

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**Present :
Hon'ble Justice Shekhar B. Saraf**

WPA 5633 of 2021

**Paramita Bera & Anr.
Vs.
The Union of India & Ors.**

Mr. Debashis Banerjee
Mr. Rakesh Jana

..for the petitioners

Ms. Soma Chowdhury

...for the respondent nos.3 & 4/W.B. S.L.S.A.

Heard on: 04.09.2023 & 08.09.2023

Judgement Dictated in Open Court on: 08.09.2023

Shekhar B. Saraf, J.:

1. This writ petition arises out of a very unfortunate incident wherein the petitioner no.1 being the girl of 17 years and the petitioner no.2, her brother, being of 14 years old, were assaulted by way of an acid attack.

2. The claim in the present writ petition has now been limited to the claim for petitioner no.1 as the petitioner no.2 has been paid a

sum of Rs.4,50,000/- as per the existing Rules. It is the contention of the petitioners that as per the Apex Court judgements and the NALSA's Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018, a minimum compensation of Rupees 7 to 8 lacs is payable, with an additional 50% of the said amount, on account of the victim being a minor girl child.

3. This Court wishes to outline the various Supreme Court judgements to indicate the manner in which the Supreme Court has addressed the present issue. The Supreme Court in ***Laxmi Vs. Union of India & ors.***, reported in **(2014) 4 SCC 427** held that the compensation mentioned in the scheme framed by different states was not uniform and in some states was inadequate. The Supreme Court had directed the States to frame their own rules and to ensure that compensation of a minimum of Rupees 3 lacs was paid to the victims. Subsequently, the Supreme Court in ***Parivartan Kendra Vs. Union of India & ors.***, reported in **(2016) 3 SCC 571** considered the physical, economic, social, and psychological ramifications of being the victim of an acid attack. The relevant paragraph is delineated below :

“17. Considering the plight of the victim we can sum up that:

- (i) *The likeliness of the victim getting a job which involves physical exertion of energy is very low.*
- (ii) *The social stigma and the pain that she has to go through for not being accepted by the society cannot be neglected. Furthermore, the general reaction of loathing which she would have to encounter and the humiliation that she would have to face throughout her life cannot be compensated in terms of money.*
- (iii) *As a result of the physical injury, the victim will not be able to lead a normal life and cannot dream of marriage prospects.*
- (iv) *Since her skin is fragile due to the acid attack she would have to take care of it for the rest of her life. Therefore, the aftercare and rehabilitation cost that has to be incurred will have huge financial implications on her and her family.”*

The aforementioned insight was central to the Supreme Court in summing up the manner in which compensation is required to be payable. The relevant paragraphs are delineated below:

*“19. The guidelines issued by orders in Laxmi case [**Laxmi v. Union of India & ors., (2014) 4 SCC 427, Laxmi v. Union of India, & ors., (2014) 13 SCC 743, Laxmi v. Union of India & ors, (2016) 3 SCC 669**] are proper, except with respect to the compensation amount. We just need to ensure that these guidelines are implemented properly. **Keeping in view the impact of acid attack on the victim's social, economical, and personal life, we need to enhance the amount of compensation.** We cannot be oblivious of the fact that the victim of acid attack requires permanent treatment for the damaged skin. **The mere amount of Rs 3 lacs will not be of any help to such a victim. We are conscious of the fact that enhancement of the compensation amount will be an additional burden on the State. But prevention of such a crime is the responsibility of the State and the liability to pay the enhanced compensation will be of the State.** The enhancement of the compensation will act in two ways:*

- (i) *It will help the victim in rehabilitation;*

- (ii) *It will also make the State to implement the guidelines properly as the State will try to comply with it in its true spirit so that the crime of acid attack can be prevented in future.*

20. *Having regard to the problems faced by the victims, this Court in **Laxmi v. Union of India & ors., (2014) 4 SCC 427** by an order dated 18-7-2013, enhanced the compensation, stating that, “at least Rs 3 lacs must be paid to the victims of acid attacks by the Government concerned”. **Therefore, a minimum of Rs 3 lacs is to be awarded by the Government to each victim of the acid attack. In the present case, a minimum amount of Rs 6 lacs has to be awarded to the sisters.***

21. *In peculiar facts of the case, we are of the view that **victim Chanchal deserves to be awarded a compensation more than what has been prescribed by this Court in Laxmi case.** Though in this case **we are not issuing any guidelines different from the guidelines issued in Laxmi case [Laxmi v. Union of India, (2014) 4 SCC 427]**, we should not forget that*

the younger sister was also injured by the acid attack. Although her degree of suffering is not as that of the elder one, but she also requires treatment and rehabilitation. It is to be noted that this Court in ***Laxmi case [Laxmi v. Union of India & ors., (2016) 3 SCC 669]*** does not put a bar on the Government to award compensation limited to Rs 3 lacs. The State has the discretion to provide more compensation to the victim in the case of acid attack as per *Laxmi case [Laxmi v. Union of India, (2016) 3 SCC 669]* guidelines. It is also to be noticed that this Court has not put any condition in ***Laxmi case [Laxmi v. Union of India & ors., (2016) 3 SCC 669]*** as to the degree of injuries which a victim has suffered due to acid attack. In the instant case, the victim's father has already spent more than Rs 5 lacs for the treatment of the victim. In consideration of the severity of the victim's injury, expenditure with regard to grafting and reconstruction surgery, physical and mental pain, etc., we are of the opinion that the victim (Chanchal) should be compensated to a tune of at least Rs 10 lacs. Suffice it to

*say that **the compensation must not only be awarded in terms of the physical injury, we have also to take note of the victim's inability to lead a full life and to enjoy those amenities which is being robbed of her as a result of the acid attack.** Therefore, this Court deems it proper to award a compensation of Rs 10 lacs and accordingly, we direct the Government concerned to compensate the victim Chanchal to the tune of Rs 10 lacs, and in light of the judgment given in Laxmi case [Laxmi v. Union of India, (2016) 3 SCC 669 : (2015) 5 Scale 77] we direct the State Government of Bihar concerned to compensate the main victim's sister, Sonam to a tune of Rs 3 lacs. Of the total amount of Rs 13 lacs, a sum of Rs 5 lacs shall be paid to the victim and her family within a period of one month and the remaining sum of Rs 8 lacs shall be paid to the victims within a period of three months from the date of this order.”*

4. It may be noted that the Calcutta High Court also in **Serina Mondal @ Piyada Vs. State of West Bengal & ors.**, reported in **2018 SCC Online Cal 4238** has made relevant observations

regarding the objective of Section 357A of the Code of Criminal Procedure, 1973 and the West Bengal Victim Compensation Scheme, 2017. Such observations are delineated below :

“10. *The object and purpose of the Scheme of 2017 which itself replaced an earlier scheme of the year 2012 is inter alia that a victim of a serious crime specially a woman needs urgent and immediate attention and both physical and mental rehabilitation. Such rehabilitation from the nature of the scheme and Section 357A is not dependent on the pace on which either the investigation is conducted or the trial is carried on. If this be the object and purpose of the Scheme and Section 357A read as a whole, I cannot countenance the findings of the State Legal Services Authority in the impugned order that both the requirements i. e. accused not being traced or identified as well as the factum of trial not having commenced, need be satisfied.*

11. *Compensation is awarded under the scheme as formulated pursuant to Section 357A (supra) as the fundamental rights of the victim under Article 21 have been in fact violated. Denial of compensation to such*

*victim would continue such violation and perpetrate gross inhumanity on the victim in question. This cannot be the object of Section 357A and the 2017 Scheme referred to hereinabove. **I therefore hold that both the requirements the accused not being identified or traced as also that the trial should not have commenced, need not be satisfied for entitlement of compensation under the 2017 scheme.***

12. *There is yet another way to address the issue. If the accused have not been identified a trial cannot commence anyway. The Legislature could not have imposed an occurrence leading to the same result twice over, as a condition precedent. Any multiple preconditions must be independent occurrences. Two similar events cannot form two different conditions.”*

5. The latest judgement of the Supreme Court in **Nipun Saxena & anr. Vs. Union of India & ors.**, reported in **(2020) 18 SCC 499** is of primary importance to the present case and the relevant paragraphs are delineated below :

*“7. We have gone through the Scheme prepared by NALSA with the assistance of the learned Amicus Curiae and we are of the view that **it contains the best practices of all similar schemes and should be implemented by all the State Governments and Union Territory Administrations.***

*8.We make it clear that **the Scheme postulates only the minimum requirements. This does not preclude the State Governments and Union Territory Administrations from adding to the Scheme. However, nothing should be taken away from the Scheme.**”*

6. It appears from a reading of the aforementioned judgements and specifically the judgement in ***Nipun Saxena & anr. Vs. Union of India & ors. (supra)*** that the Supreme Court has directed all States to follow the best practices stipulated in NALSA’s Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018. The Apex Court’s judgement has created an obligation upon the State Governments to have similar provisions in consonance with

such Scheme. The NALSA's Compensation Scheme for Women Victims/Survivors for Sexual Assault/other Crimes, 2018 provides that acid attack victims with face disfigurement, must get compensation ranging from a minimum of Rupees 7 lacs to a maximum compensation of Rupees 8 lacs. The Scheme also postulates that minor victims are eligible for compensation that is 50% higher than the minimum amount specified in the Scheme. The relevant clauses in the Scheme have been delineated below:

"2. Definitions:

(j) 'Minor' means a girl child who has not completed the age of 18 years.

SCHEDULE APPLICABLE TO WOMEN VICTIM OF CRIMES

S. No.	Particulars of loss or injury	Minimum Limit of Compensation	Upper Limit of Compensation
13	Victims of Acid Attack-		
a.	<i>In case of disfigurement of face</i>	<i>Rs. 7 Lakh</i>	<i>Rs. 8 Lakh</i>

9. PROCEDURE FOR GRANT OF COMPENSATION –

(3) After consideration of the matter, the SLSA or DLSA, as the case may be, upon its satisfaction, shall decide the quantum of compensation to be awarded to the victim or her dependent(s) taking into account the factors enumerated in Clause 8 of the Scheme, as per schedule appended to this chapter. However, in deserving cases, for reasons to be recorded, the upper limit may be exceeded.

*Moreover, **in case the victim is minor, the limit of compensation shall be deemed to be 50% higher than the amount mentioned in the Schedule** appended to this chapter.”*

7. It appears that the State of West Bengal has not complied with the mandate of the Supreme Court in ***Nipun Saxena & anr. Vs. Union of India & ors (supra)*** and has failed to amend its own scheme of compensation in tune with NALSA’s Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018.

8. This Court, accordingly, directs the Government of West Bengal to immediately act in accordance with the Supreme Court

judgement and frame its scheme as per NALSA's Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018 within a period of eight weeks from date. With regard to the present case, it is clear that the girl child was a minor and is accordingly eligible for a minimum amount of Rupees 7,00,000/-, as compensation as per NALSA's Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018 and an additional 50% of the said minimum amount (i.e., Rupees 3,50,000/-) is payable to the victim on account of her being a minor girl child. Accordingly, the total compensation payable to the victim is Rupees 10,50,000/- (as Rupees 3,50,000/- is to be added to the minimum compensation of Rupees 7,00,000/-).

9. In light of the same, the State of West Bengal is directed to pay the further sum of Rupees 7,50,000/- to the State Legal Services Authority, West Bengal who shall disburse the entire sum to petitioner no.1 (as Rupees 3,00,000/- has been paid to the petitioner no.1) within a period of four weeks from date.

An Afterword:

10. Mr. Gopal Krishna Gokhale, the prominent freedom fighter, had once said “what Bengal thinks today, India thinks tomorrow” – this saying was so relevant in the early 1900’s; however, the position today is antithetical and the State of West Bengal lags in almost all areas of progress and governance as well as following best practices that are mandated by the Supreme Court of India. It is unfortunate that this State, which was once known for its progressive feminist discourse, with women such as Begum Rokeya Sakhawat Hossain, Sarojini Naidu Chattopadhyay and many others, has forgotten its feminist roots. The State Government should take note of Bengal’s rich feminist history and ensure that Gokhale’s saying once again finds relevance in today’s time.

11. With the above directions, this writ petition is disposed of.

12. Let a copy of this order be immediately sent by the Registrar general, High Court of Calcutta to the West Bengal State Legal

Services Authority and the Advocate General for taking appropriate action as directed in the order above.

13. All parties are to act on website copy of this order.

(Shekhar B. Saraf, J.)