NEAR INDUS SCHOOL, NH-7, GOOTY ROAD, KUMMOOL-518002.
6. THE CHIEF COMMISSIONER OF STATE TAX, GOVERNMENT OF ANDHRA PRADESH, DOOR NO. 12- 468-4, ADJACENT TO NH-16, SERVICE ROAD, KUNCHANAPALLY, GUNTUR DISTRICT, ANDHRA PRADESH-522501.
7. THE UNION OF INDIA, , REP. BY THE SECRETARY (FINANCE), MINISTRY OF FINANCE, NORTH BLOCK, NEW DELHI - 110001.

...RESPONDENT(S):

Date of Judgment pronounced on : 31-12-2025

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

1. Whether Reporters of Local newspapers
May be allowed to see the judgments? : Yes/No
2. Whether the copies of judgment may be marked
to Law Reporters/Journals: : Yes/No
3. Whether the Lordship wishes to see the fair copy
Of the Judgment? : Yes/No

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

% Dated: 31-12-2025

W.P.No.9513 of 2024

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PRADESH-522501.

7. THE UNION OF INDIA, , REP. BY THE SECRETARY (FINANCE),
MINISTRY OF FINANCE, NORTH BLOCK, NEW DELHI - 110001.

...RESPONDENT(S):

! Counsel for petitioner : Sri Narendra Chetty

^Counsel for Respondents : Smt. Jayanthi

<GIST :

>HEAD NOTE:

? Cases referred:

¹ (1996) 2 SCC 634 (SC)

² (2015) 15 SCC 447 (SC)

³ 1962 SCC Online SC 144 (SC)

⁴ (1995) 5 SCC 659 (SC)

⁵ MANU/SC/0530/1994(SC)

⁶ AIR 1965 SC 1039

⁷ AIR 1989 AP 235 : (1989) 1 AP LJ (HC) 398

⁸ (2023) 4 SCC 1 : 2023 SCC OnLine SC 6 at page 140

APHC010183982024



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3529]

WEDNESDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

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CIRCLE, FLOOR, C.T. COMPLEX, NEAR INDUS SCHOOL, N.H.-7,
GOOTY ROAD, KURNOOL - 518002, KUMMOOL DIVISION, ANDHRA
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2.THE STATION HOUSE OFFICER, KUMMOOL TALUKA UPS, B.
THANDRAPADU VILLAGE, KUMMOOL MANDAL, KUMMOOL DISTRICT,
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3.THE STATE OF ANDHRA PRADESH, REP. BY THE PRINCIPAL
SECRETARY TO THE GOVERNMENT, REVENUE (CT)
DEPARTMENT, A.P. SECRETARIAT BUILDINGS, VELAGAPUDI,
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SECRETARIAT BUILDINGS, VELAGAPUDI, GUNTUR DISTRICT,

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PRADESH-522501.

7.THE UNION OF INDIA, , REP. BY THE SECRETARY (FINANCE),
MINISTRY OF FINANCE, NORTH BLOCK, NEW DELHI - 110001.

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ, Order or Direction, more particularly in the nature of MANDAMUS declaring the action of the Respondents 1 and 2 in returning only part of the Goods and Cash seized and confiscated from the Petitioner vide Assessment Order No. ZH370621OD95651 / Order No. 001/2020, dated 08-03-2021, passed by the First Respondent, though the Petitioner has paid the entire Tax, Penalty and Fine in Lieu of Confiscation as determined in the said Order and though Release Order was issued for the entire goods and cash seized and confiscated, as arbitrary, capricious, without authority or jurisdiction, unfair, contrary to law and illegal and consequently direct the Respondents to return the balance quantity of 44.123 Kgs., of Pure Silver seized from the Petitioner or pay its present market value and pass

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents 1, 3, 5 and 6 to consider and pass appropriate orders on the demand made by the Petitioner through its Legal Notice, dated 21-11-2023 and pass

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased

may be pleased to receive the counter copies on record by allowing the leave petition in the above writ petition and pass

Counsel for the Petitioner:

1.G NARENDRA CHETTY

Counsel for the Respondent(S):

1.GP FOR HOME

2.GP FOR COMMERCIAL TAX (AP)

3.

Date of Reserved	:	26.11.2025
Date of Pronouncement	:	31.12.2025
Date of Upload	:	31.12.2025

The Court made the following Order:
(per Hon'ble Sri Justice R. Raghunandan Rao)

Heard Sri G. Narendra Chetty learned counsel, appearing for the petitioner, Smt. Jayanthi, the learned Government Pleader for Home and the learned Government Pleader of Commercial Tax, appearing for the respondents.

2. The petitioner is doing business of Gold and Silver Bullion Metals and was registered as a registered person under the CGST and SGST Acts, 2017, at Salem, in the State of Tamilnadu. On 27.01.2021, 105 kgs of pure Silver Lumps, being transported from Hyderabad to Salem, were seized, by the officials of the 2nd respondent-police station. Apart from this, cash of Rs.2,05,000/- had also been seized. Subsequently, said silver and cash were ordered to be confiscated and an option of paying a fine of Rs.35 lakhs in lieu of confiscation, was also given to the petitioner. The aforesaid fine, was calculated by taking the rate of silver at Rs.66,667/- per kg. This order of confiscation was challenged by the petitioner, by way of W.P.No.4782 of 2021 before this Court. This Writ Petition came to be disposed of, on 21.06.2021, with liberty to the petitioner to seek appropriate appellate remedy. The appeal filed by the petitioner, came to be dismissed on 24.11.2022 and further appeal to the GST Tribunal was not filed as the GST Tribunal has not yet come into existence. In view of these developments, the petitioner paid a sum of Rs.39,20,000/- which was the tax, penalty and fine levied by the 1st

respondent. This payment was made on 21.03.2023. After such payment, the 1st respondent issued a release order requesting the 2nd respondent to release the goods i.e., 105 kgs Silver and the seized cash to the petitioner.

3. The 2nd respondent, informed the petitioner, when he was approached for release of the silver and cash, that both the silver and cash had been stolen from the custody of the 2nd respondent, by the staff of 2nd respondent, and certain quantities of silver and cash had been subsequently recovered from these persons and were, at that stage, in the possession of the First Class Judicial Magistrate, Special Mobile Court, Kurnool. The petitioner then approached the First Class Magistrate, Kurnool, under the provisions of the Criminal Procedure Code, and the silver lumps and cash of Rs.10 lakhs which had been recovered from the accused persons were directed to be released, in favour of the petitioner. However, the petitioner was given only 81.567 kgs of silver and cash of Rs.10 lakhs, against the quantity of 105 kgs of silver and cash of Rs.2,05,000/- which had been seized. The petitioner has also raised a contention that the silver seized from his son was 100% pure silver while 54.567 kgs of the silver returned to the petitioner contained only 60% silver and 27 kgs was 100% silver. The petitioner, initiated legal notices against the official respondents for being compensated for the lost of silver, on account of the theft carried out in the police station.

4. As the petitioner was not being compensated for the said losses, the petitioner has approached this Court, by way of the present Writ Petition,

seeking a direction to the respondent to return 44.123 kgs of pure silver or to pay market value of such silver. The petitioner calculated the balance silver that has to be returned to the petitioner at 44.123 kgs by fixing the impurity in 54.56 kgs at 40% and calculating the total extent of silver that would be needed to be replaced.

5. Sri G. Narendra Chetty, learned counsel for the petitioner, relying upon the judgments of **Achutrao Haribhau Khodwa & Ors., vs. State of Maharashtra & Ors.**,¹ **Union of India & Ors. vs. Sancheti Food Products Ltd.**,² **State of Rajasthan vs. Vidyawati & Another**,³ **State of Maharashtra & Ors., vs. Kanchanmala Vijaysing Shrike & Ors.**,⁴ and **N. Nagendra Rao & Co. vs. State of Andhra Pradesh**⁵ contends that the silver seized from the son of the petitioner which had been lost by the 2nd respondent, on account of the theft of such silver would have to be compensated.

6. The learned Government Pleader, on the other hand, relies upon the Judgment of the Hon'ble Supreme Court in the case of **Kasturi Lal Ralia Ram Jain vs. State of Uttar Pradesh.**,⁶ to contend that the seizure of silver by the officials of the 2nd respondent was in exercise of the sovereign power of the State and no claim for compensation, on account of any loss suffered on

¹ (1996) 2 SCC 634 (SC)

² (2015) 15 SCC 447 (SC)

³ 1962 SCC Online SC 144 (SC)

⁴ (1995) 5 SCC 659 (SC)

⁵ MANU/SC/0530/1994(SC)

⁶ AIR 1965 SC 1039

account of such exercise of sovereign power, would be maintainable before a Court.

7. In **Kasturi Lal Ralia Ram Jain vs. State of Uttar Pradesh's** case, the partner of a firm was detained in Meerut, along with gold, silver and other goods that he had brought with him to sell in Meerut. However, the gold seized from him was not returned even after he had obtained bail and was entitled for such return of the gold. Thereafter, a suit was filed for damages and interest on account of the lost gold. The appeals filed against the orders of this case, reached the Hon'ble Supreme Court. In the Hon'ble Supreme Court a defense was taken that the arrest of the person and seizure of the gold and other goods was in pursuance of a sovereign power and held that the claim cannot be sustained.

8. In the case of **Challa Ramakrishna Reddy vs. State of A.P.**,⁷ this issue had come up for consideration again. In this case, the prisoner who was in the custody of the police in sub-jail, Koilakuntla was killed within the jail. The sons and wife of the deceased person filed a suit for damages on the ground that the death of the deceased person had occurred on account of the negligence, malfeasance and misfeasance of the State and its subordinates. One of the Issues framed in the suit and subsequent appeal was whether compensation can be denied on the ground that guarding the jail is a sovereign function of the State. The judgment of the Hon'ble Supreme Court

⁷ AIR 1989 AP 235 : (1989) 1 AP LJ (HC) 398

in **Kasturi Lal Ralia Ram Jain vs. State of Uttar Pradesh's** case was also pressed into service in favour of this proposition. A Division Bench, of the erstwhile High Court of Judicature of Andhra Pradesh, had held that though the principle laid down in the said judgment would be binding, the same would not come into play when there is violation of Article 21 of the Constitution of India which guarantees every citizen the right to life and liberty. The said observations are extracted below:

17. So far neither the Legislature of this State nor the Parliament has made any law as contemplated by clause (1) of Art. 300. The position today, therefore, is that the State Government would be liable for damages in this case if such a suit could be filed against the corresponding Province which inevitably brings in the previous enactments on the subject, and the dual nature of the East India Company. In short, the position obtaining today, in the words of the Supreme Court in *Kasturi Lal v. State of U.P.* (4) AIR 1965 SC 1039 is "(there is) a material distinction between acts committed by the servants employed by the State where such acts are referable to the exercise of sovereign powers delegated to public servants and acts committed by public servants which are not referable to the delegation of any sovereign powers. If a tortious act is committed by a public servant and it gives rise to a claim for damages, the question to ask is; was the tortious act committed by the public servant in discharge of statutory functions which are referable to and ultimately based on, the delegation of the sovereign powers of the State to such public servant ? If the answer is in the affirmative, the action for damages for loss caused by such tortious act will not lie. On the other hand, if the tortious act has been committed by a public servant in discharge of duties assigned to him not by virtue of the delegation of any sovereign power, an action for damages would lie. The act of the public servant committed by him during the course of his employment

is in this category of cases, an act of a servant who might have been employed by a private individual for the same purpose....". The Court emphasized the distinction between 'sovereign functions' and 'non-sovereign functions' particularly at the present time when in pursuit of the welfare ideal, the Central and State Governments are entering into many commercial and other undertakings and activities "which have no relation with the traditional concept of governmental activities in which the exercise of sovereign power is involved". The Court observed that it is necessary to limit the area of these affairs of the State in relation to the exercise of sovereign power, so that if acts are committed by Government employees in relation to other activities which may be conveniently described as non-governmental or non-sovereign citizens who have a cause of action for damages should not be precluded from making their claim against the State. It is equally relevant to notice the facts of this case. One Ralia Ram, a partner of the appellant firm was taken into custody by three Police Constables while he was passing through a street in Meerut. His belongings were searched, he was taken to Police Station and detained there. Certain quantity of gold and silver was seized from him and kept in police custody. On the next day he was released and though the other articles seized from him were returned to him the gold seized from him was not returned. A suit was accordingly instituted for recovery of the said gold or its value. The defence was that the gold seized from Ralia Ram was kept in the Police Malkhana under the charge of the Head Constable who misappropriated the same and fled to Pakistan. It was pleaded that even if it is found that the Police Officers were negligent in discharge of their duties, the State could not be held liable for the loss resulting from such negligence inasmuch as the negligence on the part of the police officers occurred while they were discharging their statutory duties, relatable to sovereign functions of the State. *The Supreme Court found that the police officers were negligent but held that the State is not liable inasmuch as the power to arrest a person to search him and to seize the property found with him is a power conferred upon*

the officers by statute, and that the said power can be properly characterized as a sovereign power Having so held, the Supreme Court observed that it is high time the Legislatures in India seriously consider whether they should not pass legislative enactments to regulate and control their claim for immunity in cases like the one before the Supreme Court on the same lines as has been done in England by the Crown Proceedings Act 1947. We note with regret that to this day no such Act has been made though more than 23 years have passed by since the said observations were made by the Supreme Court.

20. Now there can be little doubt that the deceased and P.W.1 were arrested by the police officers of the State in the course of investigation into an alleged crime, and they were detained in jail under the orders of a Magistrate. All this is referable to the sovereign power, or function, as may be called, of the State. The obligation to ensure the safety of the prisoners, enjoined upon the State by Rule 48 of the Madras Prisons Rules, is incidental to the said sovereign power. If we apply the principle of *Kasturi Lal* (supra), it is evident that the suit must fail notwithstanding our finding of negligence on the part of prison officials. Indeed, that is what the trial Court has done. The question, however, arises whether this immunity of the State overrides the right to life and liberty guaranteed by Art. 21 of the Constitution? In short, whether it is open to the State to deprive a citizen of his life and liberty otherwise than in accordance with the procedure prescribed by law and yet claim an immunity on the ground that the said deprivation of life occurred while the officers of the State were exercising the sovereign power of the State?

28. It is contended by the learned Addl. Advocate-General, appearing for the respondents-defendants, that in the three cases before the Supreme Court, referred to above, the State did not put forward the defence of sovereign functions, and that, moreover, they were cases of writ petitions under Article 32 of the Constitution, which

clothes the Supreme Court with very wide powers. He submitted that what can be done by the Supreme Court under Art. 32 cannot be done by a Civil Court, We are not impressed by this argument. It is true that in none of the three cases was the defence of sovereign functions pleaded. We must presume that the said defence was advisedly not put forward. Moreover, we see no distinction in principle. We are equally of the view that the concept of immunity in respect of sovereign functions, implicit in clause (1) of Art. 300, cannot be recognized as an exception to Article 21. The fundamental rights are sacrosanct. They have been variously described as basic, inalienable, and indefeasible. The founding-fathers incorporated the exceptions in the Articles themselves - wherever they were found advisable, or appropriate. No such exception has been incorporated in Article 21, and we are not prepared to read the archaic concept of immunity of sovereign functions, incorporated in Art. 300(1), as an exception to Art. 21. True it is that the Constitution must be read as an integrated whole; but, since the right guaranteed by Art. 21 is too fundamental and basic to admit of any compromise, we are not prepared to read any exception into it by a process of interpretation. We must presume that, if the founding-fathers intended to provide any exception, they would have said so specifically in Part-III itself.

29. We are perfectly aware that the principle adumbrated herein opens up a new vista for individual claims for damages against the State. It may add to the present, day difficult financial position of the State. But we are of the opinion that such a remedy is not only salutary but essential for. Good Government and for ensuring Rule of law. The officials of the Government act in the name of, and for and on behalf of the State it is but just that State is made liable for their acts and defaults. It is no answer to say that the aggrieved person, can proceed against the official concerned that is neither a practicable nor efficacious remedy, Firstly, the official does not act in his individual capacity, but as an agent or representative of the State. A civil remedy against an official may very often be a case of chasing

a mirage and a criminal action is no solace. Just as it is necessary to check 'evasion and violation of law on the part of citizens, it is equally necessary to ensure that the State officials do not act with gross negligence and do not abuse their powers, to the detriment of life and liberty of the citizens. Both are equally important. State power does not confer a licence upon its officials to act contrary to law, or to grossly negligent in their duties, to the detriment of life and liberty of the citizens- So long as the officials act fairly and with reasonable care, no action can lie. Only where they abuse their powers, act with gross negligence, resulting in deprivation of life and liberty of the citizens, does the State become liable for compensation.

9. There have been a number of judgments, of the Hon'ble Supreme Court, wherein the concept of "Constitutional tort" was invoked and compensation had been granted, even in cases where the interests of private persons had been affected. A Constitution bench, of the Hon'be Supreme Court in **Kaushal Kishor v. State of U.P.**,⁸ had held as follows:

160. The judicial journey actually started off on a right note with the decision in *State of Bihar v. Abdul Majid* [*State of Bihar v. Abdul Majid*, (1954) 1 SCC 177 : AIR 1954 SC 245], where a government servant who was dismissed but later reinstated, filed a suit for recovery of arrears of salary. Though the State raised a defence on the basis of the doctrine of pleasure, this Court rejected the same on the ground that the said doctrine based on the Latin phrase "*durante bene placito*" (during pleasure) has no application in India. This decision was followed in *State of Rajasthan v. Vidhyawati* [*State of Rajasthan v. Vidhyawati*, AIR 1962 SC 933], which involved a claim for compensation by the widow of a person who was fatally knocked down by a jeep owned and maintained by the State. When sovereign immunity was pleaded, this Court observed in *Vidhyawati* [*State of*

⁸ (2023) 4 SCC 1 : 2023 SCC OnLine SC 6 at page 140

Rajasthan v. Vidhyawati, AIR 1962 SC 933] : (*Vidhyawati case* [*State of Rajasthan v. Vidhyawati*, AIR 1962 SC 933] , AIR p. 940, para 15)

“15. ... when the rule of immunity in favour of the Crown, based on common law in the United Kingdom has disappeared from the land of its birth, there is no legal warrant for holding that it has any validity in this country, particularly after the Constitution.”

(emphasis supplied)

161. On the question of the liability of the State, for the tortious acts of its servants, this Court opined in *Vidhyawati* [*State of Rajasthan v. Vidhyawati*, AIR 1962 SC 933] , as follows : (*Vidhyawati case* [*State of Rajasthan v. Vidhyawati*, AIR 1962 SC 933] , AIR p. 938, para 10)

“10. This case also meets the second branch of the argument that the State cannot be liable for the tortious acts of its servants, when such servants are engaged on an activity connected with the affairs of the State. In this connection it has to be remembered that under the Constitution we have established a welfare State, whose functions are not confined only to maintaining law and order, but extend to engaging in all activities including industry, public transport, State trading, to name only a few of them.”

162. But despite the decisions in *Abdul Majid* [*State of Bihar v. Abdul Majid*, (1954) 1 SCC 177 : AIR 1954 SC 245] and *Vidhyawati* [*State of Rajasthan v. Vidhyawati*, AIR 1962 SC 933] , this Court fell into a slippery slope in *Kasturi Lal* [*Kasturi Lal Ralia Ram Jain v. State of U.P.*, AIR 1965 SC 1039] . It was a case where the partner of a firm dealing in bullion and other goods was arrested and detained in police custody and the gold and silver that he was carrying was seized by the police. When he was released later, the silver was returned but the Head Constable who effected the arrest misappropriated the gold and fled away to Pakistan in October 1947. The suit filed by Kasturi Lal for recovery of the value of the gold, was resisted on the ground that this was not a case of negligence of the servants of the State and that even if negligence

was held proved against the police officers the State could not be held liable. While upholding the contention of the State, this Court said : (AIR p. 1046, para 21)

“21. ... If a tortious act is committed by a public servant and it gives rise to a claim for damages, the question to ask is : was the tortious act committed by the public servant in discharge of statutory functions which are referable to, and ultimately based on, the delegation of the sovereign powers of the State to such public servant? If the answer is in the affirmative, the action for damages for loss caused by such tortious act will not lie. On the other hand, if the tortious act has been committed by a public servant in discharge of duties assigned to him not by virtue of the delegation of any sovereign power, an action for damages would lie. The act of the public servant committed by him during the course of his employment is in this category of cases, an act of a servant who might have been employed by a private individual for the same purpose.”

163. In fact, it was suggested by this Court in *Kasturi Lal [Kasturi Lal Ralia Ram Jain v. State of U.P., AIR 1965 SC 1039]* that the Legislatures in India should seriously consider making legislative enactments to regulate and control their claim for immunity. Before proceeding further with the journey in the chronological sequence, it must be mentioned that the decision in *Kasturi Lal [Kasturi Lal Ralia Ram Jain v. State of U.P., AIR 1965 SC 1039]* was diluted to some extent after nearly 30 years which we shall take note of at the appropriate stage.

166. After *Rudul Sah [Rudul Sah v. State of Bihar, (1983) 4 SCC 141 : 1983 SCC (Cri) 798]*, there was no looking back. Instead of providing elaborate details, we think it is sufficient to provide in a tabular form, details of the cases where this Court awarded compensation in public law, invoking the principle of constitutional tort, either expressly or impliedly.

Sl. No.	Case law	Decision
1.	Sebastian M. Hongray v. Union of India [Sebastian M. Hongray v. Union of India, (1984) 3 SCC 82 : 1984 SCC (Cri) 407]	<ul style="list-style-type: none"> • Two men who were taken for questioning by 21st Sikh Regiment never returned home. • When a writ of habeas corpus was filed by a JNU student, this Court directed that the missing men be produced before the Court. This order could not be complied with. • Court awarded compensation of Rs 1 lakh to the wives of the missing men on account of mental agony suffered by them.
2.	Bhim Singh v. State of J&K [Bhim Singh v. State of J&K, (1985) 4 SCC 677 : 1986 SCC (Cri) 47]	<ul style="list-style-type: none"> • An MLA was illegally arrested and detained to prevent him from attending a session of the Jammu & Kashmir State Legislative Assembly. • FIR was registered under Section 153-AIPC and order of remand was obtained from the Magistrate without producing the MLA before Court. • In a writ for habeas corpus filed by his wife, this Court observed that there had been a violation of his fundamental rights under Articles 21 and 22(2) of the Constitution and accordingly directed the State of Jammu and Kashmir to pay Bhim Singh a sum of Rs 50,000 as compensation.
3.	People's Union for Democratic Rights v. State of Bihar [People's Union for Democratic Rights v. State of Bihar, (1987) 1 SCC 265 : 1987 SCC (Cri) 58]	<ul style="list-style-type: none"> • A public interest litigation was filed against the illegal shooting by police officers against members of a peaceful assembly. • Several were injured and 21 died (including children) due to this incident. • While the State had paid a compensation of Rs 10,000 each to heirs of the deceased, this Court found it insufficient and directed payment of Rs 20,000 to dependants of each deceased and Rs 5000 to each injured person.
4.	Saheli v. Commr. of Police [Saheli v. Commr. of Police, (1990) 1 SCC 422 : 1990 SCC (Cri) 145]	<ul style="list-style-type: none"> • Two women were forcefully evicted from their homes. The landlord was aided by the SHO and SI in the assault that led to demise of the nine-year-old son of one of the women. • This Court awarded compensation of Rs 75,000 to the mother of the deceased child.
5.	Supreme Court Legal Aid Committee v. State of Bihar [Supreme Court Legal Aid Committee v. State of	<ul style="list-style-type: none"> • A person injured in a train robbery, was taken to the nearest hospital by the police by tying him to the footboard of a vehicle. This led to his death.

	Bihar, (1991) 3 SCC 482 : 1991 SCC (Cri) 639]	<ul style="list-style-type: none"> • This Court observed that had timely care been given to the victim he might have been saved. • The State of Bihar was directed to pay Rs 20,000 to the legal heirs of the deceased.
6.	Nilabati Behera v. State of Orissa [Nilabati Behera v. State of Orissa, (1993) 2 SCC 746 : 1993 SCC (Cri) 527]	<ul style="list-style-type: none"> • Petitioner was a mother whose son had died in police custody. • This Court directed the State to pay compensation of Rs 1.5 lakhs.
7.	Arvinder Singh Bagga v. State of U.P. [Arvinder Singh Bagga v. State of U.P., (1994) 6 SCC 565 : 1995 SCC (Cri) 29]	<ul style="list-style-type: none"> • A married woman was detained and physically assaulted in a police station with a view to coerce her to implicate her husband and his family in a case of abduction and forcible marriage. • After taking her statement, her husband and his family were also harassed by the police. • This Court observed that the police had exhibited high-handedness and uncivilised behaviour and awarded the woman a compensation of Rs 10,000 and members of her family Rs 5000 each.
8.	N. Nagendra Rao & Co. v. State of A.P. [N. Nagendra Rao & Co. v. State of A.P., (1994) 6 SCC 205 : 1994 SCC (Cri) 1609]	<ul style="list-style-type: none"> • Appellant was in the business of food grains and fertiliser. On an inspection by the authorities concerned, his stocks were seized. • As was the practice, the food grains in custody were sold and the proceeds deposited in the Treasury, but the fertilisers were not dealt with in the same manner causing great loss to the petitioner. • In a suit for negligence and misfeasance of public authorities, this Court further developed the concept of constitutional tort and limited the scope of sovereign immunity laid down in <i>Kasturi Lal [Kasturi Lal Ralia Ram Jain v. State of U.P., AIR 1965 SC 1039]</i>. The State was held vicariously liable for the actions of the authorities.
9.	Inder Singh v. State of Punjab [Inder Singh v. State of Punjab, (1995) 3 SCC 702 : 1995 SCC (Cri) 586 : 1995 SCC (L&S) 857]	<ul style="list-style-type: none"> • A Deputy Superintendent of Police along with his subordinates abducted and killed seven persons due to personal vengeance. • This Court ordered an inquiry by CBI. After CBI filed a report, this Court directed the State to pay Rs 1.5 lakhs to the legal heirs (to be recovered from guilty policemen later) and State to pay costs quantified at Rs 25,000.
10.	Paschim Banga Khet Mazdoor Samity v. State of	<ul style="list-style-type: none"> • The callous attitude on the part of the medical authorities at various Government-run hospitals

	W.B. [Paschim Banga Khet Mazdoor Samity v. State of W.B., (1996) 4 SCC 37]	in Calcutta in providing treatment to a train accident victim was highlighted in this case. • This Court directed the State to pay Rs 25,000 for the denial of its constitutional obligations of care.
11.	D.K. Basu v. State of W.B. [D.K. Basu v. State of W.B., (1997) 1 SCC 416 : 1997 SCC (Cri) 92]	• In a public interest litigation involving incidents of custodial violence in West Bengal, this Court issued guidelines for law enforcement agencies to follow when arresting and detaining any person. • This Court also discussed the award of compensation as a remedy for violation of fundamental rights as a punitive measure against State action.
12.	People's Union for Civil Liberties v. Union of India [People's Union for Civil Liberties v. Union of India, (1997) 3 SCC 433 : 1997 SCC (Cri) 434]	• Two persons alleged to be terrorists were killed by the police in a false encounter. • This Court directed the State of Manipur to pay Rs 1 lakh to the family of the deceased and Rs 10,000 to PUCL for pursuing the case for many years.
13.	MCD v. Uphaar Tragedy Victims Assn. [MCD v. Uphaar Tragedy Victims Assn., (2011) 14 SCC 481 : (2013) 1 SCC (Civ) 897 : (2013) 2 SCC (Cri) 555 : (2013) 1 SCC (L&S) 305]	• A fire in a cinema hall resulted in injury to over 100 persons and death of 59 cinemagoers. • The fire was caused by a transformer installed by Delhi Vidyut Board (DVB). • HC had found the Municipal Corporation, Delhi Police, and the DVB responsible for the accident. • This Court held only DVB and theatre owner liable to pay compensation in the ratio of 15 : 85. • While doing so, this Court dealt extensively with the concept of constitutional tort.

167. It will be clear from the decisions listed in the Table above that this Court and the High Courts have been consistent in invoking constitutional tort whenever an act of omission and commission on the part of a public functionary, including a Minister, caused harm or loss. But as rightly pointed out by the learned Attorney General in his note, the matter pre-eminently deserves a proper legal framework so that the principles and procedure are coherently set out without leaving the matter open ended or vague. In fact, the First Report of the Law Commission

submitted a draft Bill way back in 1956. This Court recommended a legislative measure in *Kasturi Lal [Kasturi Lal Ralia Ram Jain v. State of U.P., AIR 1965 SC 1039]* in 1965 and a Bill called the Government (Liability in Torts) Bill was introduced in 1967. But nothing happened in the past 55 years. In such circumstances, the courts cannot turn a blind eye but may have to imaginatively fashion the remedy to be provided to persons who suffer injury or loss, without turning them away on the ground that there is no proper legal framework.

10. In the present case, the loss of silver can only be attributable to the negligence of the respondents as the silver was stolen from the police station itself. The loss of such a large amount of silver and cash would absolutely impinge on the right of the petitioner, under Article 19(1)(g) to carry on his trade or business. In such circumstances, the petitioner is entitled to compensation for the loss suffered by him on account of the sheer negligence on the part of the officials of the State in protecting the property which has been seized from the son of the deceased.

11. The undisputed facts are that 105 kgs of pure silver was seized from the son of the petitioner along with cash of Rs.2,50,000/- weighting 81.567 kgs and cash of Rs.10 lakhs was handed over to the petitioner. The contention of the petitioner that only 27 kgs out of the aforesaid 81.567 kgs was pure silver and the remaining 54.567 kgs contained only 60% silver. It would not be possible for this Court to go into the question of the purity of the silver, handed over to the petitioner. There is also no material, on the basis of which this Court would be able to ascertain the impurity contained in 54.567

kgs of silver lumps. In the circumstances, this Court can only take into account the short fall of silver as the differences between 105 kgs of silver seized from the petitioner and 81.567 kgs of silver returned to the petitioner. This would mean there was a short fall of 23.433 kgs of silver. This Court would however leave it open to the petitioner, to demonstrate his claim that 54.567 kgs of the silver returned to him was impure silver consisting of only 60% silver with balance being made up of copper/nickel.

12. The cash of Rs.2,05,000/- has been seized from the son of the petitioner and cash of Rs.10 lakhs has been returned to the petitioner. It is stated that the aforesaid Rs.10 lakhs was the cash recovered from the persons who had stolen the silver and cash, as these persons had sold away some part of the silver and some of the proceeds of such sale, were recovered from these accused persons.

13. In the circumstances, this writ petition is allowed, with the following directions:

1. The petitioner is entitled to a return of 23.44 kgs of pure silver.
2. The value of silver, as on date, shall be taken for purposes of supply of such silver to the petitioner.
3. The additional cash of Rs. 7,95,000/- shall be adjusted against the return of 23.44 kgs, by taking the value of Silver, as on today.

4. The silver that remains to be given to the petitioner, after such adjustment, shall be given by the respondents, either in the form of pure silver or by payment of cash, in lieu of silver. For such purpose the value of pure silver as on today shall be taken.
5. The aforesaid value will be applied if the silver is returned within three weeks from today.
6. If there is any delay in the return of the silver, beyond three weeks from today, the value of pure silver, on the date of return, shall be taken.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.

R. RAGHUNANDAN RAO, J

T.C.D. SEKHAR, J

RJS

THE HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO
&
THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION No: 9513 of 2024

(per Hon'ble Sri Justice R.Raghunandan Rao)

31.12.2025

RJS

