

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No.12725 of 2023

**Surya Sankar Barik
Vs.
The State of West Bengal and others**

For the petitioner	:	Mr. Jayanta Narayan Chatterjee, Mr. Supreem Naskar, Ms. Jayashree Patra, Ms. Pritha Sinha
For the respondent no. 6	:	Ms. Soma Chowdhury (Bandhu)
For the State	:	Mr. Amitesh Banerjee, Mr. Tarak Karan
Hearing concluded on	:	15.12.2023
Judgment on	:	20.12.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioner is a male acid attack survivor. An initial amount of Rs. 3,00,000/- was paid to the petitioner by respondent no. 6, The State Legal Services Authority, West Bengal in terms of its Victim Compensation Scheme.
2. Subsequently, however, the petitioner is required to undergo plastic surgery/cosmetic surgery and several other medical procedures involving huge expenses, for treatment, care and reintegration in society due to the partial disfigurement of the petitioner's face in view of the acid attack suffered by him.

3. Learned counsel for the petitioner contends that the Victim Compensation Scheme in such cases has been envisaged in several judgments of the Supreme Court. Learned counsel cites the first judgment in *Laxmi Vs. Union of India and others*, reported at (2014) 4 SCC 427 and then the second judgment of the same name reported at (2014) 13 SCC 743. The Supreme Court directed off-hand grant of compensation of at least Rs. 3,00,000/- by the State Government/Union Territory concerned as the after-care and the rehabilitation cost.
4. Learned counsel next cites *Parivartan Kendra Vs. Union of India and others*, reported at (2016) 3 SCC 571 where it was held that compensation is to be awarded not only in terms of physical injury but note of victim's inability to lead a full life and to enjoy those amenities which are being robbed of her as result of an acid attack should also be taken.
5. Learned counsel then relies on the third judgment in *Laxmi Vs. Union of India*, reported at (2016) 3 SCC 669. The Supreme Court laid down preventive measures and relief to victims of acid attack. More importantly, learned counsel relies on *Nipun Saxena and another Vs. Union of India and others*, reported at (2020) 18 SCC 499, where the Supreme Court expressed the view that the Scheme prepared by NALSA, that is, the National Legal Services Authority with the assistance of the learned Amicus Curiae contained the best practices of all similar schemes and should be implemented by all the State Governments and Union Territory Administrations.

6. In this context, learned counsel also places a coordinate Bench Judgment of this Court in *WPA 5633 of 2021 [Paramita Bera and another Vs. The Union of India and others]*, where a further sum over and above Rs. 3 lakh was directed to be paid in terms of the Schedule applicable to the victims of acid attack in case of disfigurement of face.
7. Learned counsel relies on Section 357-A of the Code of Criminal Procedure (Cr.P.C.) which has been introduced in the Cr. P.C. to cater to the need of victim compensation. Also relying on the West Bengal Legal Services' Scheme, being the West Bengal Victim Compensation Scheme, it is argued that both the said provisions contemplate gender-neutral modalities of disbursement of compensation for acid attack victims.
8. It is argued that the Court has ample power to grant victim compensation within the purview of Section 357-A and the West Bengal Victim Compensation Scheme at any stage, even over and above the amounts stipulated in the Scheme. It is submitted that at least, in terms of *Nipun Saxena (supra)*, the amount should be commensurate with the NALSA Scheme.
9. In order to impress upon the court the plight of the petitioner/victim, learned counsel places reliance on the photograph of the victim and his disability certificate annexed to the writ petition.
10. Learned counsel for the respondent no.6 takes a fair stand in the matter and adopts a primarily non-adversarial stance. However, it is pointed out that an amount of Rs. 3 lakh has already been paid to the petitioner pursuant to the concerned Scheme. It is also submitted

that as per the disability certificate produced by the petitioner, the petitioner's disability is 44% and not total. It is pointed out that the cited judgment of the coordinate Bench dealt with disfigurement of the whole face. The provision in the Scheme of the State is different for total facial disfigurement whereas in the case of the victim, only the right eye has been damaged.

- 11.** Upon hearing learned counsel for the parties, what attracts attention is the parent provision of Section 357-A of the Cr.P.C. which has been inserted by the 2009 amendment to introduce the concept of Victim Compensation Scheme.
- 12.** Sub-section (1) thereof provides that every State Government in coordination with the Central Government shall prepare a Scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.
- 13.** Under sub-section (2), whenever a recommendation is made by the Court for compensation, the District Legal Services Authority or the State Legal Services Authority, as the case may be, shall decide the quantum of compensation to be awarded under the Scheme referred to in sub-section (1).
- 14.** Sub-section (3) of Section 357-A provides that if the Trial Court at the conclusion of the trial is satisfied that the compensation awarded under Section 357 is not adequate for such rehabilitation or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

15. Sub-section (4) provides for application by the victim or his dependents and sub-section (5) provides that the State or District Legal Services Authority, upon receiving the recommendation and/or application and after due enquiry may award adequate compensation by completing the enquiry within two months.
16. The Scheme formulated in the State of West Bengal is called the West Bengal Victim Compensation Scheme, 2017 (for short, “the 2017 Scheme”). Section 2(1)(i) of the same defines “victim” as a person who has suffered loss or injury as a result of crime and requires rehabilitation.
17. Thus, “victim” has been used in a gender-neutral manner both in the Code of Criminal Procedure and in the West Bengal Victim Compensation Scheme. Whereas the former goes on to use the masculine gender (which, of course, includes the feminine under the General Clauses Act), the latter uses the expression “person”.
18. Thus, the entitlement of the petitioner under the said Scheme, despite not being a woman but a male, cannot be doubted.
19. In any event, in the case of the petitioner, admittedly an amount of Rs. 3 lakh was awarded to the petitioner at the first instance, thereby signifying that the respondent no. 6 admitted the entitlement of the petitioner to such compensation.
20. The amount which is disbursable to an acid attack victim under the Victim Compensation Scheme of West Bengal is Rs. 3 lakh. However, the caption of the schedule containing the quantum specifically mentions that the said amount of Rs. 3 lakh is the “minimum”

amount of compensation and not the upper limit. Hence, it is always within the framework of the Scheme to grant further compensation to the petitioner over and above Rs. 3 lakh. The Scheme does not also restrict such payment to a one-time disbursement. Since the Scheme is a beneficial piece of legislation, it has to be given wide amplitude. Seen from such perspective, the purview of the Scheme also takes within its fold periodic disbursements, if need be, for the purpose of enabling the treatment of the victim and to facilitate his/her rehabilitation and reintegration into mainstream society.

- 21.** The petitioner has relied on *Nipun Saxena (supra)*. *Nipun Saxena's* case, while being a landmark judgment in the field, was dealing primarily with compensation payable to women, survivors of sexual assault and other crimes of similar nature. It focused on crime against women as such. However, the framework of the Scheme percolated to the States in terms of the directions of *Nipun Saxena (supra)*.
- 22.** As translated in West Bengal, the West Bengal State Legal Services Authority implements its Victim Compensation Scheme, which is not only confined to the NALSA Scheme but also has components of the Victim Compensation Scheme as envisaged in Section 357-A of the Cr.P.C. In the West Bengal Scheme, there has been a gender-neutral implementation of the compensation component.
- 23.** It may not, however, be practicable for each State to implement the NALSA Scheme rates of compensation to the letter, keeping in view the peculiar circumstances and characteristics of each State and its administration. Insofar as the rates contemplated under the NALSA

Scheme is concerned, the Court cannot direct an intoto implementation of the exact rates stipulated by the NALSA Scheme in the State. It also has to be taken note of that the West Bengal Victim Compensation Scheme has been formulated not under the direction in *Nipun Saxena (supra)* but in exercise of the powers conferred of Section 357-A of the Cr.P.C. and, thus, the direction in *Nipun Saxena (supra)* does not strictly apply thereto.

- 24.** However, taken as it is, the West Bengal Victim Compensation Scheme stipulates a minimum amount of Rs. 3 lakh for acid attack victims.
- 25.** Even proceeding within the framework of the West Bengal Victim Compensation Scheme, it is to be noted that Rs. 3 lakh is not the upper limit for acid attack victims but is only the base amount of compensation so payable.
- 26.** In the case of the petitioner, the minimum amount of Rs. 3 lakh has already been paid. However, the petitioner has produced sufficient *prima facie* material to indicate that even after spending the said amount, the petitioner is in dire requirement of further amounts to finance his follow-up treatments and a meaningful reintegration into mainstream society, which is directly related to the acid attack suffered by him.
- 27.** The State has sought to argue that the petitioner works as a para-teacher. Respondent no. 6 has argued that the disability is only 44%.
- 28.** However, the meagre income of a para-teacher may not be sufficient to meet the up-keep of the petitioner and his family and, over and above, to finance his treatment and reintegration in society in view of the

peculiar trauma and fallout of an acid attack suffered by such victims. Hence, the present job of the petitioner as a para-teacher, even if existent, cannot be a fetter for the petitioner to claim further compensation under the Victim Compensation Scheme for the damage suffered to him due to the acid attack.

- 29.** The percentage of disability is also not a bar to seek compensation under the Scheme. The Victim Compensation Scheme itself does not distinguish between 100% disability and any lesser percentage insofar as acid attack is concerned.
- 30.** In fact, apart from the separate head of acid attack, there is a general provision for disability in Items 7 and 8 of the Schedule of the said Scheme. Permanent disability (80% or more) correspondingly has Rs. 2 lakh as the minimum compensation and partial disability (40% to 80%) has Rs. 1 lakh. In case of burn injury greater than 25% of the body, Item 9 provides Rs. 2 lakh as the minimum amount of compensation.
- 31.** Thus, we find that separate gradations are there for ordinary disability which have been divorced from acid attack, the latter being treated to be a separate class altogether. The incalculable damage suffered due to acid attack on the face cannot be measured merely by the percentage of disability due to the incalculable loss suffered, which is obviously the rational basis of segregating ordinary disability - permanent or partial from acid attack in the Schedule of the Scheme itself. Hence, the percentage of disability is also not a relevant factor in the present case.

- 32.** In fact, since the respondent no. 6 has already disbursed Rs. 3 lakh which is the minimum for acid attack, which is more than Rs. 1 lakh, which is the amount payable as minimum for partial other disabilities. Thus, the respondent no.6 cannot now take the objection of the disability being merely 44% to disown further responsibility.
- 33.** The present consideration thus boils down to the fact that the minimum amount of compensation of Rs. 3 lakh has already been paid to the petitioner but the petitioner alleges and *prima facie* establishes before this Court (by the annexures to the writ petition and the pleadings therein) that the petitioner requires much more for his treatment and reintegration in society.
- 34.** Section 357-A of the Cr.P.C. in sub-section (3), uses the expression “trial Court” which can recommend compensation even if the trial ends in acquittal or discharge. As distinguished therefrom, sub-section (2) of Section 357-A speaks about a recommendation made by the “court”. Hence, there is no reason why a restrictive construction should be lent to the said expression, when the expression “Court” has not been defined in the definition clause of the Code of Criminal Procedure.
- 35.** Hence, this Court has ample power under Article 226 of the Constitution of India in judicial review, as a ‘Court’, to recommend payment of further compensation to the petitioner. As per sub-section (5) of Section 357-A, on receipt of such recommendation, the State Legal Services Authority shall make due enquiry within two months

and award adequate compensation to the petitioner accordingly upon completion of such enquiry.

36. Even Clause (6) of the 2017 Scheme, in sub-clause (1), starts with the expression “whenever” a recommendation is made by the Court, thus implying that the Court can at any point of time make such recommendation. Thus, even as per the Scheme, the same is not confined to the inception and/or an one-time disbursement but such payment can be made from time to time under the Scheme.
37. In such view of the matter, being *prima facie* satisfied that the petitioner had made out a case for payment of further compensation, which this Court has authority to recommend and the respondent no. 6 has the power to implement, the respondent no. 6 is required to give an opportunity to the petitioner to present all medical and other documents to establish the petitioner’s case that further compensation is required by the petitioner for his treatment in respect of the acid attack injury for undergoing due medical procedure and rehabilitation.
38. Accordingly, WPA No. 12725 of 2023 is allowed, thereby directing the respondent no. 6 to grant an opportunity of hearing to the petitioner within January 5, 2024 to enable the petitioner to produce all relevant documents to substantiate his claim for further compensation. The respondent no. 6 shall, within 2 months thereafter, make due enquiry as to the requirement of the petitioner for such further compensation. Immediately upon completion of such enquiry, the respondent no. 6 shall disburse the amount payable to the petitioner, as revealed by the

said enquiry, within a fortnight from the conclusion of the said enquiry. While doing so, the respondent no. 6 shall not be fettered by the quantum of Rs. 3 lakh under the West Bengal Victim Compensation Scheme, 2017 which is the minimum amount payable under the Scheme and not the upper ceiling.

- 39.** There will be no order as to costs.
- 40.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)