

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 5th December, 2022

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.46 of 2020

Petitioners : Dolma Kumari Thatal and Another

versus

Respondents : State of Sikkim and Others

Application under Articles 226 of the Constitution of India

Appearance

Ms. Mon Maya Subba, Advocate for the Petitioners.

Mr. Sudesh Joshi, Additional Advocate General with Mr. Sujan Sunwar, Assistant Government Advocate for the State-Respondent Nos.1 to 2.

Mr. Sudhir Prasad, Advocate for the Respondent No.3

J U D G M E N T

Meenakshi Madan Rai, J.

1(i). The senseless loss of burgeoning lives, in instances where a little caution, if exercised, by the Respondents could have prevented such tragedies, is the pivotal concern of this Court, while considering this Petition. Before narrating the facts of the instant case, it is imperative to recapitulate that a Division Bench of this Court vide its Judgment dated 01-07-2016, in **Zangpo Sherpa vs. Government of Sikkim and Others**¹, was seised of the unfortunate untimely death of an eleven year old school going girl, who went swimming in the river Teesta, in the afternoon of 18-04-2014. A Dam upstream having suddenly released water into the river *sans* prior warning, resulted in a swollen river downstream, rendering the child helpless and unable to cope, as a consequence of which she drowned. The Division Bench issued a slew of directions in the said Petition *inter alia* as follows;

¹ 2016 SCC OnLine Sikk 91

"25. Thus, in conclusion, having considered the facts and circumstances of the matter, Report made by the Respondent No.1 and 2, the submissions at the Bar and considering the negligent act of the Respondents No.3, we pass the following directions disposing of the Writ Petition;

- (i) *The Respondent No.3 shall pay compensation of Rs.5,00,000/- (Rupees five lakhs) only, to the parents of the victim, as a measure of mitigating the loss accrued to them on account of the death of their child, within the stipulated period mentioned hereunder, failing which this amount shall carry interest @ 9% per annum from the date of judgment till realization.*
- (ii) **The Respondents shall follow the Notification No.26/HOME/2015 dated 22-06-2015 for public safety at Hydro Power Projects.**
- (iii) **The Respondents No.1 and 2 shall carry out bimonthly inspections by a team of Officers selected by the District Magistrate to check whether safety measures as required are in place and guidelines issued vide Notification No.26/HOME/2015, dated 22-06-2015, are being adhered to.**
- (iv) **The Respondent No.3 shall install scientific and technical instruments necessary for ensuring the safety of the Dam and the life and property of people in the area and downstream.**
- (v) *The Respondent No.3 shall have Ambulances and Para-Medical Staff in their employment at all the HEPPs to deal with emergencies arising out of any disaster occurring due to release of water from the Dams.*
- (vi) *The Respondent No.3 shall create an emergency fund up to the maximum of Rs.1,00,00,000/- (Rupees one crore) only, to meet any disaster and fatalities arising out of any failure on their part. The modalities shall be worked out in consonance with Respondents No.1 and 2."*

[emphasis supplied]

(ii) In the teeth of a standing Notification of the Home Department and directions of this Court (*supra*), the tragedy has recurred on account of the Respondents impleaded herein having blatantly flouted both the directions and the Notification which has resulted in the loss of two young, precious, human lives.

(iii) The Petitioners are the widowed mothers of the victims, the Petitioner No.1 being the mother of the deceased aged about

twenty-seven years at the time of incident, while Petitioner No.2 is the mother of the deceased child aged about eleven at the same time. The incident occurred on 23-05-2020 during the nationwide Lockdown on account of Covid-19. It was around 10.45 a.m., when three boys, namely, Passang Lepcha, Tek Bahadur Thatal and Rohan Roy, went in search of edible ferns in the nearby forest. On their return, they decided to cross the Rorathang River, on foot, since the river water level was low. In the midst of their crossing the river, the water level suddenly swelled and the current increased, to avoid which, the boys stood atop the largest rock that they could locate. Nevertheless, despite the precaution, they were swept away by the swollen river. From the three boys, Passang Lepcha was rescued by people of the locality, while the other two boys were not so fortunate. Hence, the prayers in the Writ Petition which are extracted hereinbelow;

"It is therefore must (sic.) humbly prayed that; this Hon'ble Court may be pleased to:

- a) *that this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate Writ/order/direction under Article 226 of the Constitution of India directing the Respondent No.3 to create education and information, install warning devices and appoint guard in all populated areas where the tail water of Gatti Hydro Power dam water flows.*
- b) *that this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing the Respondent No.1, 2 and 3 to take proper steps for providing the required facilities, instruments and technicians for seeing that no threat or danger to the life and property to the people living in the adjoining area of the dam and people living downstream is caused by the operation of the Gatti Hydro Power Projects.*
- c) *Pass an order directing the Respondent no.1, 2 and 3 for strict implementation of Notification no.26/home/2015, dated 22.06.2015; Guidelines for Public Safety at Hydropower Projects in Sikkim.*

- d) *Pass an order directing Respondent No.3 to install such scientific and technical instruments which can be used for the purpose of ensuring the safety of dam and safeguarding the life and property of people living in the adjoining areas and downstream of the dam.*
- e) *Pass an order directing the Respondent No.3 to appoint guard, construct guard house along with warning devices at place of incident i.e Bhasmey in name of Lt. Tek Bahadur Thatal and Lt. Rohan Roy.*
- f) *Pass an order directing the Respondent No.3 (Gatti Infrastructure Pvt. Ltd) to compensate the Petitioner No.1, mother of Lt. Mr. Tek Bahadur Thatal an amount of Rs.50,000,00/- (Rupees Fifty Lakh) and to compensate Petitioner No.2, mother of Lt. Mr. Rohan Roy with an amount of Rs.50,000,00/- (Rupees Fifty Lakh) or as this Honorable Court deem fit.*
- g) *Pass an interim order directing the Respondent No.1, 2 and 3 to make a payment of Rs.5,00,000/- (Rupees Five Lakh) to Petitioner No.1, Mother of Lt. Mr. Tek Bahadur Thatal and Rs.5,00,000/- (Rupees Five Lakh) to Petitioner No.2, Mother of Lt. Mr. Rohan Roy as an interim measure to facilitate them for their medical expenses.*
and
- h) *Pass such order or further order, as this Hon'ble Court may deem fit, just and proper and the public at large."*

2. Learned Counsel for the Petitioners while drawing the attention of this Court to Annexure P1, in two pages, being the Death Certificates of the unfortunate victims, as also the Medicolegal Autopsy Report annexed thereto submitted that, the cause of death in the Autopsy Report was revealed to be "*asphyxia due to ante mortem drowning*". That, this aspect was being emphasized for the purpose of indicating that the death of the victims was indeed due to drowning in the sudden swollen river. Learned Counsel also urged that there has been a complete disregard and violation of the directions of this Court in **Zangpo Sherpa** (*supra*). Besides, the siren that ought to have been placed at a distance of about one kilometer each in terms of the guidelines

issued by the Home Department, Government of Sikkim, vide Notification No.26/Home/2015, dated 22-06-2015, were not in place nor was one installed at the site of the incident. Had some care and attention been employed by the Respondent No.3 who was the Company operating the Dam, the needless deaths could have been avoided. That, in view of the non-adherence of the directions of this Court and the guidelines issued by the Home Department, the prayers of the Petitioners be granted.

3. Learned Additional Advocate General for the State-Respondent Nos.1 to 2 submitted that the directions of the Division Bench of this Court are being complied with by the State Government. That, despite guidelines issued by the State Government vide the Notification No.26/Home/2015, dated 22-06-2015, the Respondent No.3 has been irresponsible and failed to put in place the sirens or other warning devices to prevent the death of persons who may be in and around the rivers. That, had Respondent No.3 acted responsibly the tragedy would not have occurred, hence orders be issued as deemed proper by this Court.

4. Learned Counsel for the Respondent No.3 advancing his arguments contended that there has been due adherence to the Notification of the Home Department and the directions of this Court in as much as the sirens have been installed near the Dam office. That, a second siren has been installed at a distance of about six to seven kilometers from the Project office. It was also glibly submitted by Learned Counsel that the victims ought not to have been out and about crossing the river during the period of National Lockdown and that, had it been imperative for them to have gone out they ought to have used the foot bridge across the

river and desisted from crossing the river on foot. That, Annexure R2 reveals that on 23-05-2020, the same level of water was released, as on other days preceding the date of the incident, indicating clearly the absence of recklessness or negligence on the part of Respondent No.3. Inviting the attention of this Court to the Constitution of a Committee, Annexure R4 [colly], under Section 30 of the Disaster Management Act, 2005, vide a communication bearing No.195/DCE/2020/CD/165 dated 09-07-2020, comprising of the Sub-Divisional Magistrate, Rongli and the Assistant Collector, East District, it was contended that on a Complaint pertaining to the incident being lodged, the Committee enquired into the matter. They were also entrusted with the task of reviewing the implementation of guidelines for public safety at the Hydro Power Projects by Respondent No.3 in terms of Notification No.26/Home/2015, dated 22-06-2015 of the Home Department. The enquiry Report revealed that sirens had been installed at the Project site and Dam site. That, the place of occurrence was about four to five kilometers downstream from the Power House, where there was no possibility of a sudden increase in the water flow. Based on the Inspection Report of the Committee, it was found that Respondent No.3 had complied with the directions prescribed in the aforementioned Notification. Further, the Committee observed that the death of the two persons had not been caused due to natural calamity, accordingly *ex-gratia* payment to the Petitioners' families were not considered. That, in view of the compliance of the directions of this Court contained in the Judgment (*supra*), the Notification of the Home Department and the absence of fault on the part of Respondent No.3 as fortified

by the Inspection Report of the Committee, the Respondent No.3 be absolved from payment of any compensation sought for by the Petitioners.

5(i). Having given due consideration to the submissions put forth *in extenso*, it is relevant at this juncture to notice that the Home Department, Government of Sikkim, as far back as in 2015 had issued a Notification bearing No.26/Home/2015, dated 22-06-2015 with guidelines thereto, stipulating safety measures to be adopted by the Hydro Power Projects for public safety. The Notification is extracted hereinbelow for convenience and reads as follows;

**"SIKKIM
GOVERNMENT GAZETTE
EXTRAORDINARY
PUBLISHED BY AUTHORITY
Gangtok Monday 22nd June, 2015 No. 236**

**GOVERNMENT OF SIKKIM
HOME DEPARTMENT
GANGTOK
No.26/Home/2015 Date: 22.06.2015
NOTIFICATION**

Whereas, the State Government has deemed it expedient to make the following guidelines to facilitate general public awareness for safeguarding the public safety and property from potential damages, hazards and threats arising out of construction and maintenance of hydro projects.

And whereas, the purpose of guidelines is to describe the types of hazards that can exist at hydro power facilities and the safety devices and other measures that are advisable to be employed to enhance the protection of the public that utilise projects lands and water.

Now therefore, the State Government, with a view to achieve the above objectives, is hereby pleased to prescribe the GUIDELINES FOR PUBLIC SAFETY AT HYDROPOWER PROJECTS as per Annexure.

By Order and in the name of the Governor.

**Sd/-
(R. Ongmu) IAS,
CHIEF SECRETARY
F. No. Home/Confdl/112/2015"**

(ii) For brevity only Paragraph 4 of the said guidelines are extracted hereinbelow, which provides for safety Devices and measures and reads as follows;

"4. SAFETY DEVICES AND MEASURES

As a general rule, all Projects will require some type of safety devices, warning systems or other measures. The amount of protection necessary increases as public exposure to the hazards increases.

Safety devices and measures can be divided into five basic categories:

- (1) Educating and informing the public**
- (2) Visual and audible warnings of hazardous areas**
- (3) Physical restraining devices**
- (4) Escape devices**
- (5) Procedures for safer Project operations.**

(1) EDUCATION AND INFORMATION – Developers are usually well aware of the hazards that can exist near hydropower Projects. Therefore, the Developers has a responsibility to take the initiative to educate and inform the public of the specific hazards near its hydro Projects and of the general rules that should be followed to be safety conscious. **Where appropriate, information could be disseminated in recreational brochures, company literature, video tapes, televisions or radio announcements and in newspaper articles and advertisements.** The Developer should make every effort to meet the public at schools, civic organizations, etc., communicate with the public through the media, and distribute literature on water safety practices in the vicinity of the Hydro Project areas.

(2) WARNING DEVICES – Warning devices include such items as danger and warning signs, canoe/rafting portage signs, audible warning devices, lights and illumination, beacons and strobe lights, buoys, verbal warnings. These devices are required where necessary to warn of hazardous spillways, powerhouse intake areas, tailraces, and other hazardous areas and conditions.

(i) Danger and Warning Signs – Each dam should have adequate danger and warning signs. **Properly located and spaced signs can be an effective method of preventing persons from entering hazardous areas.** It is important to locate signs so that persons entering area from any direction can see one or more of the signs. Where it is not feasible to install boat restraining barriers due to the length of the dam or spillway, or

other constraints, a system of warning buoys and signs should be installed at least 300 feet from the structure or at a greater distance, depending on where the hazardous current begin. If the Project reservoir is small, as a practical matter it may be necessary to place the buoys and signs closer to the dam. **The size of lettering and the signs themselves should be of sufficient size that persons (even those with less than perfect eyesight) would not have to enter the danger zone to read the signs. As a general rule, when a person is 300 feet from any dam, signs warning of a dam should be legible and easily noticed.** Proper wording of signs is important and can improve effectiveness. Signs should convey a message that clearly advises the reader of the real danger. **In addition to "No Trespassing" or "Keep Out" signs, it would be informative to have signs that state; "Danger - Dam Ahead", "Danger of Drowning", or "Stay Alive by Staying Out". Signs should be kept in good condition and fading signs should be repainted.** Plants, grasses, and trees that obstruct shoreline warning signs should be removed. Contrasting colors should be used for sign lettering and background. A regular sign inspection programme should be developed and documented to ensure that all signs are maintained in good condition. It is particularly important to inspect signs after severe weather or flood conditions.

- (ii) **Power and Communication Lines** – Power and communication lines require special signing to warn recreationists of clearance heights. Minimum recommended vertical clearances for power and communication lines over reservoirs are found in the standard codes and regulations.
- (iii) **Audible Devices** – Audible devices, such as sirens, horns, or buzzers, are generally used to warn of sudden changes in the rate of flow, usually in tail water areas of spillways or powerhouses. It is also important to provide warnings of sudden changes in operation, such as a gate opening to pass flows that have been cut-off due to a plant shutdown. **At Projects where difficult terrain prevents a quick exit from the river, advance warning of 30 to 45 minutes may be necessary. Signs advising of the meaning of the audible devices should be posted along all access points near hazardous tail water and other areas. At least one adequately big siren should be installed at every 1-2 km along the entire river bed within the Project area and the area downstream that comes within the Project. All these sirens should be operated through GSM with adequate power backup**

so that they could be blown from one central location itself and also in case of power failure.

- (iv) **Lights** – Lights should be used to illuminate signs, the dam itself, and other hazardous areas. It is desirable that at least some of the warning signs around dams be illuminated at night. Lighting should be considered at dams, tailrace areas, substations. Specifically designed signs, safety devices, including lighting may often be necessary so that safety devices are effective under adverse weather conditions.
- (v) **Beacons** – Beacons and strobe lights can be utilized near spillway gates and overflow spillways and, if appropriate, they should be activated to provide visual warning when water is being discharged. Flashing strobe lights can also effectively complement audible warning devices.
- (vi) **Buoys** – Individually anchored buoys basically serve as floating signs. In general, buoys should be installed in accordance with accepted rules and regulations in the State where the Project is located. Buoys may not be appropriate in low-use areas in many cases or in areas where the pristine nature of the area should be preserved. However, buoys should not be substituted for restraining barriers where a positive restraining barrier is feasible.
- (vii) **Verbal Announcements** – Recorded or direct verbal warnings can be used at many smaller Projects to warn the public in tailrace areas that gates are going to be opened if the Project is always manned. However, this can only be effective if dam tenders and other personnel working near dams are adequately trained to advise the public of a Project's hazardous area.”

[emphasis supplied]

(iii) The State-Respondent No.1 have duly notified the guidelines which was for the Hydro Power Projects to have strictly adhered to but there is a lackadaisical attitude with total indifference exhibited by the Respondent No.3.

6(i). In the facts and circumstances of the case can this Court grant relief to the Petitioners?

(ii) Appositely it is relevant to consider, the Report of the Committee, constituted under Section 30 of the Disaster Management Act, 2005, submitted, vide Memo No.1702/SDM/R, dated 26-06-2020 (*supra*) Annexure R4 [colly]. The Report reads as follows;

**"OFFICE OF THE
SUB-DIVISIONAL MAGISTRATE
RONGLI SUB-DIVISION, EAST DISTRICT 737131**

Memo No:1702/SDM/R

Date: 26.06.2020

Report on unnatural death of two person who were swept away by river.

With Ref No., O.O No.87/DCE/ dated 19/06/2020 we conducted inquiry with regards to the unnatural death of Mr. Tarun Thatal Darjee and Rohan Roy by drowning into the river on 22/06/2020 the incident took place at Rangpo River on 23/03/2020 at 10.30 am.

We inspected the place of occurrence along with SHO Rhenock and found that the deceased crossed this river through Bridge and while returning they went to the river and entered into the water to cross, may be with the intention to swim. They were three in number, in the meantime the volume of water in the river increased. It might take some time but they were in the river and before they crossed the river they were swept away. Out of the three the people around the place could save one but two were swept away at their and their bodies were recovered in the evening near Swiss Garnier and Rorathang Bridge.

It is also found that Gati Hydro Electricity Project has installed siren at project site dam site at and Rorathang Bridge but there is no siren in place of incidence. Further, during the enquiry they claimed that due to lack of network and the area being an isolated one they are not able to install at that place. Gati claims they erected caution notice board near the bridge but has been removed by the locals, so as of now at the time of inspection there was no caution notice board.

We visited project site and discussed with the Gati official regarding the safety measure they have followed. It is learnt that they installed sirens at places but not near the place of occurrence. However, they are not 1-2 kms apart as per Home Department Guidelines for public safety at Hydro Electric Project vide O.O. No:26/Home/2015. Further, as per their statements no water was released from dam but at regular interval water was released from turbines. On the day of incidents water was from the turbines earlier in the morning but not in the time of incidence. Further, it was noted that the place of occurrence is 4-5 Km downstream from power house so they cannot be sudden increase of water flow.

All the relevant documents are enclosed herewith for your ready reference please.

**Sd/-
Dr. Anand Sharma
Sub-Divisional Magistrate (HQ-II)
Assistant Collector
East District, Gangtok"**

**Sd/-
P.R. Dulal
Sub-Divisional Magistrate
Sub-Division Rongli**

[emphasis supplied]

(iii) On a bare perusal of the Report, it emanates that the Respondent No.3 had installed a siren at the Project Dam site, but undisputedly there was no siren at the place of incident. The Respondent No.3 also claimed that due to lack of network and the area being isolated, they were unable to install the sirens at the said places. The State-Respondent Nos.1 and 2, during their inspection, failed to take into consideration that the noise that can be generated by a gushing swollen river flowing downstream, in a mountainous region, drowns out all sounds making it an impossibility for a person in and around the river to hear a siren six kilometers away. Admittedly the siren was at a distance of six kilometers from the place of incident. The Report further mentioned that they visited the Project site and discussed with the Officials of Respondent No.3 regarding the safety measures. The specific words used are "*It is learnt that they have installed sirens at places but not near place of occurrence*". They also discovered that the sirens are not 1-2 kilometers apart as per the guidelines in the Notification of the Home Department. From the language employed in the Report presumably the inspecting team did not personally visit the concerned area to check whether the sirens had been installed. Admittedly, the Home Department's Notification requires that the installation of siren have to be 1-2 kilometers apart, to which scant attention was paid by the Respondent No.3. It is not the claim of the Respondent No.3 that the siren installed

six kilometers away from the place of incident was audible at the place of incident where the two boys met their death on account of the ineptitude, lack of diligence, and total indifference of the Respondent No.3. The Committee while justifying the act of the Respondent No.3 for not installing sirens has stated in the Report that "*Further, it was noted that the place of occurrence is 4-5 kilometers downstream from power house so they cannot be sudden increase of water flow (sic)*". The Committee failed to appreciate that water once released from the Dam flows in uniformity and the rivers in Sikkim are fast flowing rivers being at the young/upper course or a youthful river, which is full of energy and power and the velocity of the river flowing downstream increases as also its gravitational force. Thus, water released uniformly will reach 4-5 kilometers downstream raising the water level downstream uniformly. It is not the case of Respondent No.3 that the flow of the water decreases as it proceeds downstream, which in any case would have been an obnoxious proposition considering the observation *supra* about the stage of the river. Placing warning devices admittedly at a distance of six kilometers serves no purpose whatsoever and is merely a token gesture of the Respondent No.3 to feign compliance, with no attention paid to the gravity of the directions in the Notification. The State-Respondent Nos.1 and 2 are equally culpable for concluding that sirens at a distance of 4-5 kilometers apart sufficed as compliance of the Notification *supra*, and thereby absolving Respondent No.3 from payment of compensation, when Learned Counsel for the Respondent No.3 submits that the distance of the siren was six kilometers from the Project Dam. There is no contention of the

Respondent No.3 that the sirens were placed along the length of the river at equi-distance even of 4-5 kilometers. The reason enumerated by Respondent No.3 that due to lack of network and the terrain the sirens could not be installed is inexcusable and incongruous considering that an entire Dam project was constructed in the same isolated terrain, revealing the cherry picking attitude of Respondent No.3 and its indifference in subscribing to the safety measures prescribed. It is not the contention of Learned Counsel for Respondent No.3 that as directed in the Notification (*supra*) at Clause 4(2)(iii) advance warning was issued at least 30 to 45 minutes before releasing the Dam waters.

(iv) The Respondent No.3 claimed to have erected caution Notice Boards near the Bridge which had been removed by the "locals". At the time of inspection, no Caution Boards were found in the vicinity. The Inspecting Officials found no Notice Boards and accepted as the ultimate truth the claims of Respondent No.3 that the Boards had been removed by locals, *sans* proof. The claim of having erected Notice Boards to caution the people in the area and the allegation that they were removed by the "locals" was not established by way of indicating to the Committee the places where such Boards stood prior to such removal. The contents of the alleged Boards were not disclosed nor were photographs of the alleged installed Boards furnished for the perusal of the Committee or for that matter this Court, to establish their allegations of compliance of Home Department's Notification *supra*. Why "locals" would remove the caution Notice Boards which had been put up for their safety is beyond comprehension. It is an apparent effort on

the part of Respondent No.3 to cast aspersions on the persons living in the locality when it is clearly non-compliance on their own part of the Notification of the Home Department and directions of this Court, both reflected *supra*.

(v) No proof of dissemination of brochures to the public or announcements on televisions, radio or newspaper articles educating the public of the specific hazards near the Hydro Power Project and general rules requiring obedience have been placed before this Court by the Respondent No.3. From the inspection conducted and the Report submitted the State-Respondent Nos. 1 and 2 and the Respondent No.3 in fact have exhibited a total lack of concern at the loss of two young lives, whose widowed mothers would obviously have been harbouring high expectations for their future.

7. It thus concludes that there has been a total lack of compliance of the Notification No.26/Home/2015, dated 22-06-2015, of the Home Department, by the Respondent No.3. Any Notification issued under a Statute is also a law as defined under Article 13(3)(a) of the Constitution and has to be complied with. It is worth remarking that State-Respondent Nos.1 and 2 and Respondent No.3 have not complied with the directions of this Court.

8. The submission of Learned Counsel for the Respondent No.3 that the victims ought not to have been out and about in the forest reveals an authoritarian approach of the Company towards the people residing in and around the Dam area and the downstream river banks. The Hydro Power Project Companies cannot control and put restrictions on the free movement of free

citizens of the country. Their responsibility is limited to ensuring that all necessary guidelines and directions issued for safety of persons who may be in and around the rivers at any given time are followed and precautions are taken without compromising on any aspect whatsoever.

9. It is thus Ordered as follows;

(i) All directions in **Zangpo Sherpa** (*supra*) shall be complied with in letter and spirit by all the Hydro Power Projects across the State.

(ii) The State-Respondent Nos.1 and 2 shall ensure compliance of the direction pertaining to ensuring installation of sirens and all other directions of this Court in **Zangpo Sherpa** (*supra*) and of the Notification No.26/Home/2015, dated 22-06-2015, of the Home Department.

(iii) It is reiterated that all safety measures in the Notification No.26/Home/2015 dated 26-06-2015 shall be complied with.

(iv) Sirens, at an equi-distance of one kilometer each along the length of the river where a Project Dam exists shall be installed immediately but not later than three months from today by the concerned Hydro Power Projects in the entire State.

10(i). It needs no reiteration that the value of human life cannot be computed in material terms and any amount of compensation cannot be a salve to the pain suffered by the Petitioners. Nevertheless, imposition of compensation is an effort to mitigate their sufferings and can be utilised for the purpose of rehabilitation of the Petitioners, including enabling them to take measures for their mental health, considering the irreparable loss

suffered by them. Pertinently it may be pointed out that in ***Nilabati Behera Alias Lalita Behera vs. State of Orissa and Others***², the Supreme Court was dealing with the award of compensation in proceedings under Article 32/226 of the Constitution and observed as follows;

“20. We respectfully concur with the view that the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.”

(ii) In ***Air India Statutory Corporation vs. United Labour Union***³, the Supreme Court held that there is no limitation or fetters on the powers of the High Court under Article 226 of the Constitution except self-imposed limitations. It was elucidated as extracted hereinbelow;

² (1993) 2 SCC 746

³ (1997) 9 SCC 377

"59. The Founding Fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court is as *sentinel on the qui vive* is to mete out justice in given facts. On finding that either the workmen were engaged in violation of the provisions of the Act or were continued as contract labour, despite prohibition of the contract labour under Section 10(1), the High Court has, judicial review as the basic structure, constitutional duty to enforce the law by appropriate directions. The right to judicial review is now a basic structure of the Constitution by catena of decisions of this Court starting from *Indira Nehru Gandhi v. Raj Narayan to Bommai's case*."

(iii) In the light of the above observation, the hands of this Court are clearly not stayed from awarding compensation in appropriate cases.

(iv) In the end result, it is ordered that the Respondent No.3 shall pay a sum of Rs.35,00,000/- (Rupees thirty five lakhs) only, to Petitioner No.1 and a sum of Rs.35,00,000/- (Rupees thirty five lakhs) only, to Petitioner No.2 as compensation. I hasten to add that there cannot be parity in the quantity of compensation with that in **Zangpo Sherpa** (*supra*), in view of the clear violation of the existing Notification of the Home Department and standing directions of this Court in the said matter. Should every Hydro Power Project get away with token compensation for loss of life despite standing directions of the highest Court of the State to take precautions, utter chaos would abound on account of their carelessness, which would be unaccountable. It must be borne in mind that human life is as precious, regardless of the geography of the area.

(v) This Court vide, Order dated 08-09-2022, had ordered that despite directions to the District Collectors in **Zangpo Sherpa** (*supra*) to the effect that the State-Respondent Nos.1 and 2 shall

carry out bimonthly inspections by a team of Officers selected by the District Magistrate to check whether safety measures as required are in place and guidelines issued vide Notification No.26/Home/2015, dated 22-06-2015, are being adhered to, the State-Respondents have not complied with the said directions in letter and spirit. It was ordered that Show Cause Notice be issued to the District Collector, Gangtok District and the District Collector, Pakyong District. On 20-09-2022, the District Collector, Gangtok District and the District Collector, Pakyong District, by filing separate Affidavit, replied to the Show Cause Notice, tendering their unconditional apology for failure to comply with the directions of this Court which have been detailed in their Reply. In light of their Reply, Show Cause Notice was accepted vide Order dated 22-09-2022. However, in light of the details in the Inspection Report, Memo No.1702/SDM/R dated 26-06-2020 *supra* the inspection is found to be lacking, accordingly the State-Respondent Nos.1 and 2 shall each pay costs of Rs.2,00,000/- (Rupees two lakhs) only, to the Sikkim State Legal Services Authority, for utilization in the Old Age Homes *viz*; "Lee Aal" at Rakdong, Tintek and "Ishwarambha Samiti Sangh" at Ranipool.

(vi) The payment shall be made by the State-Respondent Nos.1 and 2 and Respondent No.3 as ordered above, within forty-five days from today, failing which, the amounts' shall carry an interest of 10% from the date of filing of the Writ Petition till full and final payment.

(vii) A repeat violation of the directions of this Court will not be viewed lightly.

- 11.** Writ Petition stands disposed of with the foregoing directions.
- 12.** Pending applications, if any, stand disposed of.
- 13.** Copy of this Judgment be made available to District Magistrates of all the six districts of Sikkim immediately for information and compliance.

(Meenakshi Madan Rai)
Judge
05-12-2022

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Approved for reporting : **Yes**