

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

OWP No. 554/2009

Reserved on: 05.03.2026
Pronounced on: 24.03.2026
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Whether the operative part or full judgment is pronounced: **Full**

**Arjun Kumar Sharma, Aged 35 years,
S/o Sh. Dharam Chand,
R/o Village Pakhlai,
Tehsil & District Udhampur**

.... Petitioner/Appellant(s)

Through:- Mr. Ankush Manhas, Advocate.

Vs.

1. **State of J&K,
Through Principal Secretary
to Government,
Power Development Department,
Jammu, J&K**
2. **The Managing Director,
Power Development Department,
Jammu, J&K**
3. **The Executive Engineer,
Generation Division, PDC,
Udhampur, J&K**
4. **Deputy Commissioner, Udhampur**
5. **Tehsildar, Udhampur**

.....Respondent(s)

Through:- Mr. Raman Sharma, AAG.

CORAM: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE
JUDGMENT

Prayer:

1. Petitioner, through the medium of the instant writ petition, has sought the following relief:

“Mandamus commanding the respondents to make payment of compensation of Rs. 15,00,000/- (Fifteen Lakh Rupees) arising out of the unfortunate death of three infants of the petitioner viz. Anu Devi (8 years), Preeti Devi (6 years) and Sunil (3 years), by drowning in unfenced forebay tank of the Chenani Hydrel Project at Village Pakhlai, Tehsil and District Udhampur, on 09.06.2008, only because

of the lapses of respondents 2 and 4, with further directions to the respondents to make proper safety measures for the public at large inhabiting the area so as to prevent any future untoward incidents.”

Brief Facts:

2. The present writ petition has been filed by the petitioner (father of the deceased children) invoking the extraordinary jurisdiction of this Court seeking compensation for the unfortunate death of his three minor children who allegedly drowned in the forebay tank of the Chenani Hydrel Project situated in Village Pakhlai, District Udhampur.

3. It is the specific case of the petitioner that the said forebay tank was left unfenced and without adequate protective measures despite being a hazardous structure with steep plastered slopes, thereby posing a constant threat to the inhabitants of the surrounding area. It is alleged that due to the negligence and failure of the authorities of the Chenani Hydrel Project to provide necessary safety measures, the petitioner's three minor children accidentally slipped into the tank on 09.06.2008 and drowned.

4. The petitioner contends that the incident occurred solely due to the failure of the authorities to secure the reservoir area by adequate fencing or protective barriers and therefore, seeks compensation from the respondents for the loss of three innocent lives.

5. The respondents have opposed the petition on the ground that no negligence can be attributed to them and that the incident occurred due to lack of supervision on the part of the parents of the deceased children. It is further contended that the writ petition is not maintainable as it involves disputed questions of fact which ought to be adjudicated in appropriate civil proceedings.

Submissions on behalf of the petitioner:

6. Learned counsel for the petitioner submitted that the petitioner belongs to a poor family residing in Village Pakhlai and survives primarily on agricultural activities. It is submitted that the income derived from cultivation of wheat and maize is barely sufficient to sustain the family for a limited period during the year and for the remaining months, the petitioner is compelled to work as a labourer in Udhampur city, thereby living under Below Poverty Line conditions.

7. It is further submitted that the petitioner had four children (three daughters and one son). On the unfortunate day of 09.06.2008, when the petitioner along with his wife had gone to their agricultural fields, three of their minor children, namely Anu Devi aged about 8 years, Preeti Devi aged about 6 years and Sunil aged about 3 years, followed them towards the fields. Being of tender age and lacking sufficient understanding, the children accidentally slipped into the forebay tank of the Chenani Hydel Project situated in the village. It is submitted that the said tank had steep plastered slopes and contained deep water, making it impossible for any person falling into it to escape, as a result of which all the three children drowned.

8. Learned counsel further submitted that the incident was duly reported to Police Station Udhampur and cases were registered bearing FIR Nos. 329/2008, 330/2008 and 331/2008. It is also submitted that the matter was examined by the Revenue authorities, who acknowledged the plight of the petitioner and recommended grant of compensation from State funds.

9. It is contended that the deaths of the children occurred solely due to the negligence of the respondent authorities in failing to secure the forebay tank despite its hazardous nature. It is further submitted that the reservoir area was

left unprotected and that no effective safety measures, such as proper fencing or protective barriers, were put in place. It is also pleaded that similar incidents involving animals had occurred earlier, thereby putting the respondents on notice of the dangerous condition of the site.

10. The petitioner further submitted that two of the deceased children were school-going students of Government Middle School, Manglian and were performing well in their studies. The petitioner had high hopes for their future, which were tragically extinguished due to the negligence of the respondents.

11. It is further submitted that despite service of legal notice dated 14.06.2008 calling upon the respondents to install adequate safety measures and to grant compensation of Rs. 15,00,000/-, no action was taken by the respondents.

Submissions on behalf of the respondents:

12. *Per contra*, learned counsel appearing for the respondents has opposed the writ petition and raised preliminary objections regarding its maintainability.

13. It is submitted that no fundamental, legal or statutory right of the petitioner has been violated. According to the respondents, the violation of such rights is a *sine qua non* for invoking the writ jurisdiction of this Court. In the absence of any such violation, the present writ petition is not maintainable and is liable to be dismissed.

14. It is further contended that the present case involves disputed questions of fact which cannot be adjudicated in writ proceedings under Article 226 of the Constitution. The respondents submit that such factual disputes require proper evidence and examination, which can only be undertaken in a civil suit before a competent civil court.

15. The respondents have also denied any negligence on their part and contend that the unfortunate incident occurred due to the negligence and carelessness of the parents of the deceased children.

16. It is submitted that the forebay tank of the Chenani Hydel Project, Stage-I, was constructed prior to the year 1971 after taking into consideration all necessary precautionary and safety measures. According to the respondents, the reservoir area has been properly fenced and is surrounded by a continuous parapet wall of about two feet in height, which provides adequate safety to inhabitants and livestock.

17. The respondents further submit that, since the construction of the reservoir, no untoward incident has been reported to their office and no complaint has ever been received from the inhabitants of the area regarding any danger posed by the reservoir.

18. It is also contended that the land belonging to the petitioner is situated at a considerable distance from the reservoir and that no private land exists adjoining the reservoir area.

19. The respondents further submit that the accident occurred solely due to the negligence and lack of supervision on the part of the parents of the children, who had failed to keep watch over them.

20. With regard to the report of the Revenue Department recommending compensation, the respondents contend that the said recommendation was made merely on humanitarian grounds, considering the poor financial condition of the petitioner, and does not attribute any negligence to the respondents.

Legal Analysis:

21. Heard learned counsel for the parties and perused the material placed on record.

22. The factual matrix emerging from the pleadings and the material placed on record reveals a deeply unfortunate incident in which the petitioner lost three of his minor children, namely Anu Devi, Preeti and Sunil, who drowned in the forebay tank constructed as part of the Chenani Hydel Project. As pleaded by the petitioner, the children had followed their parents towards the agricultural fields situated in the vicinity of the said project and during the course of their movement in the area, accidentally slipped into the forebay tank, which contained deep water and steep plastered slopes.

23. The petitioner has consistently asserted that the reservoir area was not secured by adequate fencing or proper safety mechanisms and that the only protective measure adopted by the respondent authorities was a parapet wall of about two feet in height which, according to the petitioner, was wholly insufficient to prevent accidental entry into such a hazardous structure. The respondents, on the other hand, have denied negligence and have attempted to attribute the incident to the alleged lack of supervision by the parents of the deceased children.

24. The respondents have further raised a preliminary objection regarding the maintainability of the writ petition by contending that the petitioner ought to have approached the civil court for determination of damages.

25. At the outset, the objection raised by the respondents with regard to the maintainability of the present petition deserves to be addressed. The law on the subject is no longer *res integra*. It is settled law that where the negligence or inaction of State authorities results in the deprivation of life, the constitutional courts are not powerless to grant relief merely because a civil remedy may also be available. The jurisdiction of this Court under Article

226 of the Constitution is wide enough to provide an effective remedy where the fundamental right to life guaranteed under Article 21 stands violated.

26. The Hon'ble Supreme Court, in "**Nilabati Behera (Smt.) alias Lalita Behera (Through The Supreme Court Legal Aid Committee) Vs. State Of Orissa And Others**", 1993 AIR SC 1960, while explaining the nature and ambit of the remedy of compensation in proceedings under Articles 32 and 226 of the Constitution held as under :

"35. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The decisions of this Court in the line of cases starting with Rudul Sah v. State of Bihar (1983) 4 SCC 141, (1983) 3 SCR 508 granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental right of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and self-restraint, lest proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law.

Some of those situations have been identified by this Court in the cases referred to by Brother Verma, J.”

27. The aforesaid principle has also been reiterated by various High Courts while dealing with cases involving negligence on the part of public authorities resulting in loss of life. The Delhi High Court in “**Ram Kishore v. Municipal Corporation Of Delhi**” , 2007 (97) DRJ 445, held as under:

“15. In view of the above settled position in law, there can be no question that in its writ jurisdiction under Article 226 this Court can grant the relief of compensation based on the strict liability principle in a situation where there is a breach of a public duty. On the given facts of a case, liability would lie with the state if the claimant is able to show that the state acted negligently or that the “State or its instrumentality failed to discharge the duty of care cast upon it, resulting in deprivation of life or limb of a person.” In discharging the burden of proving negligence it would be open to the claimant, if the facts and circumstances so permit, to invoke the res ipsa loquitur doctrine.”

28. Thus, once it is demonstrated that the death of the petitioner’s children occurred due to negligence attributable to the authorities responsible for maintaining a hazardous public installation, the writ jurisdiction of this Court can undoubtedly be invoked. The availability of an alternative remedy in the form of a civil suit cannot operate as a bar in a case where the violation of the fundamental right to life is *prima facie* established.

29. In the backdrop of the aforesaid legal position, it is necessary to examine whether any disputed question of fact arises in the present case. The respondents, in their reply, have themselves admitted that the forebay tank was surrounded by a parapet wall of approximately two feet in height. The relevant para of the reply affidavit reads as under:

“8(i)....The reservoir situated at prohibited area has been properly fenced and is surrounded by 2 feet height continuous parapet which provides complete safety to the inhabitants and also to livestock.

Further since the date of construction of reservoir till date no untoward incident has been reported to this office much less any inhabitants/locals of the area complained regarding any danger to their life or to their livestock due to the functioning of reservoir in the area. It is also submitted that around the reservoir there exists no private land in as much as of the said Arjun Kumar which is located at a quite distance away from the reservoir.”

30. This admission on the part of the respondents assumes considerable significance. Once, the respondents themselves acknowledge that only a two-foot parapet wall existed around a hazardous reservoir, the foundational facts giving rise to the present petition stand admitted. Therefore, no disputed question of fact survives for adjudication through a civil trial. The issue which requires consideration is only with regard to the adequacy of the safety measures adopted by the respondents, which can appropriately be examined in exercise of writ jurisdiction. A parapet wall of merely two feet in height, by no reasonable standard, can be regarded as an adequate safety measure to prevent access to a hazardous water reservoir. Such minimal protection, from any yardstick, is wholly insufficient and reflects lack of due care on the part of the respondents. The objection raised by the respondents regarding the existence of disputed questions of fact is, therefore, without merit.

31. Another aspect which requires examination is whether the circumstances of the present case disclose negligence on the part of the respondent authorities. A perusal of the record reveals that the forebay tank of the Chenani Hydel Project is a reservoir containing deep water with steep plastered slopes, which makes it extremely difficult for any person who falls into it to escape. Structures of this nature are inherently hazardous and therefore, require strict safety measures to prevent accidental access. It is the categorical case of the petitioner

that the tank was surrounded merely by a low parapet wall measuring approximately two feet in height and that no proper fencing, barricading or warning mechanisms had been installed around the reservoir.

32. This Court is of the considered opinion that such a minimal protective measure cannot, by any stretch of imagination, be regarded as an adequate safeguard against such accidents. The authorities responsible for maintaining hazardous installations owe a duty of care to the public at large to ensure that effective precautions are taken to prevent foreseeable harm.

33. In the present case, the very fact that three minor children were able to access the forebay tank and accidentally fall into it clearly indicates that the safety measures adopted by the respondents were grossly inadequate. A two-foot parapet wall is insufficient for preventing entry into a dangerous reservoir, particularly in a rural area, where agricultural activities and movement of villagers, including children, are common.

34. The failure of the respondents to adopt such elementary safety precautions clearly reflects a lack of due care on their part. Thus, the doctrine of '*res ipsa loquitur*' squarely applies to the facts of the present case. The doctrine, which literally means '*the thing speaks for itself*,' applies in situations where the circumstances of the accident themselves provide evidence of negligence. The drowning of three minor children in a reservoir maintained by the respondents is not an occurrence which would ordinarily take place if adequate safeguards had been in place. The incident, therefore, speaks for itself and raises a presumption of negligence against the authorities responsible for the maintenance of the structure. In such circumstances, the burden shifts upon the respondents to establish that they had taken all reasonable precautions to prevent such an occurrence. Apart

from making a bald assertion regarding the existence of a low parapet wall, the respondents have failed to place any material on record to demonstrate that effective safety measures were, in fact, implemented.

35. This Court also fails to understand the object behind the construction of a parapet wall of merely about two feet in height around a hazardous structure such as the forebay tank. A wall of such insignificant height can hardly be regarded as an effective safety measure, as it can be easily crossed or climbed over by any person, much less by children, who are unaware of the risks involved. The very purpose of installing a protective barrier is to prevent access to a dangerous area, however, a two-foot parapet wall, by no stretch of imagination, can serve such purpose. In the considered opinion of this Court, if the respondents were genuinely conscious of the safety of the inhabitants, the reservoir ought to have been secured by a proper boundary wall or fencing of sufficient height and strength which could reasonably prevent ingress. The failure to adopt such basic and necessary precautions reflect a clear lack of due care on the part of the respondents in discharging their duty to safeguard human life.

36. The Delhi High Court in “**Darshan And Others v. Union Of India And Others**”, 2000 ACJ 578, while dealing with a situation where the negligence of State authorities in failing to ensure safety in a public place led to loss of human life, applied the doctrine of *res ipsa loquitur* and held that where the circumstances themselves clearly point towards negligence on the part of the authorities responsible for maintaining public premises, the affected parties are entitled to seek compensation under the writ jurisdiction for violation of the right to life guaranteed under Article 21 of the Constitution by holding as under:

“11.....Coming to instant case, it is one of res ipsa loquitur, where the negligence of the instrumentalities of the State and dereliction of duty is writ large on the Red Fort in leaving the manhole uncovered. The dereliction of duty on their part in leaving a death trap on a public road led to the untimely death of Skattar Singh. It deprived him of his fundamental right under Article 21 of the Constitution of India. The scope and ambit of Article 21 is wide and far reaching. It would, undoubtedly, cover a case where the State or its instrumentality failed to discharge its duty of care cast upon it, resulting in deprivation of life or limb of a person. Accordingly, Article 21 of the Constitution is attracted and the petitioners are entitled to invoke Article 226 to claim monetary compensation as such a remedy is available in public law, based on strict liability for breach of fundamental rights.

12. From the foregoing, it is clear that the present writ petition for grant of compensation in the case of breach of public duty by instrumentality of the State resulting in the deprivation of life, would be maintainable under Article 21 of the Constitution of India.”

37. Furthermore, the attempt of the respondents to attribute negligence to the parents of the deceased children also does not merit acceptance. It is a well recognized principle that when hazardous structures are located in areas accessible to the public, the authorities maintaining such structures must anticipate the possibility of children approaching them. Children, by reason of their tender age, are incapable of appreciating the risk involved and, therefore, the law expects a higher degree of care from those responsible for maintaining dangerous premises. The respondents cannot, therefore, escape liability by shifting the blame onto the grieving parents.

38. In circumstances where hazardous structures such as water tanks or reservoirs are left unprotected in places accessible to children, courts have consistently held the authorities responsible for failing to discharge their duty of care. The Madras High Court in **“Kanagaraj @ Ammasai V. The District Collector, Tiruppur & Others”**, Writ Petition No. 27179 of 2005,

decided on 23.09.2019, dealing with a similar situation involving the drowning of minor children due to an uncovered water storage tank maintained by public authorities held as under:

“13. Now, it is the contention of the respondent that the deceased children were neither enrolled in the school nor child welfare center and there was no necessity for the children to enter into the premises at all. Since the parents had failed to take care of the children and left them unattended in the village, they fell into the water tank and died drowning and no negligence can be attributed to the respondents. The said contention of the respondents cannot be accepted for the simple reason that the accident took place near child welfare center which is public premises meant for children and the deceased children who were playing there fell into the ground level water storage tank which was kept open by the respondents negligently. The respondents cannot simply escape from the liability by saying the deceased children were neither enrolled in the child welfare centre nor in the school. We cannot expect such tender aged children to know that they had no right to enter into the premises. In the instant case, the respondents 1 to 3 ought to have taken steps to either to close the ground level water tank or cover it up by fencing so as to avoid any untoward incidents in the premises. It is only due to the negligence of the respondent the accident took place. The State has an obligation to ensure the safety of its citizens and the right to life guaranteed under Article 21 of the Constitution of India is a basic human right and the negligence on the part of the respondent infringed Article 21 of the Constitution of India.

14. Even though it is stated that it was the 4th respondent, a civil contractor, who had constructed the buildings for child welfare center and he is also liable to pay to pay compensation, in the counter affidavit filed by the 1st respondent, it is stated that the construction work was done by department itself and no contractor was engaged for the construction activities. Even assuming that the 4th respondent, the civil contractor, was engaged for the purpose of construction, the construction work was over long ago and the building was handed over to the respondents, but, the ground level water tank was left unattended and kept open by the government authorities. As stated earlier, the official respondents ought to have taken appropriate steps either to

close the ground level open water tank or to fence it. but, they did not do so. The failure on their part now claimed the lives of the two innocent tender aged sons of the petitioner. Thus, the deaths of the children are attributable only to the gross negligence on the part of the official respondents and therefore, they are alone liable to compensate the petitioner adequately.”

39. In the facts of the present case, the respondents have contended that the incident occurred due to lack of supervision on the part of the parents and the children had themselves ventured into a dangerous area. Such a contention, in the considered opinion of this Court, cannot be accepted so as to dilute the responsibility of the authorities maintaining a hazardous installation. The victims in the present case were children of very tender age who, by reason of their immaturity and lack of judgment, cannot reasonably be expected to comprehend the dangers posed by structures such as a deep water reservoir. The law has consistently recognized that children do not possess the same degree of discretion, foresight and ability to appreciate risk as adults. Consequently, the doctrine of contributory negligence, which may sometimes apply to adults, cannot ordinarily be invoked against children of tender age. When a dangerous structure is maintained in an area where the presence of children is reasonably foreseeable, a higher degree of care is expected from the authorities responsible for its maintenance. Any lapse in adopting adequate safeguards in such circumstances cannot be justified by attributing negligence to the children themselves.

40. The Delhi High Court in “**Subramaniam v. Delhi Metro Rail Corporation Ltd.**”, WP(C) 5024/2007 decided on 02.07.2013 reiterated the well-settled principle that ‘*children of tender age cannot be attributed with contributory negligence*’. The Court observed as under:

“Issue No. (iii)

14. As indicated above, in Kishan Lal's case and as rightly pointed out by Ms. Mehta in the case of Kumari Alka...Plaintiff; v. Union Of India & Others....., this court, has held that children of tender age cannot be imputed with contributory negligence. A similar view has been taken by a Division Bench of the Karnataka High Court in Sunadra Shetty's case. The relevant observations, for the sake of convenience, are culled out herein below:-

“...28. The facts of the present case demanded greater care on the part of the driver of the care because children of tenders years cannot even be imputed with contributory negligence. They have not attained that age of discretion and what generally the adults can understand as rash or negligent acts cannot even be imputed to them as they are not in a position to understand the consequences of their acts. Many dangers which are open and obvious to the adults may be concealed and secret traps for the children...”

41. In similar facts and circumstances, the Delhi High Court in **“Gopalpur Victim Association V. Delhi Jal Board & Ors.”**, WP(C) 5027 of 2010, decided on 02.02.2011 has held as under:

“12. On a perusal of the same, there should be no shadow of doubt. It was obligatory on the part of the Delhi Jal Board to ensure that nobody enters into the said area. The said care was not taken. Care being not taken, the life span of four young children got extinguished. The plea advanced by the respondents, namely, GNCTD and Delhi Jal Board or its agency that children may have played mischief or gone for a swim is mercurial and specious in nature. For the sake of dispute, a question is not to be raised to bring it in the realm of disputed question of fact. In our considered opinion both the State and the Delhi Jal Board are vicariously liable for not maintaining the area in question. We may say with profit that the Delhi Jal Board may have engaged contractors/agencies for maintaining the area but there has been a failure. Hence, we can say without any iota of doubt both the State and Delhi Jal Board have failed to maintain the area as a consequence of which the children lost their lives. As a sequitur compensation has to be awarded.”

42. The aforesaid observations reinforce the principle that where minors of tender age are involved, the responsibility of ensuring safety lies predominantly upon those who control or maintain potentially dangerous premises or instrumentalities. Applying the same principle to the facts of the present case, it is evident that the respondents cannot escape liability by attempting to attribute contributory negligence to the deceased children, who were incapable of appreciating the risk posed by the forebay tank maintained by the authorities.

43. The issue also assumes a constitutional dimension when examined in the light of Article 21 of the Constitution. The right to life guaranteed under Article 21 places a corresponding duty upon the State to safeguard and protect the lives of its citizens. The authorities engaged in hazardous activities owe an absolute and non-delegable duty to ensure that no harm results to members of the public and that where hazardous installations are maintained, the responsible authorities must adopt the highest standards of safety.

44. The principle that the State and its instrumentalities bear strict responsibility where their actions or omissions lead to the violation of the right to life has been emphatically recognized by the Hon'ble Supreme Court in **“Municipal Corporation of Delhi, Delhi v. Uphaar Tragedy Victims Association & Ors.”**, 2012 AIR SC 100, held as under:

“96. Courts have held that due to the action or inaction of the State or its officers, if the fundamental rights of a citizen are infringed then the liability of the State, its officials and instrumentalities, is strict.

97. This Court in Union of India v. Prabhakaran Vijaya Kumar (2008) 9 SCC 527, extended the principle to cover public utilities like the Railways, electricity distribution companies, public corporations and local bodies which may be social utility undertakings not working for private profit. In Prabhakaran (2008) 9 SCC 527 a woman fell on a

railway track and was fatally run over and her husband demanded compensation. The Railways argued that she was negligent as she tried to board a moving train. Rejecting the plea of the Railways, this Court held that her “contributory negligence” should not be considered in such untoward incidents—the Railways has “strict liability”. A strict liability in torts, private or constitutional do not call for a finding of intent or negligence. In such a case the highest degree of care is expected from private and public bodies, especially when the conduct causes physical injury or harm to persons. The question as to whether the law imposes a strict liability on the State and its officials primarily depends upon the purpose and object of the legislation as well. When activities are hazardous and if they are inherently dangerous the statute expects the highest degree of care and if someone is injured because of such activities, the State and its officials are liable even if they could establish that there was no negligence and that it was not intentional.”

45. Viewed in this backdrop, the failure of the respondents to secure the forebay tank with proper protective measures constitutes a clear breach of their constitutional obligation to safeguard life. The tragic death of the petitioner’s children is therefore not merely an unfortunate accident but a consequence of the failure of the authorities to discharge their duty of care. Once, such negligence resulting in loss of life is established, the liability of the State to compensate the victim becomes inevitable. Even though the children may not have begun earning, their lives possess immense value and their untimely death results in profound emotional and social loss to their parents.

46. In the present case, the magnitude of the tragedy suffered by the petitioner cannot be understated. The petitioner, who belongs to agricultural background, lost three of his minor children in a single incident. The emotional and psychological trauma suffered by the family is beyond quantification. At the same time, the negligence attributable to the

respondent authorities in failing to provide adequate safety measures around a hazardous reservoir cannot be overlooked.

47. For all the reasons discussed hereinabove, this Court is of the considered view that the petitioner has been able to establish that the death of his three minor children occurred due to the negligent maintenance of the forebay tank by the respondent authorities and such negligence has resulted in violation of the fundamental right to life guaranteed under Article 21 of the Constitution. The petitioner is therefore entitled to be compensated by the respondents in exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution.

48. This Court is conscious of the fact that no amount of monetary compensation can ever adequately recompense the irreparable loss suffered by the petitioner, who has been deprived of the lives of his three minor children in a single tragic incident. The pain, anguish and emotional devastation caused by such a loss transcend all pecuniary considerations and cannot be measured in terms of money. Human life is invaluable, and the loss of young children, who represent not only the present but the very hope and future of a family, leaves behind a void that can never be filled. The award of compensation in such cases, therefore, is not intended to place a monetary value on human life, but is a means to provide some measure of solace to the bereaved family and to acknowledge the wrong done by the State due to its failure to discharge its duty of care. It also serves as a reminder to public authorities of their constitutional obligation to safeguard the lives of citizens. Thus, while no compensation can truly undo the tragedy or restore what has been lost, the grant of monetary relief remains the only available means in law to partially redress the harm caused and to uphold the rule of law.

49. The next question which arises for consideration is with regard to the method to be adopted for determination of compensation. Ordinarily, in cases arising out of motor accident claims, the Courts apply the multiplier method for assessing compensation based on the income of the deceased and the dependency of the claimants. However, the present case does not arise out of a claim under private law but pertains to grant of compensation in exercise of writ jurisdiction for violation of the fundamental right to life guaranteed under Article 21 of the Constitution.

50. In the considered opinion of this Court, the multiplier method would not be an appropriate yardstick in the facts of the present case. The deceased were minor children of tender age and had no independent source of income, and therefore any attempt to assess future earnings would be wholly speculative. The compensation awarded in such cases is not intended to be a precise equivalent of pecuniary loss but is a public law remedy to redress the infringement of a fundamental right.

51. This Court also finds merit in the reasoning adopted by the Madras High Court in case titled as “**Rajakumar vs. The State Of Tamil Nadu**”, WP(MD) No. 14252 of 2023 c/w WMP(MD) Nos. 12059 & 12141 of 2023, decided on 01.07.2025, wherein it was observed that:

“93. If I were to apply the multiplier method, it would amount to varying compensation for each of the petitioners. The pain and suffering that the writ petitioners have undergone would have been more or less the same. Therefore, in the light of the judgment of the Supreme Court in Balram's case and in the light of this reasoning, I am not inclined to adopt the said method.”

52. This Court is in agreement with the aforesaid view that the application of the multiplier method would result in variation in the

quantum of compensation among similarly placed claimants, whereas the pain, suffering and loss occasioned to the parents on account of the death of their children would, in essence, remain the same. This Court, therefore, does not find it appropriate to adopt the multiplier method and instead deems it proper to award uniform compensation. The loss of a child is incapable of being measured in terms of money, and any mathematical formula would fail to capture the magnitude of such loss. In the considered opinion of this Court, what can be done in such circumstances, is to award a just and reasonable amount which may provide some measure of solace to the bereaved family and at the same time serve as a reminder to the State of its constitutional obligations.

53. Accordingly, this Court is not inclined to adopt the multiplier method for determination of compensation in the present case. Instead, it deems it appropriate to award a compensation which is just, fair and reasonable, having regard to the facts and circumstances of the case, including the tender age of the deceased children, the nature of negligence attributable to the respondents, and the socio-economic condition of the petitioner.

54. This Court cannot shut its eyes to the larger ground reality that such incidents are not isolated, but reflect a recurring pattern of neglect in matters concerning public safety. Instances of persons, including children, losing their lives after falling into uncovered manholes, open drains, unsecured water bodies, or suffering electrocution due to exposed and poorly maintained high-tension wires, are, unfortunately common. These recurring tragedies point towards systemic deficiencies and maintenance of public infrastructure and a failure to adopt timely preventive measures. Such an approach, where corrective steps are undertaken only after the occurrence of

damage, is wholly inconsistent with the constitutional mandate and the obligations cast upon the State under the Directive Principles of State Policy to ensure the welfare, safety and well-being of its citizens.

55. The responsibility of the State in the present case must also be viewed in the broader constitutional framework which not only guarantees fundamental rights but also casts corresponding obligations upon the State to secure and protect those rights. This obligation finds clear reflection in the Directive Principles of State Policy, particularly Article 38, which mandates the State to secure a social order promoting the welfare of the people, and Article 39(e) and (f), which require the State to ensure that the health and strength of individuals are not put to risk and that children are protected against neglect and exploitation. Further, Article 47 of the Constitution of India casts a duty upon the State to improve public health and raise the standard of living of its people. Though not enforceable by themselves, these principles are fundamental in the governance of the country and serve as guiding beacons for State action. When read harmoniously, these provisions impose a clear duty of care upon the State and its instrumentalities to take all necessary measures to safeguard the lives of its citizens, especially in situations involving hazardous activities or installations under its control. Any failure on the part of the State to discharge this obligation, resulting in loss of life, cannot be treated as a mere lapse but amounts to a breach of its constitutional duty, thereby attracting liability to compensate the victims or their families.

Conclusion:

56. Having heard learned counsel for the parties, and upon a careful perusal of the material placed on record, this Court is persuaded to hold that the

present case is not merely one of an unfortunate accident, but one which discloses a clear failure on the part of the respondent authorities in discharging their duty of care in respect of a hazardous public installation.

57. The objection raised by the respondents with regard to the maintainability of the writ petition is found to be devoid of merit in view of the settled legal position that where the right to life under Article 21 of the Constitution stands infringed due to the negligence or inaction of State authorities, the constitutional courts are fully empowered to grant relief in exercise of their writ jurisdiction. The availability of an alternative remedy by way of a civil suit does not operate as a bar in such circumstances.

58. This Court is further of the considered opinion that the doctrine of '*res ipsa loquitur*' squarely applies to the facts of the present case. The very occurrence of the incident, resulting in the drowning of three minor children in a reservoir maintained by the respondents, raises a presumption of negligence which the respondents have failed to rebut by placing any cogent material on record. The attempt to attribute negligence to the parents of the deceased children is neither legally sustainable nor morally tenable, particularly when the victims were of tender age and incapable of appreciating the risks posed by such a structure.

59. This Court observes that the alleged safety measure of a parapet wall of about two feet in height is wholly inadequate and illusory in nature. A barrier of such negligible height cannot, by any reasonable standard, be expected to prevent access to a hazardous reservoir. It is beyond comprehension as to how such a minimal structure could serve the purpose of safeguarding human life, when it can be easily crossed by any person without any difficulty. The very object of providing protective measures stands defeated. In the considered

view of this Court, the respondents ought to have ensured proper fencing or construction of a boundary wall of sufficient height and strength so as to act as a real and effective barrier preventing access to the hazardous area.

60. This Court is further of the view that, apart from proper fencing or boundary walls, the respondent authorities ought to have installed adequate warning signboards at conspicuous places around the reservoir, cautioning the public of the inherent danger. The absence of such basic precautionary measures demonstrates a casual and indifferent approach towards public safety.

61. This Court cannot shut its eyes to the recurring lapses and systemic deficiencies in the maintenance and supervision of public utilities and hazardous installations. Instances of electrocution due to exposed or poorly maintained high-tension wires are common, where innocent persons, including daily wage workers, have either lost their lives or have been rendered permanently disabled. Such recurring incidents reflect systemic deficiencies which require urgent attention at the highest level of administration.

62. It must be emphasized that no amount of compensation can ever be an adequate substitute for human life. Monetary relief, at best, is only a means to provide solace to the affected families, it can neither restore the life lost nor truly compensate for the irreversible loss and suffering endured. This Court, therefore, reiterates that the primary focus of the State must be on prevention rather than post-incident compensation.

63. The facts on record clearly establish that the respondents failed to adopt adequate safety measures to secure the forebay tank, thereby exposing the inhabitants of the area to a foreseeable risk. Such failure constitutes a breach

of the duty of care owed by the respondents and results in violation of the fundamental right to life guaranteed under Article 21 of the Constitution.

64. This Court thus deems it appropriate to direct the Chief Secretary of the Union Territory to take cognizance of the issue and formulate a comprehensive policy ensuring proper fencing, installation of warning signboards, and adoption of adequate safety measures around reservoirs, water bodies, and other hazardous installations. Such measures are imperative to safeguard human life and to ensure that tragedies of the present nature are not repeated in future.

65. In view of the settled legal principles governing the grant of compensation in public law for violation of fundamental rights, and having regard to the facts and circumstances of the present case, particularly the grave and irreparable loss suffered by the petitioner on account of the untimely death of his three minor children, this Court finds that the petitioner is entitled to compensation as a measure of redress for the loss of life resulting from the negligent acts of the respondent authorities.

66. This Court cannot remain oblivious to the magnitude of the tragedy, where the petitioner has lost three young children in a single incident, which could have been prevented had adequate safety measures been put in place. The failure of the authorities to adopt even basic precautions reflects a serious lapse in the discharge of their public duty. While no amount of monetary compensation can compensate for the loss of human life particularly that of children, the award of compensation in such cases serves as a necessary public law remedy to acknowledge the wrong and to provide some measure of solace to the bereaved family.

67. Accordingly, the writ petition is allowed. The respondents are directed to pay compensation of Rs. 2,00,000/- (Rupees Two Lakhs) for each deceased child, amounting in total to Rs. 6,00,000/- (Rupees Six Lakhs), to the petitioner within a period of eight weeks from the date of this order. The respondents are further directed to take immediate and effective steps to ensure proper fencing, installation of warning signboards, and adequate safeguarding of the forebay tank, as well as all similar hazardous installations, so as to prevent recurrence of such tragic incidents in future.

68. **Disposed of** accordingly.



(Wasim Sadiq Nargal)
Judge

Jammu:
24.03.2026
Michal Sharma/PS

Whether the judgment is speaking : *Yes*
Whether approved for reporting : *Yes*