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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 16th April, 2026

Pronounced on: 27th July, 2026

+ W.P.(C) 12566/2019

MOHD. NEEJAM AND ANR.

.....Petitioners

Through: Mr. Kartik Venu, Mr. R Jude Rohit
and Mr. Arjan Ajai Singh, Advocates
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versus

THE STATE, GOVT. OF NCT OF DELHI AND
ORS.

.....Respondents

Through: Mr. Raghvendra Upadhyay, Panel
Counsel, GNCTD with Ms. Purnima
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Tiwari, Advocates for DJB
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CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

MINI PUSHKARNA, J.

INTRODUCTION:

1. The present writ petition has been filed under Article 226 of the Constitution of India (“**Constitution**”), seeking compensation for the death of the petitioners’ minor son, i.e., Mohd. Nazim, aged 10 years, on account of the claim of negligence on part of the respondents.
2. At the outset, it is noted that at the time of filing of the writ petition, the petitioners had prayed for compensation/damages to the tune of Rs. 25,00,000/-. However, in view of time having passed from the date of the incident, i.e., 27th September, 2014, and the tenure of the present proceedings, the petitioners also seek simple interest @ 12% per annum, thereby, claiming an amount of Rs. 40,40,495.36/-.

PROCEEDINGS BEFORE THE COURT:

3. Before advertng to the facts of the case, it would be apposite to record the developments that have occurred during the course of the present proceedings.
4. On account of the submissions made by respondent nos. 3 and 4, this Court *vide* order dated 12th January, 2023, impleaded respondent no. 6, i.e., Engineers India Limited (“**EIL**”) in the array of the parties. Further, respondent no. 6 stated that they adopt response to the present petition filed by respondent nos. 3 and 4. The relevant portion of the order dated 12th January, 2023, is reproduced as under:



“xxx xxx xxx

1. *Learned counsel appearing for respondent Nos. 3 and 4 submits that only officials of Engineers India Ltd. (EIL) have been impleaded and the company itself has not been impleaded.*

2. *At this stage, learned counsel for the petitioners submits that he has no objection to the impleadment of EIL to the array of the parties to the present petition.*

3. *Accordingly, Engineers India Ltd., Bhikaji Cama Palace, New Delhi - 110029 is impleaded as respondent No. 6 to the present petition. Let an amended memo of parties be placed on record.*

4. *Learned counsel for respondent Nos. 3 and 4 accepts notice on behalf of newly impleaded respondent No. 6 and submits that the response filed on behalf of respondent Nos. 3 and 4 be read as response filed on behalf of respondent No. 6.*

xxx xxx xxx”

(Emphasis Supplied)

5. Subsequently, upon oral request from the petitioners, this Court *vide* order dated 30th October, 2023, impleaded M/s DSCL-Fengshun-Wabag Consortium (“DSCL/Contractor”), i.e., respondent no. 7 in the array of parties. The relevant portion of order dated 30th October, 2023, is reproduced as under:

“xxx xxx xxx

2. *At the oral request of learned counsel for the petitioners, DSCL Ltd. being the contractors who were executing the work on the site where the accident occurred [for their successors in interest] are impleaded as respondent No.7. Amended memo of parties be filed within one week from today. Notice will thereafter be issued to respondent No.7 by all permissible modes, dasti in addition. Affidavit of service be filed within two weeks. Counter affidavits be filed by the respondents within four weeks thereafter.*

xxx xxx xxx”

(Emphasis Supplied)



PARTIES:

6. The petitioners in the present case are the parents of the deceased. The respondent no. 1 is the State, i.e., Government of NCT of Delhi (“GNCTD”), which is responsible for the implementation of any welfare schemes, which are meant for the victims and their family members. Respondent no. 2 is the Delhi Jal Board (“DJB”), which is the principal authority/employer for the sewer project at the site of incident. Respondent nos. 3 and 4, i.e., Mr. Rajesh Kumar Maurya and Mr. Shahjad Ahmad, were in the position of ‘Senior Engineer’ at respondent no. 6, i.e., EIL, an Indian government owned engineering consultancy service provider under the ownership of Ministry of Petroleum and Natural Gas, Government of India, who were appointed to provide project management consultancy services for ‘*Laying of Interceptor Sewer along Najafgarh, Supplementary and Shahdara drains for abatement of pollution in Yamuna river*’ (“**Project**”). Respondent no. 5 was in the position of ‘Safety Officer’ at respondent no. 7, i.e., DSCL, which was appointed as the Contractor for the project.

7. It is noted that respondents were carrying out some sewerage related work near the site of incident, i.e., *Bhagirathi Vihar Canal, Delhi – 110094*, specifically, Shahdara drain (receiving shaft RS-14 – Package 5) (“**site of incident**”), wherein, they had dug a deep / large pit in which dirty water was stored. The respondent no. 2, i.e., DJB entered into an Agreement with respondent no. 6 – EIL for the purposes of project management consultancy of the Project which consisted of six different Packages. Pursuant to the aforesaid Agreement, EIL invited bids on behalf of DJB to undertake the said works and awarded the bid to respondent no. 7, i.e. DSCL for Packages 4 and 5, namely, ‘Rohini/Rithala’ and ‘North Yamuna’, respectively.



Consequently, a Tripartite Agreement dated 07th February, 2012, was executed amongst the respondent no. 2, 6 and 7 for the purposes of execution of the Project.

FACTUAL MATRIX:

8. The son of the petitioners was born on 21st September, 2004, and was deceased on 27th September, 2014, on account of the occurrence of the unfortunate incident, wherein, on the date of incident, i.e., 27th September, 2014, the deceased fell into a pit of sewerage near site of the incident.

9. After the incident occurred, some persons took the deceased to GTB Hospital, where the doctors, *vide* MLC No. B-4031/14, declared the boy as ‘*brought dead*’ to the hospital, and accordingly a Death Certificate dated 03rd November, 2014, was also issued towards the same.

10. It is noted that pursuant to the incident, the police of Police Station - Gokalpuri, Delhi reached the spot and registered the information *vide* DD No. 29A. The First Information Report (“**FIR**”) of the incident was registered *vide* F.I.R. No. 975/2014 under Section 304A of the Indian Penal Code, 1860 (“**IPC**”). Further, a Chargesheet was filed by the Investigating Officer, arraying Mr. Rajesh Kumar Maurya (respondent no. 3), Mr. Shahjad Ahmad (respondent no. 4), and Mr. Zubair Alam (respondent no. 5), as the Contractors working on the site of incident.

SUBMISSIONS BY THE PARTIES:

11. On behalf of the petitioners, the following submissions have been made:

11.1 The minor son of the petitioners’, Mohd. Nazim, died after falling down in a pit of sewerage due to negligence on part of the respondents. Respondent no. 2, i.e., DJB, is the state body responsible for the collection,



treatment and disposal of waste water/sewerage in Delhi. The works being carried out at the site of incident were under their supervision.

11.2 The petitioners have suffered great loss due to the unfortunate and untimely demise of their minor son. The State has failed to protect the fundamental rights of the petitioners' son, and therefore, the petitioners are entitled to compensation as a public law remedy.

11.3 The present writ petition is maintainable despite respondent nos. 6 and 7 being private bodies as they are amenable to the writ jurisdiction in view of them being contracted to facilitate a public-welfare project on behalf of respondent no. 2 – DJB.

11.4 The objection of delay and laches, raised by the respondent no. 7, disregards the ground realities faced by the victims of negligence, especially, those from economically weaker sections of society, in a case, where a death has occurred owing to the said negligence. The pain, trauma, and financial distress cannot be measured in mere legal timelines.

11.5 An FIR bearing No. 975/2014 was lodged immediately after the incident and the proceedings are pending. However, the ongoing criminal proceedings do not preclude the petitioners' right to seek compensation under a public law remedy. It is well-settled that a criminal trial and a claim for compensation under public law operate in separate domains. Moreover, the fundamental principle of justice dictates that where a person has suffered irreparable loss, due to wrongful actions or omissions of another, mere procedural technicalities cannot be allowed to frustrate the legitimate claim of compensation.

11.6 Article 226 of the Constitution empowers this Court to adjudicate upon issues of grave injustice, and the mere existence of disputed questions



of facts does not constitute a ground for dismissal of the present writ petition. Further, the petitioners' remedy is not frustrated by disputes *qua* the *inter-se* liabilities between the respondents.

11.7 In the present case, foundational facts stand clearly established and are not in contest, *viz.*, the death of the petitioners' minor child, the cause of death confirmed in FIR and post-mortem report, the jurisdiction and administrative control of the DJB over the area, and the element of gross negligence apparent from the record. These undisputed facts establish clear breach of public duty and violation of the fundamental right to life under Article 21 of the Constitution. It is a settled law that on such a breach of fundamental right, a writ petition seeking compensation is maintainable.

11.8 The fatal incident involved an open and unguarded manhole situated in a public space, which raises an irrebuttable presumption of negligence on the part of the respondents. Thus, the principle of *res ipsa loquitur* is applicable. In view thereof, the burden of proof shifts from the petitioners to the respondents as a *prima facie* case is established.

11.9 The public law remedy is based on strict liability where a *prima facie* case of violation of fundamental rights has been made out. Compensation for violation of fundamental right is a public law remedy, distinct from the private remedy under the law of tort. It is well-settled in law that a trial and claim for compensation under public law operate in separate domains.

11.10 The respondents have jointly and severally failed to discharge their duty of care and responsibility by neglecting to take any safety precautions. The respondents had not placed any warning signs or boards near the site of the incident.



11.11 Respondent no. 1, i.e., GNCTD, in their Counter Affidavit has not controverted the chain of liability, and such non-denial amounts to implied admission in law. Therefore, the said respondent admits that the responsibility of safety and supervision of the site of incident was with respondent nos. 6 and 7. While, respondent nos. 4, 5, and 6, in their reply, admit that the obligation to ensure safety and proper supervision was contracted to respondent no. 7.

11.12 It is an admitted case of respondent no. 7 that it was the executing Contractor entrusted with carrying out works at the site of incident, and that it had the physical possession and operational control of the site of incident. It is further admitted by respondent no. 7 that they had the responsibility of ensuring safety measures at the project site. Moreover, the said respondent also admits the unavailability of a security guard at the site at the time of incident, thereby, reinforcing culpable negligence.

11.13 In light of the unequivocal admissions, the responsibility of the respondent no. 7, along with the supervisory roles of respondent nos. 3, 4, and 6, under the aegis of respondent nos. 1 and 2, stands established. Thus, the present case calls for invocation of this Court's jurisdiction under Article 226 of the Constitution.

11.14 The plea of the respondents about the existence of a boundary wall is untenable in light of the material on record. The Chargesheet reveals the presence of a crowd at the site. However, had the boundary wall been intact, such crowd could not have gathered there. Clearly, the wall was either non-existent or broken in parts, and most certainly did not constitute any sort of restriction in entry.



11.15 The purported map of the site of incident, as cited by the respondent no. 7, is almost two years prior to the incident, as is clearly apparent from the date on the endorsement seal affixed thereto. The map does not reflect whether a boundary wall existed or not. Furthermore, even the photographs used by respondent no. 7 indicate a dilapidated boundary wall.

11.16 The respondents' plea that the security measures installed by them at the site of incident were stolen by the local persons does not absolve them of their duty of care towards the public at large. The respondents were obligated to either replace the said security measures or adopt more stringent or permanent measures.

11.17 The respondents' defence of contributory negligence is bad in law as the standard of contributory negligence applied to a child differs from an adult.

11.18 It has been claimed by respondent no. 7 that they could not obstruct the drain during the monsoon period, and therefore, were not working actively at the site of incident. However, even during the periods of inactivity, standard industry safety protocols are essential and have to be followed.

11.19 Furthermore, the Letter dated 03rd November, 2014, issued by respondent no. 6 – EIL to the Additional District Magistrate, CEO, DDMA (North East) Deputy Commissioner Office Complex, Nand Nagari, Delhi (“ADM”) stating that all safety measures have been duly installed, has neither been properly annexed nor been proved. Moreover, the said respondent has raised factually unfounded allegations, viz., one boy pushing the deceased, which has been wrongfully attributed to the respondent no. 6 – EIL, who, in its reply, has never made any such assertion.



11.20 The plea of respondent no. 6 that some children were playing near the site and the deceased may have been responsible for his own death, is vague and unsupported by any evidence on record. There is no such statement by any witness or in any enquiry report. The respondent no. 6 – EIL has relied upon the hearsay of respondent no. 7 – DSCL, i.e., the Contractor. Moreover, the standard of care expected from a child is entirely different from that expected from an adult. The respondents, who are public authorities and their Contractors, owed a higher duty of care to the public.

11.21 The mere exclusion from the criminal Chargesheet, as claimed by respondent no. 7, does not act as a shield against public law liability as omissions or decisions by the police cannot exonerate the said respondent from civil or constitutional responsibility.

11.22 The specific terminology used to describe the place of death is not material, but what is material is whether a dangerous opening was left unprotected and whether children had access to it. The respondents cannot evade liability by contending that the structure at the site of the incident was either called a pit, well, shaft, manhole or something else.

11.23 The respondents have not annexed any other document showing the conclusion of enquiry or the findings of the ADM. Neither any report of the enquiry, nor any contemporaneous photographs, taken immediately after the incident, have been placed on record. Furthermore, the respondents failed to produce before this Court, the Tripartite Agreement dated 07th February, 2012, despite being in exclusive possession of the respondents. The respondents have virtually produced every form of document irrelevant to the dispute except those documents which would actually be material. The



said concealment or selective reliance must be adversely inferred against the respondents.

SUBMISSIONS OF THE RESPONDENTS:

Submissions of respondent no. 1 / GNCTD:

12. Through their Counter Affidavit dated 11th January, 2023, the GNCTD denied all averments of the petitioners, and stated that no relief can be sought herein, as the site of incident does not fall within the jurisdiction of the answering respondent, i.e., Public Works Department (“PWD”), GNCTD.

Submissions of respondent no. 2 / Delhi Jal Board (“DJB”):

13. The contentions on behalf of the respondent no. 2 – DJB are as follows:

13.1 Respondent no. 2 has not violated any rules and regulations or any of the legal or constitutional rights of the petitioners as alleged, therefore, the present petition is not maintainable and is liable to be dismissed *qua* respondent no. 2.

13.2 It is the admitted case of the petitioners that respondent no. 6 – EIL is the sole responsible agency, acting through respondent no. 7 – DSCL, of the works being undertaken in respect of the Project, at the site of incident. Thus, the DJB had no role of any sort at the site of incident, even in view of the agreement between the parties.

13.3 The present petition is barred by delay and laches, for the reason that the incident occurred in the year 2014 but the petition was only filed in the year 2019.

Submissions of respondent nos. 3, 4 and 6:

14. The submissions on behalf of respondent nos. 3, 4 and 6, are as follows:



14.1 It is the executive mandate of respondent no. 2 – DJB to undertake water supply, sewerage disposal and drainage projects within the National Capital Region of Delhi. Under the said mandate, the DJB entered into an agreement with EIL, which clearly records that EIL is to provide the Project management consultancy services on behalf of the DJB.

14.2 A Tripartite Agreement dated 07th February, 2012, was executed between the DJB, EIL and DSCL for the Project, and an agent-principal relationship between the EIL and DJB was formed, with DSCL acting as the executing agency for the works. Further, respondent nos. 3 and 4 were deployed at the site of incident on behalf of the EIL, and had no involvement with the construction or safety standards of the Project in any way, therefore, they cannot be held liable for any mishap.

14.3 The present petition is not maintainable against the answering respondents as they are neither ‘the State’ nor a ‘Statutory Body’. Furthermore, it is neither the case of the petitioners that respondent nos. 3 and 4 have acted negligently in violation of their public duties, nor have the petitioners established or specified which of the answering respondent’s action or inaction has violated the fundamental or legal rights of the petitioners. Moreover, unless negligence can be attributed and established, the present writ petition is not maintainable against the answering respondents.

14.4 It is the Contractor, which is responsible for ensuring the safety of life and property on the site, and any damage or loss caused to any third-party life and property should be repaired/replaced/compensated by the Contractor at their own expense. Furthermore, the Contractor undertakes complete indemnification of any and all third-party claims on both EIL and DJB. If the



Contractor fails to compensate for any third-party life and property, the same shall be done by respondent no. 2, on account of them being the principal employer.

14.5 It is also that the Contractor is mandated to take out relevant insurance policies for numerous contingencies and third-party liabilities, up to the value of the contract amount. In view thereof, the Contractor is bound to have adequate and significant third-party insurance cover to compensate and/or undertake all activities as may be required. Accordingly, respondent nos. 3 and 4 cannot be held liable in both law and equity to compensate the petitioners.

14.6 The answering respondents have acted within the scope of their work and authority to facilitate the public-welfare Project on behalf of the DJB. Additionally, the work site had numerous safety measures installed, such as caution tapes, safety nets, barricading boards, etc. and the Contractor adopted such measures on the directions of EIL. However, the said safety measures were stolen on various occasions and a complaint dated 21st March, 2013, was registered at Police Station - Gokulpuri.

14.7 The record in the present petition reveals substantial ambiguities about the precise nature of the structure in which the boy fell, the exact location of the incident, the authority or entity in possession and control of the site at the relevant time, and the existence or absence of safety measures at the material time.

14.8 The present petition is barred by limitation and suffers from delay and laches, as the date of incident was in September, 2014, however, the present petition has been filed in November, 2019, and the petitioners have failed to provide any cogent reason for the same.



14.9 The present petition is not maintainable as per the principle of *sub – judice*, in view of the pending criminal matter under FIR No. 975/2014, before the Karkardooma Courts, Delhi, and as such, in the absence of a firm establishment/indictment of the alleged negligence on part of the respondent nos. 3 and 4, the present petition cannot stand. Furthermore, negligence on part of the respondent nos. 3 and 4 is a question of fact, yet to be determined by a competent Court.

14.10 The Chief Metropolitan Magistrate in FIR No. 975/2014 *vide* the order dated 29th May, 2015 held that it is unclear how the respondent no. 3 and 4, are responsible for the safety of the site. Thus, there is no evidence to showcase that the said respondents were responsible for the safety of the site.

14.11 Respondent nos. 3 and 4 have acted within their scope of work and authority as employees of the project management consultant to facilitate the public-welfare project on behalf of the owner, i.e., respondent no. 2, and without prejudice, there is nothing to show otherwise.

14.12 The Chargesheet is a mere mechanical reproduction of the FIR and it does not disclose any independent investigation, analysis or evidentiary augmentation. It therefore, does not contain the level of technical detail required by this Court to draw a conclusion of civil or public law liability. It fails to annex any detailed photographs, measured or scaled site plan, and the description of the site, while the alleged hazard remains generic and unsupported by cogent evidence.

14.13 The FIR and Chargesheet interchangeably describe the structure as a “गड्ढे”, “नाले”, “water pit” and a “sewer”. The final report also refers to the site as a “gutter”. The petitioners’ own pleadings alternately describe the structure as a “pit of sewerage” or a “deep/large pit”, or elsewhere as an



“open sewer”. In the rejoinder, the terminology shifts again to an “open & uncovered pit of sewerage”.

14.14 In contrast, the respondents describe the structure in specific technical terms that contradict the “open pit” narrative. the reply of respondent no. 7 identifies the structure variously as an “interceptor chamber,” a “shaft/manhole,” or a “well”. The site of incident is identified in Project records of the answering respondent, as a “receiving shaft”, and it is a controlled construction zone.

14.15 In view thereof, without precise technical identification of the structure, no presumption of negligence can arise as different structures attract different safety protocols, statutory obligations, and foreseeability standards, as the duty of care varies depending on the nature of the instrumentality.

14.16 The respondents were diligent in their duty of care and that any absence of covers at the time of the incident was the result of illegal third-party intervention rather than any systemic failure or oversight by the EIL.

14.17 The site plan/drawing annexed on record by respondent no. 7 is a rough hand-sketch rather than a measured or scaled plan. Such a sketch cannot assist this Court in determining the precise location of the structure, its proximity to public pathways or residential areas, the accessibility of the site to children, or the placement or absence of barricades or covers. These deficiencies materially weaken the factual foundation of the petition.

14.18 The petitioners seek an improper invocation of doctrine of *res ipsa loquitur*, which is wholly inapplicable on the present record. Further, the material on record does not establish exclusive control of respondent nos. 3, 4 and 6, nor does it rule out any third-party interventions.



14.19 There is a multi-tier contractual arrangement involving a principal employer, a project management consultant and an executing Contractor. The answering respondents, i.e., respondent nos. 3, 4 and 6, are not executing agencies, and any such determination of liability without examination of contractual allocation, indemnity and insurance coverage, is legally unsustainable.

14.20 The determination of liability depends upon identifying which authority had possession, custody, or operational control of the site of incident on the relevant date. By way of a Letter dated 03rd November, 2014, to the ADM, respondent no. 6 had, *inter-alia*, expressed their role as the project management consultant. The aforesaid communication is purely explanatory and it contained no admission of negligence by respondent no. 6. Furthermore, the respondents complied with the subsequent administrative suggestion of increasing the height of the structure to 1.5 metres, and such action is standard post-incident safety enhancement, which cannot be retrospectively treated as an admission of prior negligence or acknowledgment of pre-existing hazard.

14.21 The doctrine of attractive nuisance cannot be invoked merely because the victim was a child, it requires proof that the site was inherently alluring and that children habitually accessed it, and that reasonable precautions were not taken. No such materials exist on record.

14.22 The doctrine of strict liability is not applicable in the present case as there has been no 'escape' of anything dangerous from the work site which caused the incident.

14.23 Granting compensation would lower the threshold for public claims, and encourage a template-based litigation founded on sympathy than legal



proof and attributability. The compensation of Rs. 25 Lacs, as sought by the petitioners, is without any basis or justification, as they have suffered no pecuniary loss. The petitioners, if at all, can be entitled to a maximum of Rs. 2,53,000/- as standard compensation, on the basis of the law laid down by the Supreme Court on standard compensation.

Submissions of respondent no. 7:

15. The respondent no. 7, i.e., DSCL has made the following submissions:

15.1 The contracted works had to be executed in terms of instructions issued by EIL and under their supervision and continuous inspection. The DJB/EIL was also responsible for carrying out continuous Health, Safety & Environment audits and meetings. Part of the aforesaid works, concerning Package 5, was to be carried out on the edge of the Shahdara drain.

15.2 On one side of the interceptor chamber was the edge of the drain, on the other side was the boundary wall of the Irrigation & Flood Control Department (“I&FCD”) of respondent no. 1. Further, at the onset of the monsoons, works were not being carried out at the subject area by the answering respondent, pursuant to the directions by I&FCD that the drain could not be obstructed during monsoons and all such obstructions have to be removed by 15th June, each year.

15.3 I&FCD carries out works in drains for monsoon preparations, including, desilting among other works. The process of cleaning/desilting of the drain by I&FCD leads to the interceptor chamber & shaft structure being filled with slush and debris. The answering respondent, in the aforesaid position, could not carry out the works, which could only be resumed in the month of October of each year. The incident in question took place during such period in September, 2014.



15.4 The answering respondent had even otherwise put requisite safety measures in place. However, there were incidents of theft of the said safety measures, therefore, there was no negligence or laxity in adopting safety measures. EIL's own Letter dated 03rd November, 2014, noted that the incident occurred when one or the other boy inadvertently pushed the boy in question, who then fell into the well/shaft.

15.5 The incident in question took place at receiving shaft, being RS-14, which is approximately 19.7 metres in width, while the bank of the drain till the edge of the boundary wall of I&FCD is 14.2 metres wide. Also, the height of the boundary wall of I&FCD is approximately 2.5 metres. Moreover, the area in question is not a public area and it was quite wide and plainly visible and also perceptible to children. Thus, inference of negligence could not be readily attributable. Therefore, the principle of *res ipsa loquitur* is not applicable in the present case.

15.6 The present petition is not maintainable as it raises disputed questions of facts and the said issue cannot be adjudicated upon in the present proceedings.

15.7 The petitioners, in their written submissions, seek claim of Rs. 39,50,837/-, which is a divergence of what has been claimed in the writ petition. The petitioners have not sought to amend their writ petition and no basis has been furnished for the purported compensation amount. There is further no basis in the petitioners' claim towards interest; much less from the date of incident.

15.8 The petitioners' argument that charges have been framed against DSCL is wholly erroneous and misconceived. DSCL has not been arrayed as an accused by the Investigating Officer. Furthermore, the petitioners, in their



rejoinder arguments confine their relief of compensation to respondent nos. 1 and 2, and such being the case, there is no basis for the writ petition to be allowed.

ANALYSIS & CONCLUSION:

16. I have heard learned counsels for the parties and have perused the record.

17. The present is a classic case where the state authorities have displayed apathy towards the death of a child by trying to shift burden to each other, despite apparent glaring negligence in not securing the site which was a source of potential danger on account of open pits that had been allowed to remain uncovered and unguarded. When such incidents happen where young children lose their lives due to failure of the government authorities to provide for adequate safety measures, the same is a pointer to the fundamental breakdown of the civic governance and blatant failure of the civic body in its duty of care. Such infractions constitute violation of the fundamental right to life, and have to be addressed with utmost seriousness.

18. The present writ petition has been filed seeking a compensation of Rs. 40,40,495.36/- (Rupees Forty Lacs Forty Thousand Four Hundred Ninety-Five and Thiry-Six Paisa Only), as on date. The same is sought premised on the claim that the death of the petitioners' son, Mohd. Nazim, aged 10 years, was due to the negligence on part of the respondents.

19. In the present writ, as compensation is sought against several entities, it would be expedient to understand the roles of the respondents, and other involved parties in the matter. Further, the respondents have shifted liability upon one another, which is also indicated in the table below. Thus, the following may be considered:



S.NO.	PARTY NAME	PARTY DETAILS
1.	Petitioner nos. 1 and 2	Father and Mother of the deceased. <u>(Claim negligence on part of all the respondents)</u>
2.	Respondent no. 1	GNCTD Party to the writ because it is the State Government which overlooks the welfare schemes for victims' family members. <u>(Does not specify negligence to any party)</u>
3.	Respondent no. 2	Delhi Jal Board DJB is the principal authority and employer overseeing the Project where the incident occurred. <u>(Claims negligence on part of respondent nos. 3, 4 & 6, i.e., EIL and its employees)</u>
4.	Respondent no. 3 & 4	Mr. Rajesh Kumar Maurya & Mr. Shahjad Ahmad Both are Senior Engineers in EIL (Respondent no. 6), who were the employees of EIL overseeing the Project. <u>(Claims negligence on part of the respondent no. 7, i.e., DSCL – Contractor)</u>
5.	Respondent no. 5	Mr. Zubair Alam He is the Safety Officer in charge of the site, at the time of incident. He is the employee of DSCL (Respondent no. 7), i.e., private Contractor.
6.	Respondent no. 6	M/s Engineers India Limited This is a public sector undertaking owned by the Government of India, which was appointed for the purposes of project management consultancy. EIL had invited



		bids on behalf of DJB, for the complete Project. Moreover, EIL oversaw the complete Project, including the private Contractors.
7.	Respondent No. 7	M/s DSCL Fengshun Wabag Consortium This is the Contractor that had been appointed by EIL, for the purposes of executing the work at Packages 4 and 5, i.e., site of incident. <u>(Claims negligence on part of the respondent nos. 2 and 6)</u>

20. To comprehend the sequence of events, it would be apposite to note the details of the Project that was being undertaken by the respondents, wherein, the incident had occurred. Thus, the following particulars may be noted:

- a. The Project in question was for '*Laying of Interceptor Sewer along Najafgarh, Supplementary and Shahdara for abatement of pollution in Yamuna River*'.
- b. The Project had six Packages, i.e., locations/areas.
- c. The DJB was the principal employer under whose aegis the Project was being undertaken.
- d. DJB appointed and entered into an Agreement with EIL for project management consultancy.
- e. The EIL took out a Notice inviting Tender for the Project, in which the respondent no. 7, i.e., DSCL – Contractor was awarded the Project for Packages 4 and 5, i.e., *Rohini/Rithala & North Yamuna*. The incident took place on 27th September, 2014, at the edge of Shahdara Drain,



which is located in *Bhagirathi Vihar Canal, Delhi – 110094*. The incident and the said location are located in Package 5.

- f. DJB, EIL and the DSCL, entered into a Tripartite Agreement dated 07th February, 2012 in this regard. Further, as per the Contractor, the terms of the Agreement were detailed in the Bidding Document and the Letter of Acceptance.
- g. The Police has filed a Chargesheet, which includes a sketch, and the position marked as ‘A’ in the said sketch along with the Chargesheet, is where the incident occurred.

21. Considering the various submissions made before this Court on behalf of the parties, the following questions arise for consideration by this Court:

1. *Whether the present petition is barred by delay and laches?*
2. *Whether the present petition is not maintainable on account of alleged disputed questions of facts?*
3. *Whether the present petition is maintainable against the private parties?*
4. *Whether there is negligence on part of the respondents?*
5. *Whether a prima facie case has been made out by the petitioners?*
6. *Nature of site where the incident occurred?*
7. *Whether compensation can be granted, and if so, the mechanism that has to be applied?*

Whether the present petition is barred by delay and laches?

22. The present writ was filed on 15th November, 2019, whereas, the incident occurred on 27th September, 2014. The respondent nos. 2, 3, 4, 6 and 7 have claimed that the petition suffers from delay and laches as, *firstly*,



the petition has been filed after 5 years of the occurrence of the incident, and *secondly*, the petitioners have not provided cogent reasons for the delay.

23. The aforesaid submissions regarding delay and laches as raised by the respondents do not find favour with this Court. In this regard, it is to be noted that the petitioners are grieving parents of a minor child aged 10 years at the time of his death. The petitioners had lodged the FIR No. 975/2014 on the same date as the incident, i.e., 27th September, 2014. Further, criminal proceedings were underway, wherein, a Chargesheet was filed, and proceedings were ongoing. Indication of the same can also be culled out from the order dated 29th May, 2015 passed by Chief Metropolitan Magistrate, District Court, Karkadooma, which is on record before this Court. Moreover, as per the order dated 14th October, 2025 passed by the District Court, Karkadooma, which was handed over in the Court, charges were framed against respondent no. 7. Therefore, the criminal proceedings are still underway, which are being pursued by the petitioners.

24. Moreover, the ground realities of parents of a deceased minor child have to be considered, along with the financial status of the parties, in dealing with such technical objections. The aspects of pain, trauma, financial distress, loss of child and being economically weak, have to be taken into consideration, while dealing with an objection of delay and laches. Thus, the Supreme Court in the case of *Tukaram Kana Joshi and Others Versus Maharashtra Industrial Development Corporation and Others*, (2013) 1 SCC 353, laid certain guidelines in relation to the aspect of delay and laches. Relevant paragraphs of the said judgment are extracted as below:

“xxx xxx xxx

13. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the



same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the courts to exercise their powers under Article 226, nor is it that there can never be a case where the courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable. (Vide P.S. Sadasivaswamy v. State of T.N., State of M.P. v. Nandlal Jaiswal and Tridip Kumar Dingal v. State of W.B.)

14. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners. (Vide Durga Prashad v. Chief Controller of Imports and Exports [(1969) 1 SCC 185: AIR 1970 SC 769], Collector (LA) v. Katiji [(1987) 2 SCC 107: 1989 SCC (Tax) 172: AIR 1987 SC 1353], Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur [(1992) 2 SCC 598: AIR 1993 SC 802], Dayal Singh v. Union of India [(2003) 2 SCC 593: AIR 2003 SC 1140] and Shankara Coop. Housing Society Ltd. v. M. Prabhakar [(2011) 5 SCC 607: (2011) 3 SCC (Civ) 56: AIR 2011 SC 2161].)

15. In H.D. Vora v. State of Maharashtra [(1984) 2 SCC 337: AIR 1984 SC 866] this Court condoned a 30-year delay in approaching the court where it found violation of substantive legal rights of the applicant. In that case, the requisition of premises made by the State was assailed.

xxx xxx xxx”

(Emphasis Supplied)



25. Likewise, in the case of *Ram Autar Singh Yadav Versus State of Uttar Pradesh and Others*, 2024 SCC OnLine SC 6091, the Supreme Court laid down the test for laches in a case of violation of fundamental rights, in the following manner:

“xxx xxx xxx

22. In the present case, neither is there accrual of any parallel right of a third party nor could grant of relief cause confusion and public inconvenience. There has also been no occasion for the State authorities to claim that they are in any manner handicapped to defend their action. On the contrary, this is a case where the appellant sought to explain the belated approach by referring to his repeated unyielding persuasions, which the High Court brushed aside mechanically, without appreciating that the appellant had invoked its writ jurisdiction for enforcement of his Fundamental Rights under Articles 14 and 21 of the Constitution. When a litigant approaches a high court invoking its high prerogative writ jurisdiction with a petition under Article 226 of the Constitution alleging that the impugned State action is in breach of his Fundamental Right and claims that the breach be bridged by issuing appropriate writ/order/direction as distinguished from a claim for enforcement of a statutory right, it partakes the character of a duty on the part of such high court to enforce the right breached as the guardian of the Constitution. Law is well-settled that there is no loss of a Fundamental Right for non-exercise thereof and also that there cannot be waiver of a Fundamental Right. Hence, no argument can commend acceptance that a litigant seeking enforcement of his Fundamental Right should be declined relief in all cases of a belated approach. Notwithstanding delay, which might not have been explained to the full satisfaction of a high court, we hold that in cases where a high court finds that facts, as they have been presented, are not seriously disputed, no further investigation into facts is required to be made, the relief claimed in the petition was otherwise due to the writ petitioner and the same would have followed as a matter of course and been granted had he approached the high court without delay, it would be iniquitous and inappropriate to deny relief for no better reason than that the relief has been belatedly claimed.

23. The writ petition of the appellant provided an opportunity to the High Court to right the wrong which, unfortunately, it failed to seize. It is with a deep sense of regret that we end the discussion here expressing hope that as the sentinel on the qui vive, the high courts



in the country would do well not to mechanically dismiss writ petitions on the ground of delay and laches without considering all the relevant factors.

xxx xxx xxx”

(Emphasis Supplied)

26. Similarly, in the case of ***Munni Devi Versus Government of NCT of Delhi and Another, 2021 SCC OnLine Del 46***, the incident occurred in the year 2007 and the writ petition was filed in the year 2018. Thus, in the said case, where there was a delay of 12 years from the date of the incident, the Court held that right of the illiterate petitioners from remote areas who lost their son, could not be defeated by laches. Thus, it was held as follows:

“xxx xxx xxx

38. *The next plea that has been strongly raised by Respondent 2 in defence is the plea of delay and laches. It has been pleaded that the present writ petition has been filed almost 12 years after the incident has occurred and the relief is barred by delay and laches.*

39. *In my opinion, the plea is misconceived.*

40. *Firstly, I cannot help noticing that the petitioner comes from an economically weaker section of the society. The parents of the deceased live in the interior of the Bihar. The husband of the petitioner is working as a labourer. They have painstakingly been following up with the police for appropriate steps but no results have followed. It is only in 2017 that from the court of learned MM through status report that was filed that some details were provided as to how their son had got electrocuted. Thereafter, they have perused and filed the suit which was dismissed as withdrawn and now they have filed the present writ petition.*

41. *On the issue of delay and laches, it is settled position of law that it is not a mandatory requirement that every delayed petition must be dismissed on the ground of delay.* In this context reference may be had to the judgment of the Supreme Court in *Vetindia Pharmaceuticals Ltd. v. State of U.P.* [Vetindia Pharmaceuticals Ltd. v. State of U.P., (2021) 1 SCC 804], where the court held as follows:

15. *That brings us to the question of delay. There is no doubt that the High Court in its discretionary jurisdiction may decline to exercise the discretionary writ jurisdiction on ground of delay*



in approaching the court. But it is only a rule of discretion by exercise of self-restraint evolved by the court in exercise of the discretionary equitable jurisdiction and not a mandatory requirement that every delayed petition must be dismissed on the ground of delay. The Limitation Act stricto sensu does not apply to the writ jurisdiction. The discretion vested in the court under Article 226 of the Constitution therefore has to be a judicious exercise of the discretion after considering all pros and cons of the matter, including the nature of the dispute, the explanation for the delay, whether any third-party rights have intervened, etc. The jurisdiction under Article 226 being equitable in nature, questions of proportionality in considering whether the impugned order merits interference or not in exercise of the discretionary jurisdiction will also arise. This Court in *Basanti Prasad v. Bihar School Examination Board* [*Basanti Prasad v. Bihar School Examination Board*, (2009) 6 SCC 791], after referring to *Moon Mills Ltd. v. M.R. Meher* [*Moon Mills Ltd. v. M.R. Meher*, AIR 1967 SC 1450], *Maharashtra SRTC v. Balwant Regular Motor Service* [*Maharashtra SRTC v. Balwant Regular Motor Service*, AIR 1969 SC 329] and *State of M.P. v. Nandlal Jaiswal* [*State of M.P. v. Nandlal Jaiswal*, (1986) 4 SCC 566], held that if the delay is properly explained and no third party rights are being affected, the writ court under Article 226 of the Constitution may condone the delay, holding as follows:

“18. In the normal course, we would not have taken exception to the order passed by the High Court. They are justified in saying that a delinquent employee should not be permitted to revive the stale claim and the High Court in exercise of its discretion would not ordinarily assist the tardy and indolent person. This is the traditional view and is well supported by a plethora of decisions of this Court. This Court also has taken the view that there is no inviolable rule, that, whenever there is delay the Court must refuse to entertain a petition. This Court has stated that the writ court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution may condone the delay in filing the petition, if the delay is satisfactorily explained.”

42. In this context reference may also be had to the judgment of the Supreme Court in *Tukaram Kana Joshi v. Maharashtra Industrial Development Corpn.* [*Tukaram Kana Joshi v. Maharashtra Industrial Development Corpn.*, (2013) 1 SCC 353], where the court held as follows:

“14. The High Court committed an error in holding the appellants non-suited on the ground of delay and non-availability



of records, as the court failed to appreciate that the appellants had been pursuing their case persistently. Accepting their claim, the statutory authorities had even initiated the acquisition proceedings in 1981, which subsequently lapsed for want of further action on the part of those authorities. The claimants are illiterate and inarticulate persons, who have been deprived of their fundamental rights by the State, without it resorting to any procedure prescribed by law, without the court realising that the enrichment of a welfare State, or of its instrumentalities, at the cost of poor farmers is not permissible, particularly when done at the behest of the State itself. The appellants belonged to a class which did not have any other vocation or any business/calling to fall back upon, for the purpose of earning their livelihood.”

43. In the present facts also the petitioners herein are illiterate and inarticulate persons and cannot be deprived of their rights in this manner.

44. Considering the overall situation and also keeping in mind that the jurisdiction under Article 226 of the Constitution of India is equitable in nature and keeping in view the background of the petitioner, in my opinion, it would not be appropriate to decline relief to the petitioner on the ground of delay and laches in the facts and circumstances of this case. The plea raised by Respondent 2 that the petition is liable to be dismissed on the ground of delay and laches, is rejected.

xxx xxx xxx”

(Emphasis Supplied)

27. Considering the exposition of law as aforesaid and in view of the overall facts and circumstances of the present case, this Court deems it fit to entertain the present petition. The plea raised by respondents regarding delay and laches, is found to be without any merit, and is totally misconceived. The petitioners herein are from the weaker section of the society, and the criminal proceedings were continuing before they approached this Court to invoke civil remedy, and the same were verily being pursued by the petitioners. The petitioners are from a poor background and lack legal literacy. It has been placed on record that the father of the deceased, earned an income of Rs. 15,000/- per month, working as a painter on contractual



basis and the mother is a homemaker. It cannot be discounted that in the unfortunate incident that took place wherein the petitioners lost their minor child, they have faced immense agony, distress and financial stress, as a natural corollary.

28. Thus, in view of the factual backdrop, the present is a fit case for exercising the discretion of this Court under the writ jurisdiction, especially, wherein petitioners are seeking relief against violation of their fundamental rights. Thus, it would be in the fitness of things to not oblivate the rights of the petitioners on a mere technical and procedural ground. Consequently, the contention of the respondents regarding delay and laches, is rejected in the facts and circumstances of the present case.

Whether the present petition is not maintainable on account of alleged disputed questions of facts?

29. It is the case of the respondents that the present writ petition cannot be entertained in light of disputed questions of facts arising before this Court, and therefore, the petitioners ought to exercise an alternate remedy in appropriate proceedings.

30. In this regard, it is to be noted that the aspect of disputed questions of facts does not take away the jurisdiction of this Court to entertain a writ petition, in cases where the material and foundational facts of the case are undisputed. Further, only because there exists an alternate remedy to a party, does not obligate a writ Court to not exercise its jurisdiction. It is for this Court to decide that if the material / foundational facts are not disputed, then the Court can exercise its jurisdiction under Article 226 of the Constitution.

31. Thus, the Supreme Court in the case of *A.P. Electrical Equipment Corporation Versus Tahsildar and Others*, 2025 SCC OnLine SC 447, has



held that mere existence of disputed questions of fact, does not take away the jurisdiction of High Court under Article 226 of the Constitution. Thus, it was held as under:

“xxx xxx xxx

48. Normally, the disputed questions of fact are not investigated or adjudicated by a writ court while exercising powers under Article 226 of the Constitution of India. But the mere existence of the disputed question of fact, by itself, does not take away the jurisdiction of this writ court in granting appropriate relief to the petitioner. In a case where the Court is satisfied, like the one on hand, that the facts are disputed by the State merely to create a ground for the rejection of the writ petition on the ground of disputed questions of fact, it is the duty of the writ court to reject such contention and to investigate the disputed facts and record its finding if the particular facts of the case, like the one at hand, was required in the interest of justice.

49. There is nothing in Article 226 of the Constitution to indicate that the High Court in the proceedings, like the one on hand, is debarred from holding such an inquiry. The proposition that a petition under Article 226 must be rejected simply on the ground that it cannot be decided without determining the disputed question of fact is not warranted by any provisions of law nor by any decision of this Court. A rigid application of such proposition or to treat such proposition as an inflexible rule of law or of discretion will necessarily make the provisions of Article 226 wholly illusory and ineffective more particularly Section 10(5) and 10(6) of the Act, 1976 respectively. Obviously, the High Court must avoid such consequences.

50. In the aforesaid context, we may look into the decision of this Court in the case of State of Orissa v. Dr. (Miss) Binapani Dei, AIR 1967 SC 1269. In paragraph 6 at p. 1270 of the said judgment, this Court has been pleased to hold as follows:—

“Under Art. 226 of the Constitution the High Court is not precluded from entering upon a decision on questions of fact raised by the petition. Where an enquiry into complicated questions of fact arises in a petition under Art. 226 of the Constitution before the right of an aggrieved party to obtain relief claimed may be determined. The High Court may in appropriate cases decline to enter upon that enquiry and may refer the party claiming relief to a suit. But the question is one of



discretion and not of jurisdiction of the Court.”

(Emphasis supplied)

51. This Court in the case of *Gunwant Kaur v. Bhatinda Municipality*, (1969) 3 SCC 769: AIR 1970 SC 802 observed as follows:—

“The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. **The High Court is not deprived of its jurisdiction to entertain a petition under Art. 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Art. 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made, dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.**”

(Emphasis supplied)

52. In one of the recent pronouncements of this Court in *State of U.P. v. Ehsan*, 2023 INSC 906, this Court observed that:—

“28. **We are conscious of the law that existence of an alternative remedy is not an absolute bar on exercise of writ jurisdiction. More so, when a writ petition has been entertained, parties have exchanged their pleadings/affidavits and the matter has remained pending for long. In such a situation there must be a sincere effort to decide the matter on merits and not relegate the writ petitioner to the alternative remedy, unless there are compelling reasons for doing so. One such compelling reason may arise where there is a serious dispute between the parties on a question of fact and materials/evidence(s) available on record are insufficient/inconclusive to enable the Court to come to a definite conclusion.....**

xxx xxx xxx”

(Emphasis Supplied)



32. Likewise, the Supreme Court in the case of *Tamil Nadu Electricity Board Versus Sumathi and Others*, (2000) 4 SCC 543, has held that when there is negligence on the face of it and infringement of Article 21 of the Constitution is there, in relation to disputed questions of facts, it cannot be said that there is a bar for remedy under Article 226 of the Constitution. Thus, the Supreme Court held as follows:

“xxx xxx xxx

10. In view of the clear proposition of law laid by this Court in Sukamani Das case [(1999) 7 SCC 298] when a disputed question of fact arises and there is clear denial of any tortious liability remedy under Article 226 of the Constitution may not be proper. However, it cannot be understood as laying a law that in every case of tortious liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there it cannot be said that there will be any bar to proceed under Article 226 of the Constitution. Right of life is one of the basic human rights guaranteed under Article 21 of the Constitution. In U.P. State Coop. Land Development Bank Ltd. v. Chandra Bhan Dubey [(1999) 1 SCC 741 : 1999 SCC (L&S) 389] where one of us (Wadhwa, J.) was a party, this Court after examining various decisions of the courts on the power of the High Court under Article 226 of the Constitution observed that the language of Article 226 of the Constitution does not admit of any limitation on the powers of the High Court for the exercise of jurisdiction thereunder though by various decisions of this Court with varying and divergent views, it has been held that jurisdiction under Article 226 can be exercised only when a body or authority, the decision of which is complained, was exercising its power in the discharge of public duty and that writ is a public law remedy. This Court then observed: (SCC pp. 758-59, para 27)

“[I]t may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law. Prima facie from the language of Article 226, there does not appear to exist such a divide. To understand the explicit language of the article, it is not necessary for us to rely on the decision of English courts as rightly cautioned by the earlier Benches of this Court. It does appear to us that Article 226 while empowering the



High Court for issue of orders or directions to any authority or person, does not make any such difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority including, in appropriate cases, any Government. Under clause (1) of Article 367, unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the legislature of the Dominion of India. 'Person' under Section 2(42) of the General Clauses Act shall include any company, or association or body of individuals, whether incorporated or not. **The Constitution is not a statute. It is a fountainhead of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals, whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances.** The High Court does not interfere when an equally efficacious alternative remedy is available or when there is an established procedure to remedy a wrong or enforce a right. A party may not be allowed to bypass the normal channel of civil and criminal litigation. The High Court does not act like a proverbial 'bull in a china shop' in the exercise of its jurisdiction under Article 226."

xxx xxx xxx"

(Emphasis Supplied)

33. In the present case, the questions which are disputed have squarely been raised by the respondents themselves. There is heavy reliance by the



respondents on the communications made by each other. The aspect of the location where the incident took place, the instrumentality which caused the incident, and whether the safety measures were present or not, have all been raised by the respondents as questions, which as per them, show there is dispute in the facts of the present case. In this regard, reliance is placed on the judgment of the Division Bench of this Court in the case of ***Rajeev Singhal and Another Versus MCD (East Delhi Municipal Corporation) and Another, 2018 SCC OnLine Del 11518***, wherein, the Division Bench has held that *inter se* disputes regarding facts between the respondents therein is not a ground for disentitling the petitioners therein in seeking relief under writ jurisdiction. The relevant portions of the said judgment are extracted as below:

“xxx xxx xxx

*18. In the case of Varinder Prasad (supra) also similar situation was in existence. In that case also, a boy aged 10 years died on account of a shed (chhajja) of a house situated in DESU Colony, Najafgarh collapsing and falling on him. In that case also negligence in maintenance of the chhajja was proved but there was inter se dispute between the Delhi Transco Limited and various other government authorities which resulted in an inter se dispute between them with regard to the question of negligence and while taking note of the aforesaid situation, relying upon earlier judgments of this Court and the Supreme Court in the case of D.K. Basu (supra), Neelabati Behera (supra), Rudal Shah (supra), Ram Kishore (supra) and Darshan (supra), **it has been held by this Court that once occurrence of the incident, factum of death of the victim consequent to negligence are established, merely because there is an inter se dispute between the respondents as to who is responsible for the accident or the negligence, the writ petition could not be dismissed.** The law laid down in the case of Chairman, Grid Corporation of Orissa (supra) was considered and after taking note of various judgments, the learned Court in the case of Varinder Prasad (supra) in para (31) has dealt with the issue in the following manner:*

*“31. **Consequently, I have no hesitation in concluding that the***



present being a case of glaring and evident negligence, to which the maxim Res Ipsa Loquitor applies, the present writ petition under Article 226 of the Constitution of India is maintainable as the said negligence has led to complete infraction of the fundamental right to life of the deceased. The inter se dispute between the two respondents, i.e. respondent nos. 1 and 2, would not come in the way of the petitioners for claiming compensation for breach of the fundamental rights of the deceased Ajay Kumar. The tendency of the public authorities, when more than one of them is involved, to shift the burden on each other is not new. Same was the position in Darshan (supra), and Ram Kishore (supra) and Swarn Singh (supra). The said inter se dispute was held, not be disentitle the petitioner from claiming relief under Article 226 of the Constitution of India, as negligence, resulting in breach of fundamental rights was held to have been established in each of these cases. The Court shall, however, prima facie examine the aspect of responsibility, only with a view to fix the responsibility of one of the respondents to pay the awarded compensation, leaving it open to the respondents to battle out and settle their inter se liability in appropriate proceedings.”

19. From the aforesaid, it is clear that merely because there is an inter se dispute between the respondents, it would not disentitle the petitioners from claiming the relief under Article 226 of the Constitution of India as negligence resulting in breach of Fundamental Rights is held to be established. Even though the judgment in the case of Varinder Prasad (supra) has been rendered by Single Judge of this Court but the said judgment refers to various judgments not only of Supreme Court but also of this Court and once in this case the finding recorded is to the effect that the accident took place because of negligence in the matter of maintenance of electrical equipments and it is also proved that the accident was a consequence of such negligence, merely on account of inter se dispute between the parties, namely, respondent No. 1 and respondent No. 2, in our considered view, the petitioner could not be non-suited or their petition is dismissed. Once the factum of accident having occurred resulting into death of the child and the accident being a consequence of negligence are established, the learned writ Court should have, in our considered view, proceeded to assess the compensation and awarded it to the appellants instead of dismissing the writ petition. In fact, the inter se dispute on facts between the respondents cannot be a ground for dismissing the writ petition. On the contrary, as has been done in various cases including the case of Varinder Prasad (supra), the Court should have held both the respondents jointly and severally liable for payment of compensation,



imposed 50% liabilities on them and thereafter left it to them to work out their inter se dispute, particularly so when both the respondents are functioning under the control of the Government.

20. Accordingly, in dismissing the writ petition on the ground that there are disputed questions of fact, in our considered view, the writ Court has committed a grave error which cannot be upheld by us. Accordingly, we allow this petition by holding that the writ petition was maintainable and merely because there is an inter se dispute between the respondents, the right of the petitioners (appellants herein) to claim compensation cannot be denied. Having held so, now the question would arise as to how and in what manner quantification of the compensation in the present case can be undertaken and how the compensation can be arrived at. In this regard, we may refer to the principle of law laid down in the case of *Lata Wadhwa (supra)* followed subsequently in the case of *M.S. Grewal (supra)*, the formula and criteria laid down in the case of *Kamla Devi (supra)*, so also in the case of *Varinder Prasad (supra)* and the compensation can be worked out. In the case of *M.S. Grewal (supra)*, relying upon an earlier judgment of the Supreme Court in the case of *C.K. Subramania Iyer v. T. Kunhikuttan Nair (1969) 3 SCC 64*, certain guidelines for the purpose of assessment of compensation has been laid down by the Supreme Court and in para (8) the principle laid down reads as under:

“8. Incidentally, this Court in *C.K. Subramania Iyer v. T. Kunhikuttan Nair [(1969) 3 SCC 64]* while dealing with the matter of fatal accidents laid down certain relevant guidelines for the purpose of assessment of compensation. Paragraph 13 of the Report would be relevant on this score and the same is set out herein below:

13. The law on the point arising for decision may be summed up thus: Compulsory damages under Section 1-A of the Act for wrongful death must be limited strictly to the pecuniary loss to the beneficiaries and that under Section 2, the measure of damages is the economic loss sustained by the estate. **There can be no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations but the amount recoverable depends on the particular facts and circumstances of each case. The life expectancy of the deceased or of the beneficiaries whichever is shorter is an important factor. Since the elements which go to make up the value of the life of the deceased to the designated beneficiaries are necessarily personal to each case, in the very nature of things, there can**



be no exact or uniform rule for measuring the value of human life. In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable. As a general rule parents are entitled to recover the present cash value of the prospective service of the deceased minor child. In addition they may receive compensation for loss of pecuniary benefits reasonably to be expected after the child attains majority. In the matter of ascertainment of damages, the Appellate Court should be slow in disturbing the findings reached by the courts below, if they have taken all the relevant facts into consideration.

xxx xxx xxx''

(Emphasis Supplied)

34. Accordingly, despite there being *inter se* disputed questions of facts between the respondents, this Court, to satisfy the maintainability of the petition, has to look at the foundational facts that are material. When material facts are not disputed and a case can be made out with the facts on record, a petition is maintainable under Article 226 of the Constitution.

35. In the present case, it is the contention of the respondents that the place of incident, the circumstances, the sequence leading to the death and the authority / entity in possession / control of the site, are all disputed, therefore, the writ petition cannot be entertained. However, the contentions of the respondents in this regard, are untenable and entirely misplaced. The foundational and material facts are undisputed in the present case, as brought forth in the table below:

S.NO.	INGREDIENTS	FACT	REASONING
1.	Cause of death	The death of the child occurred due to falling into an uncovered pit at the site in possession and/or control of the respondents.	The factum of death of the child is an admitted fact with the parties. The dispute as to the exact uncovered pit in which the child fell, is



			inconsequential, as it is an undisputed fact that the site of incident was in possession and control of the respondents on account of their respective roles in the Project.
2.	Place of incident	The location where the incident happened, is an admitted fact that it occurred in the area where the respondents were operating and executing their Project.	The exact location wherein the incident happened also does not create any foundational dispute, and the fact still remains that the incident occurred at a site, wherein the respondents were in possession and executing a Project.
3.	Authority	The authority in the present case is also not disputed.	The Project was under the aegis of DJB, and the involvement of EIL and DSCL is also clearly evidenced by the Tripartite Agreement, and correspondences indicating overseeing and management of the Project.

36. Thus, the contention of the respondents regarding disputed questions of facts cannot be accepted. There are clear and substantial facts which are not in dispute, on the basis of which, this Court can proceed with the present writ petition.

37. Maintainability of the present petition was also challenged on the ground that the petitioners have an alternate remedy to file a suit. However,



the same cannot be accepted. This Court in the case of *Lakhan Singh and Another Versus Delhi Development Authority and Others*, 2024 SCC OnLine Del 9415, has held that alternate remedy is not a bar for invoking the writ jurisdiction. Thus, in the said case, it was held as follows:

“xxx xxx xxx

34. The respondent no. 1 has further submitted that there are disputed questions of facts which precludes the court from entertaining the present writ petition. I am unable to agree with this contention since the court is not debarred from entertaining writ petitions only on the ground that alternate remedies are available and that there are disputed questions of facts. The power of the high courts under Article 226 is plenary in nature and it is the discretion of the high court to entertain petitions even on account of there being disputed question of facts or availability of alternate remedies. Reliance is placed upon the dicta of the Hon'ble Supreme Court in *Popatrao Vyanaktrao Patil v. The State of Maharashtra*, Civil Appeal No. 1600/2020 dated 14.02.2020, the operative portion of which reads as under:

“6. It could thus be seen, that even if there are disputed questions of fact which fall for consideration but if they do not require elaborate evidence to be adduced, the High Court is not precluded from entertaining a petition under Article 226 of the Constitution. However, such a plenary power has to be exercised by the High Court in exceptional circumstances. The High Court would be justified in exercising such a power to the exclusion of other available remedies only when it finds that the action of the State or its instrumentality is arbitrary and unreasonable and, as such, violative of Article 14 of the Constitution of India. In any case, in the present case, we find that there are hardly any disputed questions of facts.”

35. Reliance is further placed upon *Godrej Sara Lee Ltd. v. The Excise And Taxation Officer-Cum-Assessing Authority*, 2023 LiveLaw (SC) 70, the operative portion of which reads as under:

“4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by Article 226 of the Constitution having come across certain orders passed by the high courts holding writ petitions as “not maintainable” merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue



prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the high court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the high courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition “not maintainable”. In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the “maintainability” of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that “entertainability” and “maintainability” of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to “maintainability” goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of “entertainability” is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for



such entertainment would not be proper.”

36. Additionally, in my view there are no disputed questions of fact in the present case, Master Praveen lost his life due to an uncovered, unsecured and unguarded manhole. The same has also been stated as cause of death in the post-mortem report. There were no signages indicating the open manhole. The respondents have stated that there is shortage of lighting, however no action with respect to reporting/fixing the problem of shortage of lighting has been shown. **Therefore, there is an apparent inaction, indifference and negligence by the respondent no. 1 and respondent no. 3 in their duty of taking reasonable care which is inclusive of putting safety measures in place, having an adequate system to ensure such unfortunate incidents do not occur.**

xxx xxx xxx”

(Emphasis Supplied)

38. In this regard, reference is also made to the judgment of the Supreme Court in the case of ***Century Spinning and Manufacturing Company Ltd. and Another Versus Ulhasnagar Municipal Council and Another, (1970) 1 SCC 582***, wherein it was held as follows:

“xxx xxx xxx

13. Mr Gokhale appearing on behalf of the Municipality urged that the petition filed by the Company apparently raised questions of fact which in the view of the High Court could not appropriately be tried in the exercise of the extraordinary jurisdiction under Article 226. But the High Court has not said so, and on a review of the averments made in the petition this argument cannot be sustained. **Merely because a question of fact is raised, the High Court will not be justified in requiring the party to seek relief by the somewhat lengthy, dilatory and expensive process by a civil suit against a public body. The questions of fact raised by the petition in this case are elementary.**

xxx xxx xxx

(Emphasis Supplied)

39. Thus, in the conspectus of the aforesaid precedents, read with the foundational facts, this Court holds that the present writ is maintainable.



Whether the present petition is maintainable against the private parties?

40. It is settled law that if private bodies are undertaking public functions, then they are amenable to writ jurisdiction. In the present case, a statutory authority, respondent no. 2, i.e., DJB entered into an Agreement with a Public Sector Undertaking of Government of India, i.e., respondent no. 6 – EIL, which by way of bidding, awarded the Contract to respondent no. 7, i.e., DSCL. Further, the Project was for laying of intercepted chambers for abatement of pollution of River Yamuna. The same, on the face of it, is a public welfare Project, and therefore, the parties having entered into a Tripartite Agreement in this regard, would clearly be amenable to writ jurisdiction despite being private parties, as they are espousing functions for the public in building a public infrastructure Project.

41. Thus, this Court in the case of *Kishan Lal and Ors. Versus Govt. NCT of Delhi and Ors.*, MANU/DE/8177/2007, held that private parties are amenable to writ petitions, if they are performing public functions. Thus, it was held as follows:

“xxx xxx xxx

5. The first issue that must be addressed at the outset is whether a private body, here Sulabh, is amenable to the writ jurisdiction under Article 226 of the Constitution. In *Rahul Mehra & Anr v Union of India & Ors.*: 114 (2004) DLT 323, a Division Bench of this Court held that “amenability” is not the correct litmus test for determining the maintainability of a writ petition under Article 226. Rather, one must examine the “function” of the organization at issue: If it carries out a public function, then exercise of writ jurisdiction is appropriate, as under:

If a public duty or public function is involved, any body, public or private, qua that duty or function, and limited to that, would be



subject to judicial scrutiny under the extraordinary writ jurisdiction of article 226.

6. In *Rahul Mehra (supra)*, the Board of Control For Cricket in India (BCCI), although a private organization, was found to perform several public functions apart from its wholly private functions. This court held that the BCCI was amenable to writ jurisdiction under Article 226 only in regard to its public functions, but not its private functions such as private contracts, internal rules, etc. and other matters not concerning the public.

xxx xxx xxx”

(Emphasis Supplied)

42. Furthermore, in the case of *Rahul Mehra & Another Versus Union of India & Others*, 2004 SCC OnLine Del 837, it was held that when a private entity is discharging a public duty, they are amenable to writ jurisdiction. The relevant paragraphs of the said judgment, are reproduced as under:

“xxx xxx xxx

7. The core question, therefore, is — whether BCCI is amenable to the writ jurisdiction under Article 226 of the Constitution? Sub-article (1) thereof reads as under:

“226. POWER OF HIGH COURTS TO ISSUE CERTAIN WRITS.

(1) Notwithstanding anything in Article 32, every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

xxxx xxxx xxxx xxxx”

A plain reading would suggest that the powers are plenary and the High Court can issue directions, orders or writs to “any person” for the enforcement of any fundamental right and “for any other purpose”. However, these wide powers have been regulated by judicial pronouncements so as to avoid interference in matters where alternative remedies are available as also where the dispute is purely of a private nature having no “public law” element. The traditional view was that wherever the State or its instrumentality was involved, it



was regarded as an issue within the domain of public law. Likewise, where individuals were at loggerheads, the remedy lay within the precincts of private law. This was all very well as long as governments stuck to governance and private persons or bodies confined their activities to pursuits of a private nature. But, when the state entered into the fields of commerce, industry and business and when private bodies took up public functions and duties, this distinction between public law and private law based on the public or private character of the institution was no longer clear-cut. Therefore, it was no longer safe to rely solely upon the character of the institution to decide whether it was amenable to writ jurisdiction or not. For instance, where there is a dispute of a purely contractual nature (not being a statutory contract), it does not matter that one of the parties is the “State” or a “statutory body” or “instrumentality of the State”, such a matter falls within the arena of private law and judicial review under Article 226 would not lie. And, the converse would be equally true. In other words, a dispute in which the State is not directly involved may yet be a public law issue if a public duty or a public function is performed by a private body.

8. Governments have ventured into the private arena and private bodies, likewise, have undertaken public duties or public functions. There is a degree of overlap and the distinction is no longer clear-cut or watertight. The law must be alive to these dynamics. Accordingly, the question of maintainability of a writ petition must not be addressed from the standpoint of amenability. Everybody is amenable to the jurisdiction of the High Courts under Article 226. However, Courts have exercised restraint and they exercise these powers only in cases which involve public law. Therefore, the “litmus” test for invoking the writ jurisdiction is whether the act complained of is in the discharge of a public duty or a public function. It matters little as to who discharges the public duty or performs the public function. And so too, the source of the power to discharge or perform such duty or function. Whether the person is empowered by statute or some governmental order or whether such person arrogates to himself the power to perform a public function or discharge a public duty, is of no consequence. What is to be seen is whether there is an infraction in the discharge of such duty or function. If there is, the High Court has power to correct it by issuing an order, direction or writ to any person. Funding is also not an issue. A privately funded private organisation but discharging a public duty would still be within the “net” of Article 226.

9. In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*, (1989) 2 SCC 691 [at



page 700], the Supreme Court succinctly put this issue beyond the pale of controversy in the following words:

“20. The term “authority” used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words “any person or authority” used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists, mandamus cannot be denied.”

(underlining added)

The decision in *Andi Mukta* (supra) was further explained in *Vst Industries Ltd. v. Vst Industries Workers’ Union*, (2001) 1 SCC 298 where the Supreme Court observed as follows at page 306]:

“In *Anadi Mukta* case this Court examined the various aspects and the distinction between an authority and a person and after analysis of the decisions referred in that regard came to the conclusion that it is only in the circumstances when the authority or the person performs a public function or discharges a public duty that Article 226 of the Constitution can be invoked.”

And, then in *G. Bassi Reddy v. International Crops Research Institute*, (2003) 4 SCC 225, [at page 236] the Supreme Court held:

“28. A writ under Article 226 can lie against a “person” if it is a statutory body or performs a public function or discharges a public or statutory duty (*Praga Tools Corpn. v. C.A. Imanual, Shri Anadi Mukta Sadguru Trust v. V.R. Rudani* SCC at p. 698 and *VST Industries Ltd. v. Workers’ Union*) Although, it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity.”

Ultimately, in *Federal Bank Ltd. v. Sagar Thomas*, (2003) 10 SCC 733, [at page 748]:



“From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.”

xxx xxx xxx”

(Emphasis Supplied)

43. The contention of the individual respondents, i.e., respondent nos. 3 to 5 that the petition is not maintainable against them, as they are mere employees of EIL and DSCL cannot be accepted. In this regard, reference is made to the case of ***Smt. Mamta Devi & Ors. Versus BSES & Ors., 2005 SCC OnLine Del 1294***, wherein, this Court has held that when relief is claimed, apart from a statutory authority and its employees, against private individuals, there is no bar to the maintainability of the writ petition. Thus, it was held as follows:

“xxx xxx xxx

18. That relief is claimed, apart from a statutory authority and its employee, against private individuals is also not a bar to the maintainability of the writ petition. Private individuals engaged in hazardous activities have been burdened with liability in writ proceedings as in the case of Uphar Cinema Tragedy and M.C. Mehta's case (supra).

xxx xxx xxx”

(Emphasis Supplied)

44. A claim against state and its agencies, along with private individuals is clearly maintainable, when they are espousing public functions. Therefore, the contention of respondents on this account stands rejected.



Whether there is negligence on part of the respondents?

45. To assess negligence, it is essential to examine the roles of the respondents in the present matter. Thus, it is noted as follows:

- i. **Respondent no. 1 – GNCTD** has been involved in the matter, and the same is evidenced from the Show Cause Notice dated 18th October, 2014 issued by them to respondent no. 3 – Mr. Rajesh Kumar Maurya, an employee of respondent no. 6 – EIL. Further, the DJB under whose aegis the work was being carried, is an instrumentality of the GNCTD.
- ii. **Respondent no. 2 – DJB** – The said respondent is the principal employer under whose aegis the Project was being operated. DJB appointed respondent no. 6, which in turn, appointed respondent no. 7 on behalf of DJB for execution of the Project. The DJB has been involved in overseeing the Project and the same is evidenced by the Letter dated 10th June, 2019 sent by Flood Department to DJB in relation to the Project and information regarding monsoons. Further, DJB held a review meeting for the Project in question, *vide* Minutes of Meeting dated 11th August, 2019, wherein, the status of Package 5, i.e., place where the site was situated, was discussed. Even the Letter dated 22nd January, 2010 was issued by the Flood Department to DJB again indicates the involvement of DJB, as also the Letter dated 21st April, 2014 issued by DJB, showing its involvement in the Project.
- iii. **Respondent no. 6 – EIL** was appointed by DJB by way of an Agreement, to act as a project management consultant. EIL was overseeing the operations of the Project, and respondent no. 7, took its permissions from EIL as well. Further, EIL was the authority which provided the status with regard to the work being done under the



Project. Moreover, EIL had invited the bid for tender on behalf of DJB, all of which shows its clear involvement in the Project. Reference in this regard can be made to the Letter dated 06th August, 2012, Letter dated 29th March, 2014 by DSCL to EIL sent to resolve issues in the Project and Package wise status being provided by EIL. Further, Letter dated 18th November, 2019 was sent by DSCL to EIL regarding damages of manhole in Package 5. Reference is also made to the Letter dated 03rd November, 2014 addressed to Additional District Magistrate sent by EIL explaining its position at the incident at hand.

- iv. **Respondent no. 7** – DSCL was the Contractor in question which was executing the work at site. DSCL had written several letters to EIL, and had been awarded a tender by EIL on behalf of DJB to execute work at the site in question. It has also entered into a Tripartite Agreement with DJB and EIL as per its own submissions.
- v. **Respondent nos. 3 & 4** are the employees of EIL.
- vi. **Respondent no. 5** is the employee of respondent no. 7 and was designated as the safety officer for the site in question.

46. Thus, it is clear that all the respondents have played an active role in the Project which was being carried out in the area where the site of incident is located. Furthermore, on account of the active involvement of DJB and the other respondents being its instrumentalities for operation and execution of work, there is a clear aspect of vicarious liability involved in the matter, and none of the respondents can seek to absolve themselves if negligence is found to be present in the matter.

47. Reference may be made to the case of *Gopalpur Victim Association Versus Delhi Jal Board & Ors.*, 2011 SCC OnLine Del 554, wherein, it was



held that the State and DJB are vicariously liable for the acts of Contractors and agencies, which failed to maintain the area in question therein. Relevant portions of the aforesaid judgment, read as under:

“xxx xxx xxx

11. That apart from what has been pleaded one aspect that has been brought to our notice in course of hearing a communication made by Executive Engineer of Flood and Irrigation Department of GNCTD to the SHO, Timarpur police station. Para 2 of the said communication reads as under:

“The land under reference has been handed over to Delhi Jal Board to lay their pipe line and is under their control for carrying out their work, which has not been completed so far. Prior to allowing the Delhi Jal Board to lay their pipe line, gate fitted in boundary of southern side used to be locked by the chowkidars of this department. However, after accord of approval to Delhi Jal Board the same is controlled by their staff to have a free access to the site to carry their men, machinery and material as and when required.”

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.

xxx xxx xxx”

(Emphasis Supplied)

48. In this regard, it would be apposite to refer to the judgment of this Court in the case of ***Devika and Others Versus Delhi Jal Board Through its***



Chairman and Another, 2026 SCC OnLine Del 4373, wherein, it was held that any activity undertaken under the authority of the State must be reckoned as the act of the State itself, and the State must be held vicariously liable for it. Thus, it was held as follows:

“xxx xxx xxx

29. So far as the question of vicarious liability is concerned, this Court in Chitra Chary v. DDA, has held that any activity undertaken under the authority of the State must be reckoned as the act of the State itself, and the State must be held vicariously liable for it. This is in line with the decision of the Supreme Court in Achutrao Haribhau Khodwa v. State of Maharashtra, wherein, it was observed that the State should be as much liable for tort in respect of a tortious act committed by its servant within the scope of his employment and functioning as such, as any other employer.

30. In Lakhan Singh v. Delhi Development Authority, this Court, in an analogous situation where the DDA sought to deflect liability onto a private contractor for leaving an open manhole, emphatically rejected such a defence, holding that a statutory body's duty of care cannot be so easily transferred to a contractual arrangement with a private party.

xxx xxx xxx”

(Emphasis Supplied)

49. To satisfy the test of negligence, the primary consideration is whether the respondents implemented adequate safety measures. If the incident is found to be result of the respondents’ breach of duty in taking adequate safety measures, their liability for negligence would be established.

50. Accordingly, in this regard, the following may be considered:

- i. As per the Chargesheet and the FIR, there were no safety measures present at the site such as barricading, signage, safety nets or presence of security personnel. Further, when the incident occurred, many people had come to the site as well. The same indicates that if there was any boundary wall, it was not adequate to stop or restrict



movement of persons. Further, the argument that safety material was stolen from the site, buttressed by a sole complaint dated 21st March, 2013 filed by DSCL, does not absolve the clear dereliction of duty to maintain safety measures, especially, when the incident had occurred 18 months after the said complaint.

- ii. As per respondent no. 7's own admission, the security guard was at a distance of 250 metres from the site of incident, and there was only one security guard for the complete site, which clearly evidences active avoidance in maintaining security at the site, especially, when the said respondent was aware of people entering into the site.
- iii. Further, the security guard was posted at the site, who would have informed as to the theft of manhole/well/pit cover, however, the same was not remedied by the respondent no. 7. Despite presence of open pits/wells, no measures were taken to secure the same by deployment of adequate force of security and measures towards the same. The respondent no. 7, having placed only one security guard for an area as large as the site of the Project, provides clear indication of the neglect and dereliction of duty.
- iv. Respondents were aware that there was monsoon season and the drain would fill up with water and debris. Notwithstanding the same, no proof has been placed on record to show any active measure of safety taken by the respondents in that regard. On the contrary, it is stated that due to monsoons, work could not be done. The site and the execution of the Project was in the hands of the respondents. Further, even as early as the year 2020, respondent no. 7 was working on the site, therefore, it cannot be said that stopping of work at the site would



ipso facto mean not to undertake safety measures. This shows gross negligence on part of the respondents.

51. All of the above aspects show that adequate safety measures were not taken by the respondents and merely one security guard was deployed for the large area of the site, wherein, the incident had occurred. Thus, on the above factual backdrop, had the respondents taken proper safety measures, the incident may have been averted. Therefore, there is an active negligence on part of respondent no. 7, who in turn had their operations overseen by respondent no. 6, M/s Engineers India Limited, who was working under the aegis of respondent no. 2, DJB. Thus, there is a clear case of negligence on behalf of the respondents.

52. The Supreme Court has issued guidelines in a case on its own motion, titled as *Measures for Prevention of Fatal Accidents of Small Children due to their falling into Abandoned Borewells and Tubewells: In Re Versus Union of India and Others (2010) 15 SCC 224*, wherein, the Supreme Court stated that where the respondents were constructing a shaft or well, they were required to erect barbed wire fencing or other suitable barriers around the well. They were required to cap the well assembly with a strong cap fixed to the casing pipe with bolts and nuts. They were required to ensure that the well was not left uncovered. The relevant portions of the aforesaid judgment are extracted as under:

“xxx xxx xxx

4. Having regard to the number of incidents that have taken place during the recent past and the immediate need for preventing such incidents in future, we direct that the following safety measures/guidelines are to be observed by all the States:

4.1. The owner of the land/premises, before taking any steps for constructing borewell/tubewell must inform in writing at least 15



days in advance to the authorities concerned in the area i.e. District Collector/District Magistrate/Sarpanch of the Gram panchayat/any other statutory authority/officers concerned of the Department of Groundwater/Public Health/Municipal Corporation, as the case may be, about the construction of borewell/tubewell.

4.2. Registration of all the drilling agencies viz. government/semi-government/private, etc. should be mandatory with the district administration/statutory authority wherever applicable.

4.3. **Erection of signboard at the time of construction near the well with the following details:**

(a) **Complete address of the drilling agency at the time of construction/rehabilitation of well.**

(b) **Complete address of the user agency/owner of the well.**

4.4. **Erection of barbed wire fencing or any other suitable barrier around the well during construction.**

4.5. **Construction of cement/concrete platform measuring 0.50 m × 0.50 m × 0.60 m (0.30 m above the ground level and 0.30 m below the ground level) around the well casing.**

4.6. **Capping of well assembly by welding steel plate or by providing a strong cap to be fixed to the casing pipe with bolts and nuts.**

4.7. **In case of pump repair, the tubewell should not be left uncovered.**

4.8. **Filling of mud pits and channels after completion of works.**

4.9. **Filling up abandoned borewells by clay/sand/boulders/pebbles/drill cuttings, etc. from bottom to the ground level.**

4.10. On completion of the drilling operations at a particular location, the ground conditions are to be restored as before the start of drilling.

4.11. **District Collector should be empowered to verify that the above guidelines are being followed and proper monitoring check about the status of boreholes/tubewells are being taken care through the State/Central Government agencies concerned.**

4.12. District/Block/villagewise status of borewells/tubewells drilled viz. number of wells in use, number of abandoned borewells/tubewells found open, number of abandoned borewells/tubewells properly filled up to the ground level and balance number of abandoned borewells/tubewells to be filled up to the ground level is to be maintained at the district level.

4.13. **In rural areas, the monitoring of the above is to be done through Village Sarpanch and the Executive from the Agriculture**



Department. In case of urban areas, the monitoring of the above is to be done through Junior Engineer and the Executive from the Department concerned of Groundwater/Public Health/Municipal Corporation, etc.

4.14. If a borewell/tubewell is “abandoned” at any stage, a certificate from the Department concerned of Groundwater/Public Health/Municipal Corporation/private contractor, etc. must be obtained by the aforesaid agencies that the “abandoned” borewell/tubewell is properly filled up to the ground level. Random inspection of the abandoned wells is also to be done by the Executive of the agency/department concerned. Information on all such data on the above are to be maintained in the District Collector/Block Development Office of the State.

5. The abovementioned guidelines shall be given wide publicity through the national television channels. A copy of this order be sent to the Chief Secretaries of all the States/Union Territories who shall forward the same to the District Collectors of all districts of their respective States.

xxx xxx xxx”

(Emphasis Supplied)

53. The respondents in the present case have failed to comply with any of the aforementioned guidelines.

54. The terminology used to describe the place of death, whether it is a well, shaft, pit, or manhole, does not affect the liability of the respondents. What matters is whether a dangerous opening was left unprotected and whether children had access to it. Further, the respondents cannot evade liability by raising arguments as to whether the place of incident was a pit, a well, a shaft, or a manhole. The duty to secure all such openings which may pose danger, is absolute.

55. The contention that there was contributory negligence on part of the deceased child, also cannot be accepted. In the case of ***Court On Its Own Motion Versus Govt. of NCT of Delhi and Others, 2018 SCC OnLine Del 10283***, the Division Bench of this Court held that failure to exercise ordinary



care and diligence in maintaining a scrutiny over an uncovered rain water harvesting pit and failure to keep the surrounding area in a reasonably safe condition, amounted to negligence of the statutory authority in performing its duties, and no negligence could be attributed to the 11 years' old victim who lost his life by falling into the same. Thus, the Division Bench held as follows:

“xxx xxx xxx

23. Significantly, in *Williams v. City of Bristow, Okl.*, 350 P.2d 484: 84 ALR 501 the Supreme Court of Oklahoma held that **“it is the duty of a municipality to exercise ordinary care and diligence to keep its sidewalks and streets in a reasonably safe condition. The municipality is not an insurer of safety of the traveling public and its liability is founded on negligence.”**

24. We find that the expression ‘negligence’ is not defined statutorily.

25. *Black's Law Dictionary* (8th Edn, 2004 at p.1061) defines ‘negligence’ as follows:

“negligence, n. 1. The failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregarding to others' right. The term denotes culpable carelessness.”

(Emphasis supplied)

26. *Stroud's Judicial Dictionary* (4th Edn, 1973 at p.1747) defines ‘negligence’ thus:

“NEGLIGENCE. (1) “‘Negligence’ is not an affirmative word; it is a negative word; it is the absence of such care, skill, and diligence, as it was the duty of the person to bring to the performance of the work which he is said not to have performed” (per Willes J., *Grill v. General Iron Screw Collier Co.*, 35 L.J.C.P. 330).

(2) “Negligence is the omitting to do something that a reasonable man would do, or the doing something which a reasonable man would not do” (per Alderson B., *Blyth v. Birmingham Water Works Co.*, 11 Ex. 784).

(Emphasis by us)



27. In Halsbury's Laws of England (Fifth Edition, Vol. 78, para 61), the duty of an occupier of the premises to the public is elucidated as follows:

“61. Duty to the public in respect of premises. An occupier of premises adjoining a highway or other public place is under an obligation to take reasonable care not to injure members of the public, and is liable if, in consequence of failing to exercise such care, a person is injured (1) where the occupier knew or ought reasonably to have known that the premises were in a state likely to cause injury to persons passing by...”

28. In similar facts, the court in the case of Sattar Sheikh v. Municipal Corporation of Delhi, 2014 ACJ 489 fastened liability for negligence on the MCD in the following terms:

“Thus, the possibility of children playing on the said plot which was admittedly in disuse as a toilet, ought to have been in the comprehension of the respondent No. 1 MCD. Moreover, it is totally inexplicable as to why the plot and/or manholes were left uncovered. Thus, a case of negligence on the part of the respondent MCD is made out.”

(Emphasis by us)

xxx xxx xxx

31. The above enunciation of the applicable principles clearly declares that duty of maintenance of the manholes rests squarely and solely on the public authorities who built and control it.

32. We have extracted the counter affidavits filed on record. These clearly establish the fact that the area in question, more specifically the manhole, was under the maintenance and responsibility of the PWD which had failed to maintain the same. No negligence can be attributed to the victim for not noticing or spotting the uncovered manhole. The only possible conclusion from the admitted factual position is that the PWD had failed in its duty of exercising even ordinary care & diligence in maintaining a scrutiny over the manholes and keeping the surrounding area in a reasonably safe condition.

33. The blame for the ill-fated incident, in which a young 11 year old boy, who had gone for a happy outing as a school picnic, lost his life, therefore clearly lies with the PWD which failed to exercise due care.

34. The PWD has before us, attempted to abdicate its responsibility of saying that no manhole constructed by it is left uncovered. But clearly this is unacceptable. The effort to pin the blame solely on the horticultural wing of the PWD is also not correct. While the



horticultural wing cannot absolve itself of blame, the wing of the PWD which built the water tank and the manhole, had the responsibility of regularly inspecting and maintaining the same and failed to do so has to be held to have been equally negligent in performing their duties. The horticultural wing ought to have noticed the damage to the cover and ensured that it also informed the concerned authorities.

xxx xxx xxx”

(Emphasis Supplied)

56. Additionally, the Division Bench of this Court in the case of ***Sharafat Khan and Another Versus Northern Railway and Another, 2023 SCC OnLine Del 3594***, while holding that it was the duty of the respondents to take proper diligence and care at the site to avoid any accident, has held as follows:

“xxx xxx xxx

16. Negligence is not statutorily defined. In Governor-General in Council v. Mt. Saliman, ILR (1948) 27 Pat 207 and State v. Hari Singh, (2015) 219 DLT (CN B) 15, ‘negligence’ is defined as breach of a duty caused by the omission to do something which a reasonable person guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable person would not do. Winfield (Winfield and Jolowicz Tort, 12th edition. P. 69) defines negligence as breach of a legal duty to take care which results in undesired damage by the defendant to the plaintiff. The said definition was also referred in Jay Laxmi Salt works (P) Ltd. v. State of Gujarat, (1994) 4 SCC 1, Poonam Sharma v. Union of India, AIR 2003 Del 50. **Negligence, in its ambit, comprises three constituents which are : i) a legal duty on the part of the party complained of to exercise due care towards the party complaining of the former's conduct; ii) breach of the said duty, and iii) consequential damage. The duty to take care is essential before a person can be held liable for negligence. The person concerned is obliged to take reasonable care to avoid acts or omissions which she/he could reasonably foresee, would likely injure other persons.**

17. R-1 awarded a contract for the construction of a rainy-well at the site to M/s Kedar Nath Khandelwal through its proprietor i.e. the respondent no. 2. The site was under control of the respondent no. 1 and the respondent no. 1 allowed the respondent no. 2 to take



permissive control of the site. At the time of incident, the site was in use, occupation and possession of the respondent no. 2 but it belonged to the respondent no. 1. R-2 made a temporary well at the site in which the deceased fell and died. It is also apparent and not disputed by either of the respondents in their respective affidavits, that digging work at site continued for many days and the respondent no. 2 neither deputed any safety guard at site nor placed any fencing around the pit/trench to prevent any living being from wandering towards it, lest any harm could be caused to such unsuspecting person. This site annexed to the petition shows one large contiguous land. Children used to play in the open unhindered area. Nothing has been brought on record to show that the children were cautioned or restrained or forewarned from playing in the open filed. A young boy of about 12 years does not know the difference between a railways land or land of other civic agency. For children all open areas, lands and fields are for games, for running, fun and frolic. The petitioner says the young boy died when he slipped into the well. Now any reasonable person would foresee such fatal mishaps, if the dug-up trench/well was not secured/fenced-off/guarded to prevent such mishaps. This was the duty of the respondents to the public. They failed in their duty to care. Their negligence led to the loss of life of an innocent boy. The children of the locality used to play on said open land in which the unsecured rainy well was dug up; while playing in the said area the boy of 12 years fell into the pit/trench and lost his life. Evidently, neither of the respondents had taken appropriate care and erected/installed safety measures at the site, to prevent any unwanted and unfortunate incident, like the one which resulted in death of the deceased. The respondents were neither vigilant nor sensitive in taking appropriate safety measures at the site to avoid any unfortunate accident. It was the duty of the respondents to take proper diligence and care at the site to avoid any accident. The respondents were negligent in taking safety measures at the site to prevent any accident. The respondent no. 1 cannot be absolved from its responsibility of taking proper safety measures at the site even after award of contract to the respondent no. 2. The respondents are jointly and severally liable for their act of negligence and to pay compensation to the appellants.

xxx xxx xxx”

(Emphasis Supplied)

57. The defence of contributory negligence or the suggestion that the children were ‘playing’ or were ‘mischievous’ has been consistently rejected



by the Courts in cases involving the death of minor children by falling into uncovered and dangerous pits, manholes and wells. In this regard, reference is made to the judgment of this Court in the case of **Gopalpur Victim Association (Supra)**, wherein, it has been held as follows:

“xxx xxx xxx

5. On a perusal of the writ petition and the counter affidavit, it is clear as noon day that where the four young children breathed their last by falling in the pit was a vacant land belonging to the Flood and Irrigation Department, which had been handed over to Delhi Jal Board for laying down of pipelines. The stand in the return is that it was not necessary to protect the area in entirety like a prohibited area. It is the further stand that the possibility of children going for a swim or playing mischief in the dead of night cannot be ruled out. On a query being made whether at 7 p.m. in Delhi in the month of March can be described as dead of night, we must fairly say, Mr. Waziri, learned Standing Counsel conceded that it cannot be said dead of night as it can at best be described as twilight time. The stand that the children would have gone to swim in the pit seems to be a far from satisfactory explanation. It is not disputed that the area admeasure about 10 acres of land and it is unimaginable that the children would go to swim in a pit; The simultaneity of death does not suggest any kind of foul play by anyone. The children being children have the tendency to proceed in a singular mind set at times may be to save each other or may be trying to run but definitely it cannot be said that they were mischievous or went to swim. On that base of such a stance, it cannot be said that there is disputed questions of fact which cannot be adjudicated in exercise of power under Article 226 of the Constitution. Presently to the authorities that have been pressed into service by the respondent.

xxx xxx xxx”

(Emphasis Supplied)

58. Reference is also made to the judgment in the case of **Subramaniam and Anr. Versus Delhi Metro Rail Corporation and Ors., 2013 SCC OnLine Del 2363**, wherein, while rejecting the contention of contributory negligence of the deceased child, it was held as follows:



“xxx xxx xxx

12. In order to grant compensation, it would have to be ascertained as to whether the facts, as they stand, establish violation of the victim's right under Article 21 of the Constitution. In this behalf, the following needs to be noticed : -

xxx xxx xxx

(iii). It is, therefore, quite evident that one of the respondents i.e., DMRC or MCD or both, could have adopted the same approach upon completion of the work at site. The failure, on the part of the said respondents, to take measures which could have prevented occurrence of a mishap of the nature which occurred in the instant case, resulted in breach of duty of care, which they owed to the victim. **This court, in Kishan Lal's case, in somewhat similar circumstances, applied the principle of res ipsa loquitur to fix liability of the State. Since the victim in Kishan Lal's case was a child of tender age of seven years, the court clearly held that no contributory negligence could be attributed to the child. In applying the principle of res ipsa loquitur, the court cited with approval the following observations made in yet another decision of this court in Klaus Mittelbachert v. East India Hotels Ltd. 65 (1997) DLT 428. The relevant observations are extracted hereunder : -**

“....Under the doctrine of res ipsa loquitur a plaintiff establishes a prima facie case of negligence where (1) it is not possible for him to prove precisely what was the relevant act or omission which set in train the events leading to the accident, and (2) on the evidence as it stands at the relevant time it is more likely than not that the effective cause of the accident was some act or omission of the defendant or of someone for whom the defendant is responsible, which act or omission constitutes a failure to take proper care for the plaintiff's safety. There must be reasonable evidence of negligence. **However, where the thing which causes the accident is shown to be under the management of the defendant or his employees, and the accident is such as in the ordinary course of thing does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care.** Three conditions must be satisfied to attract applicability of res ipsa loquitur: (i) the accident must be of a kind which does not ordinarily occur in the absence of someone's negligence; (ii) it must be caused by an agency or instrumentality within the exclusive control of the defendant; (iii) it must not have been due to any voluntary action or contribution on the part of the plaintiff. (See Ratanlal and Dhirajlal on Law of Torts, edited by Justice G.P. Singh, 22nd edition 1992, pp 499-501 and the Law of



Negligence by Dr. Chakraborti, 1996 edition, pp 191-192)...”
(emphasis is mine)

12.1 Having regard to the above principle, I am of the opinion that a civil wrong was committed qua the petitioners' child Lalu, on account of the negligence of DMRC and/or MCD.

xxx xxx xxx

14. As indicated above, in Kishan Lal's case and as rightly pointed out by Ms. Mehta in the case of Kumari Alka v. Union of India, 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 hereinbelow : -

“...28. The facts of the present case demanded greater care on the part of the driver of the car 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...” (emphasis is mine)

14.1 I am in respectful agreement with the view taken in the judgements cited above. This issue is, thus, also decided in favour of the petitioners. The child Lalu could not be imputed with contributory negligence. The argument of respondents, particularly DMRC, made in this behalf is thus rejected.

xxx xxx xxx”

(Emphasis Supplied)

59. Thus, in view of the above, there is clear negligence on part of the respondents. Standard of care expected from a child is entirely different from that expected from an adult. A ten years' old child cannot be expected to appreciate the dangers of an uncovered pit or well, in the same manner as an adult. The respondents, who are public authorities and their Contractor, owed a higher duty of care to the public, especially, to children who are naturally attracted to open spaces and who cannot be expected to recognise manmade dangers left unguarded. Hence, the respondents failed to take



measures which could have prevented such a mishap and have been clearly negligent.

Whether a *prima facie* case has been made out by the petitioners?

60. In proceedings such as the present one, wherein, compensation is sought, it has to be seen whether *prima facie*, there is negligence on part of the respondents. The petitioners have stated that the principles of *res ipsa loquitur*, i.e., the thing speaks for itself, applies in the present matter. On account of the negligence being established on part of the respondents, accompanied with the facts as noted above, it is clear that a *prima facie* case has been made out by the petitioners. Thus, when a *prima facie* case has been made out, the burden of proof shifts onto the respondents to show that negligence was not on their part. In this regard, reference is made to the case of ***Chob Singh Versus Govt. of NCT of Delhi and Anr., 2012 SCC OnLine Del 1983***, wherein, it was held as follows:

“xxx xxx xxx

15. There can be no dispute or denying the fact that the respondents owed a duty of care to the general public, so that no action or inaction of theirs causes harm to the general public at large. Further there can be no dispute that the tanks should have been maintained as well as covered and locked, so that no person could enter into the wall, where Nand Kishore met the accident. The duty of the respondent DJBs guard did not end by leaving the two children with Sanju. He should have, in the first instance, not permitted the children's entry. Even if they were permitted to enter the compound, it was his responsibility to ensure that they did not loiter inside or go into dangerous areas. The said area posed a high risk to any stranger, much more to children, who may go into areas where poisonous gas was being produced. The principle of strict liability will be applicable in the present case and the Delhi Jal Board is liable to pay compensation.

16. In MCD v. Suhagwanti, 1966 SCC Online SC 22: AIR 1966 SC 1750, the Supreme Court applied the strict liability principle in awarding compensation to the victim. The Court applied the maxim



Res Ipsa Loquitor as the mere fact that the clock tower fell, told its own story in raising the inference of negligence so as to establish a prima facie case against the Corporation.

17. This court in the recent judgment of Santu Ram v. State, W.P. (C) 768/2009 decided on 07-02-2012 had dealt with the similar issue. In that case, the place where the poles were kept was a public place and anybody could have access to that place without any hindrance. It was held that it was the duty of the respondent BSES to ensure that their actions or omissions do not cause harm or injury to any other person who may come into contact with that poles stacked in an open public place. The respondents were found to be negligent in keeping the cemented poles in an open public area, where the general public had access, without any warning or taking proper safety measures. So, the principle of strict liability was applied in that case and the BSES was held liable to pay compensation to the petitioners for the ultimate breach of their only son's most valuable fundamental right to life, guaranteed under Article 21 of the Constitution of India.

18. In Darshan v. Union of India, 1999 SCC Online Del 358: 2000 ACJ 578, the deceased had died of drowning after falling into an open manhole. The Division Bench of this court held as follows—

“Coming to instant case. It is one of res ipsa loquiter, 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 untimely death of Skatter 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 derivation 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.”

19. In the case of Varinder Prasad v. BSES Rajdhani Power Ltd., W.P. (C.) No. 8924/2007 decided on 18-01-2012, the High Court took into account the earlier decision of this Court in Ram Kishore v. MCD, 2007 (97) DRJ 445, to hold that a writ petition to claim compensation is maintainable under Article 226 of the Constitution of India, in case there is violation of fundamental rights. In Varinder Prasad (supra) an unfortunate boy died in an accident when the shed of the house collapsed on him.



20. The Supreme Court in *Pushpabhai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. (P) Ltd.*, (1977) 2 SCC 745 has explained the doctrine of *Res Ipsa Loquitur* in the following words:

“The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant.

This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purport of the words res ipsa loquitur is that the accident “speaks for itself” or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Salmond on the Law of Torts (15th Ed.) at p. 306 states: “The maxim res ipsa loquitur applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused”.

21. *In Halsbury's Laws of England, 3rd Ed., Vol. 28, at page 77, the position is stated thus: “An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged as negligence “tells its own story” of negligence on the part of the defendant, the story so told being clear and unambiguous”. Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part.*

22. *The mere fact that the entry was allowed was sheer negligence on the part of the respondents. As aforesaid, the respondents owed a duty of care to the said children by not permitting their entry into the compound as the same was a prohibited area. The said area posed a high risk to any stranger - much more to small children, who may go into areas where poisonous gases were being produced and present.*

23. *I, therefore, hold that the maxim Res Ipsa Loquitur is clearly attracted in the present case and the incident in question itself establishes the negligence on the part of the respondents. The petitioners are, therefore, entitled to grant of compensation in these*



proceedings for breach of the most basic fundamental right of Nand Kishore under Article 21 of the Constitution of India.

xxx xxx xxx”

(Emphasis Supplied)

61. The doctrine of *res ipsa loquitur* was explained by the Supreme Court in the case of ***Pushpabai Purshottam Udeshi and Others Versus Ranjit Ginning & Pressing Co. (P) Ltd. and Another., (1977) 2 SCC 745***, in the following manner:

“xxx xxx xxx

6. The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of *res ipsa loquitur*. The general purport of the words *res ipsa loquitur* is that the accident “speaks for itself” or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Salmond on the Law of Torts (15th Edn.) at p. 306 states: “The maxim *res ipsa loquitur* applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused”. In Halsbury's Laws of England, 3rd Edn., Vol. 28, at p. 77, the position is stated thus: “An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged a; negligence ‘tells its own story’ of negligence on the part of the defendant, the story so told being clear and unambiguous”. Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part.....

xxx xxx xxx”

(Emphasis Supplied)



62. In the present case, the admitted facts as borne out from the records of the respondents, are as follows:

- i. Firstly, it is admitted that on 27th September, 2014, the petitioners' 10 years' old child Mohd. Nazim died, with cause of death as drowning, as a result of falling into a pit filled with dirty water.
- ii. Secondly, the place of death is also not disputed, being within the area of construction being carried out by the respondents.
- iii. Thirdly, the site where the incident occurred was at the relevant time, under the control of the respondents for a project commissioned by the DJB. In this regard, a Tripartite Agreement was signed amongst the DJB, i.e., respondent no. 2, the Engineers India Ltd., i.e., respondent no. 6 and the contracting consortium, which is respondent no. 7 herein.
- iv. Fourthly, the absence of safety measures at the site, including, but not limited to, lack of barricading around the well/pit and lack of warning signs around the well/pit.
- v. Fifthly, the pit was left uncovered.
- vi. Sixthly, the site was left unattended by the respondents, as the respondents themselves have stated that the security guard was not around at the time when the incident occurred.
- vii. Seventhly, a criminal case (FIR No. 975/2014 dated 27th September, 2014, Police Station - Gokalpuri) was registered, and a Chargesheet was filed and charges were framed against respondent no. 7 in connection with this incident.
- viii. Eighthly, show cause proceedings under Sections 33 and 34 of the Disaster Management Act, 2005, were initiated against respondent no.



3, citing observations of the District Authority Quick Response Team, stating that there were no precautions/warning signs placed near any of the wells/pits, nor were they covered or surrounded with a safety tape.

63. Thus, in the facts of the present case, it is undisputed that the child has died as a result of falling into a pit with dirty water. The place of death is in the area of the project executed by the respondents. Safety measures were inadequate or not even present. The pit/manhole was not covered. Show cause proceedings and criminal proceedings have been initiated against the respondents. All of these facts speak for themselves that admitted positions are there in the present matter, which establish negligence on part of the respondents.

64. In this regard, reference is made to the case of *Pravesh Kumar and Another Versus Delhi Jal Board, through its Chairman Head Office and Others, 2024 SCC OnLine Del 8158*, wherein, while dealing with the applicability of the maxim *res ipsa loquitur*, it was held as follows:

“xxx xxx xxx

21. Therefore, it is a settled law that the writ jurisdiction can be invoked by the aggrieved persons in cases of violation of the right to life at the hands of the State, as such a remedy is fundamental to public law.

22. Thus, the principal issue which stands posed before the Court is the applicability of the maxim *res ipsa loquitur* and the requisite standard of proof in upholding the petitioners' right to receive monetary compensation under the public law remedy.

23. In *Shagufta Ali*, the Court, while referring to the enunciation of law in various judicial precedents, laid down the essential conditions for the applicability of the legal maxim *res ipsa loquitur* in exercise of its discretionary powers under Article 226 of the Constitution of India to grant compensation. It was categorically held that when the State instrumentalities are directly and solely responsible for an incident, and the cause and fact of death are undisputed, the



maxim res ipsa loquitur would be applicable. This principle allows for the presumption of negligence, strictly based on the facts of each case.

24. This Court in the case of Munna reiterated the findings in Shagufta Ali and held that it is a settled law that where the negligence and breach of duty by the State are writ large and duty of care is found to be specifically of the public authorities, the maxim res ipsa loquitur shall apply. When the State is under a statutory duty of care and fails to fulfil such duty, the presumption of liability without proof will also be attracted.

25. The Division Bench of this Court in another case of Rajeev Singhal was considering a claim of compensation on account of death due to electrocution, where, a fourteen-year-old boy got in contact with an electric cable which was lying on the ground. The Court considered various decisions and held that once it is established that the incident actually resulted into the death of the child and the same was a consequence of negligence, the Writ Court would be well within its jurisdiction to award necessary compensation irrespective of the dispute, if any, between the respondents therein.

26. In the case of Subramaniam, this Court was considering a case of the death of eight-year-old child who died while playing with his friends on account of asphyxia caused by drowning in a stormwater drain. The Court held that the rigour of conservatism has been relaxed, not only in the field of civil wrongs, termed as torts, but also in the area of contracts where the State or its instrumentalities are parties. The pertinent observations in the said decision are reproduced as under:—

“11....As a matter of fact, the courts have gone to the extent of saying that it would be incorrect to state that where facts are disputed, a writ court would not have jurisdiction to entertain a petition under Article 226 of the Constitution. It is one thing to say that the court in its discretion may not entertain a petition in which disputed questions of fact arise for consideration, it is another thing to contend that a court does not have jurisdiction to entertain a petition which raises disputed questions of fact. The latter proposition is now discarded by the Supreme Court. [See. Smt. Gunwant Kaur v. Municipal Committee Bhatinda (1969) 3 SCC 769 and ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd. (2004) 3 SCC 553

11.1 The approach, with regard to civil wrongs committed by officers of the State or the instrumentalities of the State are on no different footing where claims are based on strict liability. While



there is no gainsaying that, an affected person could vindicate his right qua a civil wrong committed on him, by instituting a civil suit, a claim in public law for compensation, for unconstitutional deprivation of the fundamental right to life, would also be available to him. This claim would be in addition to the claim available in private law for damages caused on account of tortious acts of the public servants. Compensation, if any, would be paid by constitutional courts for 'established infringement of rights granted under Article 21 of the Constitution'.

11.3 Most of the aforementioned cases were reviewed by the Supreme Court in the case of *MCD v. Association of Victims of Uphar Tragedy*; (2011) 14 SCC 481 : AIR 2012 SC 100, where the court sustained the grant of compensation, with some modification, to the families of the victims and those who were injured in the fire, which occurred in the Uphar Cinema Theatre at Delhi. A Division Bench of the Supreme Court after reviewing its own previous precedents pushed the envelope a little further by observing that : -
“...what can be awarded as compensation by way of public law remedy need not only be nominal palliative but something more. It can be by way of making monetary amounts for the wrong done or by way of exemplary damages, exclusive of any amount recoverable in a civil action based on tortious liability...”

27. In the case of *Gopalpur Victim Association*, this Court was dealing with the tragic drowning of four children, namely Narender, Atul, Vikas, and Nitesh, in a water-filled pit on the land owned by the Flood and Irrigation Department. The said land, handed over to DJB for pipeline work, was not properly secured, resulting in the children accessing the dangerous area and losing their lives. The parents, represented by the Gopalpur Victim Association, filed a writ petition seeking compensation for the negligence in safety measures by the authorities.

28. The primary issue in the said case was whether the respondents, therein, namely DJB and Government of NCT of Delhi, were responsible for the deaths of the children. The respondents argued that the area was not meant to be protected like a restricted zone and speculated that the children might have entered the pit either to swim or due to mischief. They also contended that since the facts were disputed, the matter should not be adjudicated under Article 226, where the Court generally addresses legal rather than factual issues. However, the Court rejected this argument stating that the children had drowned at twilight, and that the claim that they entered the pit to swim was speculative and unconvincing. The Court held that both the DJB and the State authorities were negligent in their duty to secure the area and prevent unauthorized



access. The lack of fencing and safety measures directly contributed to the tragic deaths of the children. The Court referenced several precedents to clarify that the presence of factual disputes does not bar the Court from entertaining a writ petition under Article 226 of the Constitution of India.

29. The Court further emphasized that in cases where the facts are straightforward and clearly established, the High Courts have the authority to adjudicate both legal and factual issues without relegating the matter to a civil suit. With respect to quantum of compensation, the Court awarded Rs. 3.5 lakhs to each of the victims' families, which included Rs. 1 lakh that had already been paid as ex-gratia by DJB. The remaining Rs. 2.5 lakhs was ordered to be paid within four weeks. Additionally, the Court allowed DJB to recover this amount from any responsible parties, including contractors or staff, after conducting a proper inquiry.

30. In the case of Kishan Lal, a seven-year-old boy had died after falling into an open manhole due to the negligence of the respondents, therein, who failed to ensure that the manhole was covered. The Court held that children cannot generally be imputed with contributory negligence and thereby, a compensation amounting to Rs. 5,13,801/- was granted to the parents of the deceased therein, holding Sulabh International Social Service Organization responsible for toilet complex maintenance to be negligent in performing its duties. The Court, while relying upon Kamla Devi v. Government of NCT of Delhi, awarded the aforesaid compensation, comprising Rs. 1,53,801/- as standard compensation and Rs. 3,60,000/- for pecuniary loss of dependency.

31. In another case of Darshan, the petitioners, who were the widow and minor children of the deceased, sought compensation for his death after he fell into an open manhole and drowned. The case revolved around the negligence by the Government authorities responsible for maintaining the manhole. The respondents, therein, including the Public Works Department (PWD) and the Municipal Corporation of Delhi (MCD), disputed their liability, each claiming the manhole did not fall under their jurisdiction. However, the Court rejected these arguments, holding that such a dispute between departments should not delay relief to the victims. While citing judicial precedents on State liability for breach of fundamental rights under Article 21 of the Constitution of India, the Court held that a writ petition was an appropriate remedy for compensation in cases involving negligence by Government agencies. The Court awarded the petitioners Rs. 2,00,000 as compensation alongwith interest, and directed that the amount be divided among the widow and minor children. The Court further clarified that, if necessary,



the PWD could recover the compensation from the MCD after further inquiry.

32. In view of the aforementioned precedents, it is unequivocal that in cases where the factum surrounding the incident leading to the death of the deceased is undisputed, but the issue of negligence and liability may be contested, the petitioner would still be entitled to seek compensation while resorting to public law remedy. The facts established by the pleadings provide the basis for a pecuniary claim, regardless of any inter se disputes qua liability for the alleged negligence. It is also observed that the said right is not contingent upon the determination of liability, rather on the recognition of the incident's occurrence. In such cases, the facts as established by the record speak for themselves and shall attract the maxim res ipsa loquitur.

xxx xxx xxx”

(Emphasis Supplied)

65. Further, the Supreme Court in the case of **Nilabati Behera (Smt) alias Lalita Behera (Through the Supreme Court Legal Aid Committee) Versus State of Orissa and Others, (1993) 2 SCC 746**, held that public law remedy is available to a party based on strict liability, once a *prima facie* case has been made out for violation of fundamental rights. Thus, it was held as follows:

“xxx xxx xxx

10. In view of the decisions of this Court in Rudul Sah v. State of Bihar [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508], Sebastian M. Hongray v. Union of India [(1984) 1 SCC 339 : 1984 SCC (Cri) 87 : (1984) 1 SCR 904(I)], Sebastian M. Hongray v. Union of India [(1984) 3 SCC 82 : 1984 SCC (Cri) 407 : (1984) 3 SCR 544(II)], Bhim Singh v. State of J & K [1984 Supp SCC 504 : 1985 SCC (Cri) 60], Bhim Singh v. State of J & K [(1985) 4 SCC 677 : 1986 SCC (Cri) 47], Saheli : A Women's Resources Centre v. Commissioner of Police, Delhi Police Headquarters [(1990) 1 SCC 422 : 1990 SCC (Cri) 145] and State of Maharashtra v. Ravikant S. Patil [(1991) 2 SCC 373 : 1991 SCC (Cri) 656] the liability of the State of Orissa in the present case to pay the compensation cannot be doubted and was rightly not disputed by the learned Additional Solicitor General. It would, however, be appropriate to spell out clearly the principle on which the liability of



the State arises in such cases for payment of compensation and the distinction between this liability and the liability in private law for payment of compensation in an action on tort. It may be mentioned straightaway that award of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. This is a distinction between the two remedies to be borne in mind which also indicates the basis on which compensation is awarded in such proceedings. We shall now refer to the earlier decisions of this Court as well as some other decisions before further discussion of this principle.

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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.

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34. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court



or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting “compensation” in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making ‘monetary amends’ under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of ‘exemplary damages’ awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

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 State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law — through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with Rudul Sah v. State of Bihar [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (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.

xxx xxx xxx”

(Emphasis Supplied)

66. The Division Bench of this Court in the case of ***Darshan and others Versus Union of India and others, 1999 SCC OnLine Del 358***, has held that monetary compensation can be sought as the said remedy is available in public law when strict liability for breach of fundamental rights is shown. Thus, Division Bench in the aforesaid judgment held as follows:

“xxx xxx xxx

10. A Division Bench of this court in Shyama Devi v. National Capital Territory of Delhi, also awarded compensation under Article 226 of the Constitution in a case where there was negligence in not defusing a rocket, resulting in the death of a constable.

11. Compensation had also been awarded by this court as well as the Apex Court in writ jurisdiction in several cases of custodial deaths. 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.

xxx xxx xxx”

(Emphasis Supplied)

67. Accordingly, the remedy under Article 226 of the Constitution, being a constitutional remedy, exists parallel to and independent of any civil remedy. When fundamental rights under Article 21 of the Constitution are violated and a life is lost due to negligence of the state agencies or their Contractors, a Constitutional Court has a duty to grant relief in such circumstances.

68. Petitioner no. 1 is a labourer (painter) and petitioner no. 2 is a homemaker, belonging to weaker section of the society. As held by the Supreme Court in the case of *Nilabati Behera (Supra)*, the public law remedy 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.

69. Thus, a *prima facie* case is made out on behalf of the petitioners. The negligence on part of the respondents is apparent. There is a clear violation of the fundamental right, i.e., Right to Life as enshrined under Article 21 of the Constitution. Foundational and material facts stand clearly established in



the present case, which point towards the negligence on part of respondents. Thus, the principle of *res ipsa loquitur* is squarely applicable in the present case.

Nature of site where the incident occurred:

70. It has been argued that the site was private and the deceased had trespassed onto the site. It is to be noted that work was being executed for construction of public infrastructure at the site of the incident. As per the facts on record, and the respondents' own admissions, the property was accessed by several people in the vicinity who apparently stole several fixtures from the site. The accessibility to the site was the responsibility of the respondents and measures in that regard to secure the site, were to be taken by them.

71. In this regard, reference is made to the case of *Sattar Sheikh & Anr. Versus Municipal Corporation of Delhi & Anr., 2012 SCC OnLine Del 2035*, wherein, the respondents therein had made a similar argument that the deceased had trespassed onto the plot, and thus, no negligence could be attributed to the statutory authority. While rejecting the said contention, the Court held as follows:

“xxx xxx xxx

*2. Counter affidavits have been filed by the respondents MCD and the Police. Respondent 1 MCD in its counter affidavit while not disputing the incident and the death has contended that earlier the toilet block where the manhole is situated was maintained and managed by Sulabh International; however, the same was handed over to the MCD on 20-7-2006 in a non functional and locked condition; that at the time of the incident there was no toilet block in existence and only a septic tank with two manholes and a boundary wall with a locked iron gate to prevent use thereof; it is further contended that a board was also displayed at the site proclaiming “not for use”. **It is contended that the deceased appeared to have trespassed on to the said plot having the manhole and since the deceased himself was wrongfully***



on the property, no negligence can be attributed to Respondent 1 MCD.

xxx xxx xxx

6. I find the facts of the present case to be similar to those of Sh. Kishan Lal v. Govt. of NCT of Delhi ; that was also a case of a child of seven years falling in an open manhole - **in that case, till the date of the incident, managed by Sulabh International. This Court in that case held that the respondents MCD & Sulabh International failed to demonstrate how death could have reasonably happened without negligence on their part; on the basis of the opinion of the doctor that the cause of death was asphyxia as a result of drowning and from the factum of discovery of the body, by local residents, in the manhole near the lavatory which the child had visited and from the factum that if the manhole was covered the child would not have been found in it, inference of negligence was deduced; the plea of contributory negligence was negated.** A perusal of the file of the Court of the Metropolitan Magistrate requisitioned in this Court shows that the postmortem report in the present case also records the cause of death as asphyxia due to ante mortem drowning. No external ante mortem injury was found on the body. The factum of the deceased having fallen and having been pulled out from the manhole is not disputed.

7. **As far as the plea of Respondent 1 MCD of the deceased having trespassed on the plot with the open manhole is concerned, I find on the file of the Court of the Metropolitan Magistrate requisitioned in this court photographs of the site which though show the plot as bounded by a wall but without any gate. Thus, the possibility of children playing on the said plot which was admittedly in disuse as a toilet, ought to have been in the comprehension of Respondent 1 MCD. Moreover, it is totally inexplicable as to why the plot and/or manholes were left uncovered. Thus, a case of negligence on the part of the respondent MCD is made out.**

xxx xxx xxx”

(Emphasis Supplied)

72. As noted above, the respondents in the present case were performing public functions. The claim of the respondents that boundary walls were constructed and relevant safety measures were undertaken at the site in question, cannot be accepted. The Chargesheet, along with facts on record that the site was accessed by several persons before the incident and after the



incident took place, in itself makes it evident that the site was accessible and proper measures were not taken by the respondents to stop access of general public, especially, if the claim is that the site was private. Furthermore, there is admission on part of the respondents, that only one security guard was present at the site who was 250 metres away from the site of incident, when the said incident had occurred. The measure of deputing only one security guard in a vast area where several people had access and material was stolen regularly, contradicts the claim of the respondents that measures to stop access were taken on their part.

73. The site in question, being accessed by persons living in the locality on a regular basis, juxtaposed with the fact that the accessibility of the site was such that even children could enter the same, leads to the inevitable conclusion that measures were not taken by the respondents to stop access to the site. The respondents were clearly negligent and failed to secure the site where there were open and uncovered pits/wells.

74. This Court further deems it appropriate to hold that the judgments, as relied upon by the respondents, do not come to aid of the respondents.

75. The respondent no. 7 has relied upon the judgment in the case of ***Radhe Shyam and Ors. Versus Govt. of N.C.T. of Delhi and Anr., 2015 SCC OnLine Del 8730***. The said case is factually distinguishable. In the said case, the children fell directly into an open canal, despite safety measures. Furthermore, the Court noted that a boundary wall existed which enclosed the piece of land. There were further contemporaneous photographs shown by the government to show that the boundary wall was intact during the date of incident. There was a slope separating the canal and the boundary wall,



which acted as a safety measure. The Court observed in the said case that the children may have climbed over the boundary wall.

76. However, in the present case, the petitioners' child had fallen into an uncovered well/shaft and not directly into an open canal/wide drain. Further, in the present case, criminal investigation has been carried out and charges have been framed against the respondents. Additionally, the District Authority Quick Response Team has observed that there were no precautions/warning signs placed near any of the wells, nor were they covered or surrounded by a safety tape. Admittedly, the respondents themselves have stated that ordinarily, the wells/holes/pits used to be covered by them, but at the relevant time they were stolen by locals. Furthermore, in the present case, there is no evidence as to the condition of the boundary wall, but the recording of the FIR clearly suggests the presence of a crowd as well as police officers moving freely at the site in question, thus, suggesting that the boundary wall was either non-existent or broken in various places.

77. The respondent no. 6 relied upon the judgment in the case of ***Mohd. Quamuddin & Ors. Versus Union of India, 2015 SCC OnLine Del 10229***. The said case involved railway tracks, wherein, the Court held that the railway tracks at the site were at an elevated level. The slope of the embankment of the elevated tracks was steep and there was no regular path for crossing the tracks. Thus, the said judgment has no application to a construction site in an urban residential area containing uncovered wells/pits.



Whether compensation can be granted, and if so, the mechanism that has to be applied?

78. The petitioners have made an updated claim of compensation from Rs. 25 Lacs to Rs. 40,40,495.36/-. The calculations by the petitioners are based upon the judgment of this Court in the case of **Pravesh Kumar (Supra)**, wherein, it has been held as follows:

“xxx xxx xxx

42. A Coordinate Bench of this Court in Varinder Prasad was considering a case of compensation under Article 226 of the Constitution of India for death of a ten-year-old boy, due to the falling of the chajja present in the respondent's premises. The Court, while granting compensation to the deceased's parents, calculated the amount that was payable as compensation and made the following observation:—

“As far as pecuniary compensation is concerned, as already explained in Kamla Devi (supra) the income of the parents can be taken as a standard measure for arriving at the expected annual income of the children. The method of calculating the compensation for pecuniary loss of dependency depends upon the potential earning capacity of the deceased Ajay Kumar, had he attained adulthood. As per the affidavit of the petitioner no. 1 dated 15.12.2011, his monthly salary at the time of this incident was Rs. 10,000. At the time of filing of the affidavit, the earnings of petitioner no. 1 were Rs. 30,000/- per month approximately. The petitioners have applied a multiplication factor of 1.5 to counter inflation and erosion of the value of money. Considering the fact that in a span of about four years, there has been a threefold increase in the earnings of petitioner no. 1 from Rs. 10,000/- p.m. to Rs. 30,000/- p.m., in my view, the multiplicand factor of 1.5, to offset the effects of inflation and erosion of the value of money should be adopted. It can be assumed that Ajay Kumar would have, at least, earned what his father was earning, if not more. Therefore, the multiplicand would be the expected annual income, less what he required for himself. As Ajay would have grown up, his personal expenses would have only risen. The contribution to the household would not have exceeded half of the income. Thus the multiplicand work out to be Rs. 90,000/- i.e. (1,80,000/2). This multiplicand is to be multiplied by the



multiplier of 15, in terms of the second Schedule to the Motor Vehicles Act, 1988. This comes out to be a figure of Rs. 13,50,000.”

xxx xxx xxx

44. Thus, taking into account the aforesaid decisions, **an attempt is being made herein to compute the compensation in accordance with the principles laid down in Kamla Devi**. The said determination of the amount of compensation payable to the petitioners can be made while classifying the compensation into following two heads:—

A) Standard Compensation

As per the guidelines, the standard compensation is stated to be 50,000/- in the year 1989 and is to be revised from time to time to counter inflation and the consequential erosion of the value of the Indian National Rupee and the amount needs to be updated for subsequent years on the basis of the Consumer Price Index for Industrial Workers (CPI-IW) brought out by the Labour Bureau, Government of India. In Kamla Devi, the (CPI-IW) with respect to the base year 1982 was 171.

As per the website and annual report of the Labour Bureau, Government of India, in July 2016 (the month when the petitioners' son died) the CPI (IW) was 280 (with respect to Base Year 2001). This number must be reworked with regard to the Base Year 1982 using the linking factor. As per the said report, the All India Linking factor between New Series of Consumer Price Index Numbers for Industrial Workers on base 2001 = 100 and the previous series on base 1982=100 (General Index) linking factor is 4.63.

Therefore, the CPI (IW) in July 2016 with respect to Base Year 1982, would be calculated as:

$$280 \times 4.63 = 1296 \text{ (approx)}$$

The standard compensation for the present case would be worked out in the following manner:

$$(50,000 \times 1296)/171 = 3,78,947 \text{ approx}$$

Therefore, the estimated standard compensation after rounding off is worked out to be Rs. 3,78,947/-.

B) Loss of Dependency and Pecuniary Losses.

As per Kamla Devi, the product of the multiplicand and the multiplier results in the figure of annual loss of dependency. The age of the deceased was nine years and the multiplier for it,



according to the Schedule II of the Motor Vehicles Act, 1988, is 15. The multiplicand is calculated by dividing the family into units - 2 for each adult member and 1 for each minor. Then annual income is divided by the total number of units to get the value of each unit. The annual dependency loss is then calculated by multiplying the value of each unit by the number of units excluding the two units for the deceased adult member.

In Kishan Lal, while the Court relied upon Kamla Devi to calculate the standard compensation, it also opined that there is a need to adopt a different approach while calculating the pecuniary losses. It was observed that the Court in Kamla Devi was adjudicating a prayer for compensation involving an earning adult whose death had an immediate financial impact on his family, whereas, in contrast, the prayer for compensation in Kishan Lal concerns the death of a small child who was not contributing to the household income. Consequently, the Court, relying on the principles laid down in M.S. Grewal v. Deep Chand Sood evolved the following methodology for calculating compensation for the death of a minor, which reads as under:—

“31. Calculating the compensation for pecuniary loss of dependency is somewhat more complicated, Whereas Kamla Devi (supra) involved an earning adult whose death had an immediate financial impact on his family, the present petition involves the death of a small child who was not contributing to the household income and who would have been unable to do so for many more years. A somewhat different approach would be needed.

32. In Smt. Kumari v. State of Tamil Nadu : 1992 AC) 283, the six-year old son of the appeilant died as a result of falling in an open manhole. The appellant filed a petition under Article 226 of the Constitution seeking a writ of mandamus directing the respondents to pay Rs. 50,000/- as compensation. The Madras High Court dismissed the writ petition on the ground that in a writ petition it was not possible to determine which respondent was negligent in leaving the sewerage tank uncovered. The Supreme Court set aside the judgment of the High Court and awarded the appellant the sum of Rs. 50,000 with interest at 12% per annum from the date of the accident until the date of payment. The Supreme Court further held that the State of Tamil Nadu may take appropriate proceedings to claim the said amount from any of the respondents who might have been responsible for leaving the manhole uncovered. Thus, one method of calculating the compensation of pecuniary loss of dependency is to bring the



above compensation given in Kumari (supra) up to date based on India's inflation rate between 1992, when the case was decided, and 2005, when Puran died, and to subtract from it what the standard compensation would have been in 1992.

33. However, the approach in *M.S. Grewal (supra)* appears to be the better and more rational approach. In *M.S. Grewal (supra)* fourteen children drowned in a river during a school picnic as a result of the school's negligence. The Supreme Court awarded Rs. 5 lakhs to each family, partly on the basis that the school was one of the most affluent in the country and the deceased children's earning potential was significant. Therefore, the method of calculating the compensation for pecuniary loss of dependency entails the examination of Puran's potential earning capacity had he lived to adulthood. The petitioner No. 1, Puran's father, was working in a market as a Security Guard and was earning approximately Rs. 4,000/- per month. The late Puran, who was in the 3rd Standard, when he passed away, was an excellent student. ***In the previous academic year, he was ranked First in his class. Therefore, we can safely assume that Puran as an adult would have earned at least as much as his father, if not more. So, as evidenced by his academic skills, Puran's father's salary can be used as a starting base for calculating the compensation for pecuniary loss of dependency. The multiplicand would be the expected annual income less what he required for himself. Since, this expected income would only arise when Puran grew up to be an adult, it would be safe to assume that his personal expenditure would be higher. True, he would be contributing to the household, but his contribution in my view would definitely not exceed half of his income. It must be remembered that here we are concerned with compensation for pecuniary loss of depending of Puran's parents. For some stretch of time Puran's father would be earning and his dependency would not be much. Furthermore, Puran would have married and would have had to support his wife and children. So, the assumption that, in the maximum, Puran's parents would have lost only half of Puran's expected annual income, would not, be an unreasonable one. Thus, the multiplicand would work out to Rs. 24,000/- ($4000 \times 12 \times 1/2$). The multiplicand and is to be multiplied by the multiplier of 15 as derived from the Second Schedule to the Motor Vehicles Act, 1988 in respect of victim in the age group of upto 15 years. Therefore, Puran's parents would be entitled to a sum of Rs. 3,60,000/- (24000×15) for compensation for pecuniary loss of***



dependency.

34. Accordingly, the petitioners are entitled to a total compensation of Rs. 5,13,801/-. The standard compensation or conventional sum being Rs. 1,53,801/- and the compensation for pecuniary loss of dependency being an amount of Rs. 3,60,000/- as computed above.”

(emphasis supplied)

Therefore, adhering to the same principle as laid down in Kishan Lal, the multiplicand can be calculated by considering the father's monthly salary as the assumed monthly income of the deceased. This amount is multiplied by 12 to arrive at the annual income and then halved. Subsequently, this multiplicand amount is multiplied by the appropriate multiplier as prescribed. In the instant case, the monthly salary of the father, as indicated in the rejoinder affidavit filed by the petitioners, is approximately Rs. 20,000. Consequently, the annual income would be Rs. 2,40,000, and the annual loss of dependency is calculated accordingly, as under:—

$(2,40,000/2) \text{ (multiplicand)} \times 15 \text{ (multiplier)} = \text{Rs. } 18,00,000/-$

The total compensation is, thus, computed to be:

$18,00,000 \text{ (pecuniary loss of dependency)} + 3,78,947 \text{ (standard compensation)} = \text{Rs. } 21,78,947/-$

xxx xxx xxx”

(Emphasis Supplied)

79. Reading of the aforesaid judgment shows that the methodology adopted for compensation in the said judgment is based upon three key precedents. Firstly, the said judgment relied on the case of **Kamla Devi Versus Government of NCT of Delhi & Anr., 2004 SCC OnLine Del 721.**, which provided a two-part formula for standard compensation and pecuniary loss of dependency. Secondly, the said judgment also relied upon the case of **Kishan Lal and Ors. Versus Govt. NCT of Delhi and Ors., MANU/DE/8177/2007**, which adopted the formula for the death of a minor child based on future potential earnings. Thirdly, the said judgment relied upon the case of **M.S. Grewal and Another Versus Deep Chand Sood and Others, (2001) 8 SCC 151**, wherein, the method of calculating pecuniary



loss of dependency by examining potential earning capacity had the child lived to adulthood, was delved upon.

80. The judgment in the case of ***Kamla Devi Versus Govt. of NCT of Delhi & Anr., 2004 SCC OnLine Del 721***, has been followed by this Court in various judgments, including, by Division Bench of this Court in the case of ***Court On Its Own Motion (Supra)*** and in the case of ***Chob Singh (Supra)***. In the aforesaid case of ***Kamla Devi (Supra)***, it has been held as follows:

“xxx xxx xxx

21. The principles which emerge can be summarized as follows:—

1. *Whenever an innocent citizen is killed as a result of a crime, particularly when it is an act of terror or communal violence or a case of custodial death, the State would have failed in its public duty to ensure the guarantee enshrined in Article 21 of the Constitution.*
2. *The modern trend and the international norm is to focus on the victims of crime (and their families) by, inter alia, ensuring that they are promptly compensated by the State in adequate measure under a well-laid out Scheme.*
3. *In India, there is no such criminal injury compensation scheme in place and the private law remedies of damages and compensation are grossly inadequate. Legislation on this aspect is not forthcoming.*
4. *In such a situation the High Court, in exercise of its powers under article 226 of the Constitution can and ought to direct the State to compensate the crime victim and/or his family.*
5. **The compensation to be awarded by the Courts, based on international norms and previous decisions of the Supreme Court, comprises of two parts:—**
 - (a) **‘standard compensation’ or the so-called ‘conventional amount’ (or sum) for non-pecuniary losses such as loss of consortium, loss of parent, pain and suffering and loss of amenities; and**
 - (b) **Compensation for pecuniary loss of dependency.**
6. **The ‘standard compensation’ or the ‘conventional amount’ has to be revised from time to time to counter inflation and the consequent erosion of the value of the rupee. Keeping this in mind, in case of death, the standard compensation in 1996 is worked out at Rs.**



97,700/-. This needs to be updated for subsequent years on the basis of the Consumer Price Index for Industrial Workers (CPI-IW) brought out by the Labour Bureau, Government of India.

7. Compensation for pecuniary loss of dependency is to be computed on the basis of loss of earnings for which the multiplier method is to be employed. The table given in Schedule II of the MV Act, 1988 cannot be relied upon, however, the appropriate multiplier can be taken therefrom. The multiplicand is the yearly income of the deceased less the amount he would have spent upon himself. This is calculated by dividing the family into units - 2 for each adult member and 1 for each minor. The yearly income is then to be divided by the total number of units to get the value of each unit. The annual dependency loss is then calculated by multiplying the value of each unit by the number of units excluding the two units for the deceased adult member. This becomes the multiplicand and is multiplied by the appropriate multiplier to arrive at the figure for compensation of pecuniary loss of dependency.

8. The total amount paid under 6 and 7 above is to be awarded by the Court along with simple interest thereon calculated on the basis of the inflation rate based on the Consumer Prices as disclosed by the Government of India for the period commencing from the date of death of the deceased till the date of payment by the State.

9. The amount paid by the State as indicated above would be liable to be adjusted against any amount which may be awarded to the claimants by way of damages in a civil suit or compensation under the Criminal Procedure Code.

xxx xxx xxx”

(Emphasis Supplied)

81. Thus, in the present case also, following the aforesaid methodology, as in the case of **Kamla Devi (Supra)**, the computation is divided into two heads, i.e., standard compensation (non-pecuniary losses) and loss of dependency (pecuniary losses).

82. As noted in the aforesaid judgment in the case of **Kamla Devi (Supra)**, the standard compensation is stated to be Rs. 50,000/- in the year 1989, which is to be revised from time to time to counter inflation. Thus, for standard compensation, the base amount of Rs. 50,000/- for the year 1989 is



adjusted using the Consumer Price Index for Industrial Workers, i.e., CPI (IW). The CPI (IW) for the year 1989 (Base 1982), as per the aforesaid judgment in the case of ***Kamla Devi (Supra)*** was 171.

83. The incident in the present case occurred on 27th September, 2014. The CPI (IW) for September, 2014, (Base 2001) was 253. Using the government provided linking factor of 4.63 to convert the old base year of 1982, the CPI (IW) for September, 2014 (Base 1982) is $253 \times 4.63 = 1171.39$. The standard compensation after adjusting inflation, is accordingly calculated as $(\text{Rs. } 50,000/- \times 1171.39) / 171 = \text{Rs. } 3,42,511.6/-$ (Rupees Three Lacs Forty-Two Thousand Five Hundred Eleven and Six Paise Only).

84. For pecuniary loss of dependency, the father's monthly income of Rs. 15,000/- is taken as a basis for the child's future potential income, as held in the aforesaid judgment of ***Court On Its Own Motion***. The annual potential income is $\text{Rs. } 15,000/- \times 12 = \text{Rs. } 1,80,000/-$ (Rupees One Lac Eighty Thousand Only). The parents' dependency is taken as 50% of this income, which is Rs. 90,000/- per year. Applying a multiplier of 15 (as the child was below 15 years of age), the pecuniary loss is $\text{Rs. } 90,000/- \times 15 = \text{Rs. } 13,50,000/-$ (Rupees Thirteen Lacs Fifty Thousand Only).

85. Accordingly, the total compensation payable to the petitioners is Rs. $\text{Rs. } 3,42,511.6/- + \text{Rs. } 13,50,000/- = \text{Rs. } 16,92,511.6/-$ (Rupees Sixteen Lacs Ninety-Two Thousand Five Hundred Eleven and Six Paise Only).

86. The petitioners are also held entitled to interest on the aforesaid principal amount of Rs. 16,92,511.6/- (Rupees Sixteen Lacs Ninety-Two Thousand Five Hundred Eleven and Six Paise Only).



87. Accordingly, simple interest @ 9 % per annum is also awarded to the petitioners on the aforesaid principal amount, from the date of filing of the present writ petition till payment of the awarded amount.

88. In view of the aforesaid, the respondent nos. 1 and 2, i.e., GNCTD and the DJB respectively, are directed to pay an amount of Rs. 16,92,511.6/- (Rupees Sixteen Lacs Ninety-Two Thousand Five Hundred Eleven and Six Paise Only) along with simple interest @ 9% per annum from the date of filing of the writ petition, till the date of realization.

89. This Court has not gone into the issue of fixing the *inter se* liability of the respondents in the present proceedings. Accordingly, the question whether the amounts payable by the GNCTD and the DJB to the petitioners, are recoverable from other respondents, are left open to be adjudicated in appropriate proceedings. It shall be open to the GNCTD and the DJB to pursue their claim against other respondents, in accordance with law.

90. The present writ petition is disposed of in the above terms.

**MINI PUSHKARNA
(JUDGE)**

JULY 27, 2026

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