

**IN THE GAUHATI HIGH COURT**  
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)  
**ITANAGAR BENCH.**

**WP (C) 196 (AP) 2013**

**Sri. Chow Nokme Mantaw  
S/o Lt. C.M. Mantaw,  
R/O Lathao Village,  
P.O/P.S. Namsai, District-Lohit,  
Arunachal Pradesh.**

➔ Petitioner.

**By Advocate:**  
Mr. H. Lampu, Advocate.

-Versus-

1. **The State of Arunachal Pradesh,  
Represented by the Secretary,  
Water Resource Department,  
Govt. of Arunachal Pradesh, Itanagar.**
2. **The Chief Engineer,  
Water Resource Department,  
Govt. of Arunachal Pradesh, Itanagar.**
3. **The Executive Engineer,  
Water Resource Department,  
Govt. of Arunachal Pradesh, Itanagar.**
4. **The Assistant Engineer,  
Water Resource Sub-Division,  
Namsai, P.O/P.S. Namsai,  
Lohit District, Arunachal Pradesh.**

➔ Respondents.

**By Advocate:**  
Ms. G. Deka, learned Addl. Sr. Govt. Advocate for State respondents.

**BEFORE**

**THE HON'BLE JUSTICE Dr. (MRS.) INDIRA SHAH**

Date of hearing : 20.08.2014

Date of Judgment & Order : 29.08.2014

**JUDGMENT & ORDER (CAV)**

By filing this writ petition, the petitioner has claimed compensation of Rs.5,00,000/- (five lacs) on account death of his 6 years old only son, namely, Lt. Chow Pengmang Mantaw, who died due to drowning in the Water Reservoir maintained by Water Resource Department.

2] Heard Mr. H. Lampu, learned counsel for the petitioner and Ms. G. Deka, learned Addl. Sr. Govt. Advocate for the State respondents.

3] The facts of the case are that on 01.05.2011, the petitioner along with his family members went to the Temple of Dangaria Baba situated near the place of occurrence. While the petitioner and his family members along with others were busy in performing harvest ritual in the Temple, petitioner's son along with his friends went to place near the canal. While petitioner's son was playing near the Water Reservoir somehow he fell thereto. After seeing the petitioner's son fallen in to the Water Reservoir, a small girl rushed to inform his parents about the incident but unfortunately when his parents arrived there the child was already dead.

4] It is submitted by the learned counsel for the petitioner that the sluice gate (Water Reservoir) installed at the place called Lathao irrigation canal is a irrigation scheme under Minor Irrigation Project('MIP', in short) which is undertaken by Water Resources Department, Govt. of Arunachal Pradesh. The aforesaid Water Reservoir is only 30 to 40 mtr away from the Dangaria Baba Temple and devotees of the locality visit the Temple regularly. The Water Reservoir is deep enough even for drowning of adult person. There is no barricade around the Water Reservoir. Since it is the scheme of Water Resources Department, the concerned Department is duty bound to take utmost precautionary and safety measures by erecting concrete wall and fence in and around the Water Reservoir. The death of the petitioner's son occurred due to negligence of Water Resource Department and therefore the Department is liable for death of petitioner's son and to pay compensation to the petitioner on account of his son's dead.

5] It is further submitted by the learned counsel that the petitioner vide his application dated 30.05.2011, approached Addl. Deputy Commissioner and the Addl. Deputy Commissioner vide order dated 02.06.2011 directed the Circle Officer-in charge, Lathao, to conduct an enquiry with regard to unfortunate death of petitioner's son. Accordingly, the Circle Officer, Lathao conducted an enquiry on 06.06.2011 and submitted the report to the Addl. Deputy Commissioner on 08.06.2011. The Circle Officer-in Charge in her enquiry report assigned two reasons of the unfortunate incident, which are given below:-

- (i) The negligence of parents as they ought to have taken care of their child.
- (ii) Negligence of the Water Resource Department.

6] According to the report had there been a proper barricading around the reservoir, such incident could have been avoided. On receipt of the enquiry report dated 08.06.2011, the Addl. Deputy Commissioner, Namsai directed the Water Resource Department to adopt utmost precautionary and safety measures such as construction of proper barricades and wall around the said sluice gate to avoid drowning of human beings and cattles in near future. The Addl. Deputy Commissioner also held the Department of Water Resource Department, Sub Division, Namsai has been negligent in performing its lawful duty by omitting precautionary and safety measures to avoid any sort of accidents into the said sluice gate. The Deputy Commissioner also directed the Department of Water Resource Department to pay a good amount of compensation to the parents of the deceased child Lt. Chow Pengmang Mantaw within 3 weeks w.e.f. from the date of aforesaid order. Thereafter, the petitioner approached different authorities as the order passed by the Addl. Deputy Commissioner was not complied with by the Water Resource Department. The petitioner also approached this Court and this Court vide order dated 08.01.2013 passed in WP (C) 298 (AP) 2012 directed the respondent authorities to dispose of the representation submitted by the petitioner within a period of 2 months from the date of receipt of certified copy of this order. The respondent No. 1, thereafter, disposed of the representation of the petitioner by rejecting the prayer of the petitioner for compensation on account of death of petitioner's son. According, to the petitioner, the ground for rejection of petitioner's representation is un-reasonable without application of judicious mind. The respondent-Department in partial compliance of the order passed by Addl. Deputy Commissioner has constructed barricade around the sluice gate but refused to pay any compensation to the petitioner.

7]. The respondent Nos. 1 to 4 in their affidavit-in-opposition have averred that the water body constructed for irrigation purpose is not at all designated as public place. It is constructed for the purpose of catering irrigation water to the nearby Agricultural Farm, it is not a place for public recreation purpose, it was the responsibility of the parents to take care of minor child of 6 years old. Moreover, the Department undertakes to construct any kind of work but the maintenances and expenses of schemes like MIP/MIC etc. are done by the beneficiaries. The State government is availing fund from Govt. of India wherein there is no provision for fencing the irrigation structure. The enquiry as per order of Addl. Deputy Commissioner was conducted without hearing the Executive Engineer of the Project, therefore, the enquiry report cannot be treated as complete. While alleging that the water bodies are generally not fenced because of huge cost involved and that there are lots of infrastructure Reservoir without fencing in and

around the village which are equally vulnerable from accident. The respondents have stated that a necessary precautionary measure like erection of sign boards, barring entry of the people has been made. The death of the child was an unfortunate accident for which the Water Resource Department could not be blamed in view of the fact that the Department is not at all negligent. The respondents have also disputed the cause of death of the child alleging that the recovery of the dead body in the Reservoir of irrigation project does not mean that the death was due to drowning in the said reservoir.

8]. The enquiry report submitted by the Circle Officer, Lathao and the order passed by the Addl. Deputy Commissioner, Namsai holding the respondents as well as parents of the deceased child was not challenge in any forum.

9] Right to life is one of the basic human rights guaranteed under the constitution of India.

10] In the case of *M.P. Electricity Board-vs- Shail Kumar & others (2002) 2 SCC 162*, the apex court has discussed the principle of "Strict Liability" and held that even assuming that all precautionary measure have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life is liable under Law of Torts to compensate for the injury suffered by any other persons. The basis of such liability is foreseeable risk inherent in the very nature of such activity. The liability cost on such person is known as "Strict Liability".

11] It differs from the liability which arises an account of the negligent or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defence did all that which could be done for avoiding the harm, he cannot be held liable when the action is based on any negligence attributed but such consideration is not relevant in cases of strict liability where the defence is held liable irrespective of whether he could have avoided the particular harm by taking precautions.

12] Herein, the possibility of drowning the child or any person could have been avoided had there been proper fencing around the reservoir. The said reservoir is situated near a Temple where villagers use to visit. Therefore, the respondents are liable to pay the compensation to the petitioner. They are directed to pay the compensation of Rs. 1,50,000/- to the petitioner.

13] This writ petition is accordingly disposed of.

JUDGE

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