

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2701 OF 2021

- | | | |
|----|--|-------------|
| 1. | Shruti Satish Kale
Age – 11 years, Occ – Nil | PETITIONERS |
| 2. | Sankruti Satish Kale
Age – 9 years, Occ – Nil | |
| 3. | Aakansha Satish Kale
Age – 6 years, Occ – Nil | |
| 4. | Ganesh Satish Kale
Age – 4 years, Occ – Nil | |

Through their Guardian Grandmother,
(Mother of deceased victim)

Moharbai Suresh Galphade
Age – 53 years, Occ – Household
R/o Chandani, Taluka and District – Beed
At present residing at Balapur
Taluka and District – Beed

VERSUS

- | | | |
|----|---|-------------|
| 1. | Chairman
District Legal Services Authority, Beed &
Hon'ble Principal District Judge,
District & Sessions Court, Beed | RESPONDENTS |
| 2. | Secretary,
District Legal Services Authority, Beed
Taluka and District – Beed | |
| 3. | Superintendent
District Legal Services Authority, Beed,
Taluka and District - Beed | |

.....

Mr. M. V. Salunke h/f Mr. V. D. Salunke, Advocate for petitioners
Mr. C. K. Shinde, Advocate for the respondents

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 19th JULY, 2023

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned advocates for the parties.

2. This petition, filed under Article 226 and 227 of the Constitution of India, challenges orders dated 13th December, 2010 passed by the learned Chairman, District Legal Services Authority, Beed (hereinafter for short "DLSA"), dated 20th December, 2019 passed by the Secretary DLSA and the notice dated 13th January, 2020 issued by Superintendent, DLSA.

3. Due to the harassment from husband, Ashwini Satish Kale - mother of the minor petitioners committed suicide on 25th February, 2018. Accordingly offence at Crime No. 40 of 2018 is registered for offence punishable under sections 498A and 306 of the Indian Penal Code, against father of the petitioners.

4. The petitioners being minors, filed Compensation Application No. 1 of 2019 through their guardian – Grandmother – Moharabai Suresh Galfade, seeking compensation under the Compensation Scheme for Women victims / Survivors of Sexual

Assault / other Crimes -2018 (hereinafter for short "Scheme of 2018"), introduced by the National Legal Services Authority.

5. Member Secretary, DLSA, Beed awarded compensation of Rs.5,00,000/- to the petitioners and directed that 75% amount of the compensation awarded be kept in fixed deposit in nationalized bank for 5 years and 25% of the amount of compensation awarded was directed to be paid to the petitioners, by order dated 12th June, 2019.

6. The order passed by the Member Secretary, DLSA was placed before the learned Chairman, as 25% of the compensation amount was to be disbursed to the petitioners. The learned Chairman, on the basis of office note dated 19th November, 2019, passed following order on 13th December, 2019: -

"In the order how Section 306 of I.P.C. is covered to grant compensation to dependent of victim is not made clear. Hence, it be reconsidered and send back for decision afresh "

7. Learned Member Secretary, DLSA, thereafter, on 20th December, 2019, passed following order :

"In such circumstance, in my opinion opportunity of hearing should be given to applicant to decide matter for decision a fresh. Therefore, issue notice to applicant r/o 24.02.2020"

8. Accordingly, notice dated 13th February, 2020 is issued to the petitioners. Office note dated 19th November, 2019 on the basis of which order dated 13th December, 2019 is passed by the learned Chairman, order passed by learned Member Secretary, DLSA dated 20th December, 2019 and consequent notice dated 13th January, 2020 are impugned in the present petition.

9. Heard learned advocate for the petitioners and the learned advocate for the respondents. Perused the memo of writ petition, documents annexed with it and the impugned orders.

10. Learned advocate for the petitioners assailed the impugned order contending that the order passed by the learned Chairman is without jurisdiction. By referring to definitions of "*dependent*", "*offence*", "*women*", "*victim*", "*survivor*" and "*eligibility for compensation*", contained in the Rules framed pursuant to Scheme of 2018, he submits that that the learned Member Secretary, DLSA was justified in awarding compensation to the petitioners. He submits that the learned Chairman, DLSA has no authority to direct the Member Secretary to reconsider the matter and to take decision afresh, which in fact amounts to review of the matter and the Rules do not make provision for review and hence, the said order passed by the learned Chairman is unsustainable. He further submits that though the

petitioners applied for copy of the office note dated 19th November, 2019, the same is not provided to them, citing a reason that it is an official communication. He, therefore, submits that since the impugned order passed by the learned Chairman, DLSA is unsustainable, the order passed by the learned Member Secretary, on the basis of the order of the learned Chairman, is also unsustainable and the same is liable to be quashed and set aside.

11. Per contra, learned advocate for the respondents supported the impugned orders by relying on the statements made in the affidavit in reply, to the effect that :

“the order is silent as to how the Scheme was applicable to the death cases arising out of the offences u/s 306 of I.P.C. Therefore, in order to satisfy the doubt and clear the aspect, the Chairman asked the Secretary to reconsider this aspect and to verify as to the applicability of the provisions of the said scheme. It is, however, submitted that neither the Secretary nor the Chairman DLSA Beed set aside the Order dated 12/06/2019, awarding compensation by the Secretary”.

12. Further submission is that since section 306 of the Indian Penal Code is not mentioned in Rule 5 of the Scheme of 2018, the learned Chairman is justified in sending the matter back for reconsideration to the Secretary and the compensation awarded by the Member Secretary is not set aside. Therefore, according to him, there is no merit in the petition and the petition is liable

to be dismissed.

13. Before dealing with the rival submissions, it is apposite to reproduce relevant rules of the Scheme of 2018:

*“2 (b) ‘**Dependent**’ includes husband, father, mother, grandparents, unmarried daughter and minor children of the victim as determined by the State Legal Services Authority or District Legal Services Authority on the basis of the report of the Sub-Divisional Magistrate of the concerned area / Station House Officer / Investigating Officer or on the basis of material placed on record by the dependents by way of affidavit or on its own enquiry.”*

*2 (k) ‘**Offence**’ means offence committed against women punishable under IPC or any other law.*

*2 (p) ‘**Woman Victim / Survivor of other Crimes**’ means a woman who has suffered physical or mental injury as a result of any offence mentioned in the attached Schedule including Section 304B, Section 326A, Section 498A IPC (in case of physical injury of the nature specified in the schedule) including the attempts and abetment.*

*4. **Eligibility for Compensation** – A woman victim or her dependent (s) as the case may be, shall be eligible for grant of compensation from multiple schemes applicable to her. However, the compensation received by her in the other schemes with regard to Section 357-B Cr.P.C., shall be taken into account while deciding the quantum in the such subsequent application.*

*5. **Procedure For Making application before the SLSA or DLSA** - Mandatory Reporting of FIRs – SHO/SP/DCP shall mandatorily share soft / hard copy of FIR immediately after its registration with State Legal Services Authority / District Legal Services Authority qua commission of offence covered in the Scheme which include Sections 326A, 354A, to 354D, 376A, 304B, 498A (in case of physical injury covered in this Schedule), so that the SLSA / DLSA can in deserving cases, may suo-motu initiate preliminary verification of facts for the purpose of grant of interim compensation.*

An application for the award of interim / final compensation can be

filed by the Victim and / or her Dependents or the SHO of the area before concerned SLSA or DLSA. It shall be submitted in Form I along with a copy of the First Information Report (FIR) or criminal complaint of which cognizance is taken by the Court and if available Medical Report, Death Certificate, wherever applicable, copy of judgment / recommendations of court if the trial is over.

6. ***Place of filing application*** – *The application / recommendation for compensation can be moved either before the State Legal Services Authority or the concerned District Legal Services Authority or it can be filed online on a port which shall be created by all State Legal Services Authorities. The Secretary of the respective DLSA shall decide the application / recommendation moved before him/her as per the scheme.*

11. ***Method of Disbursement of compensation -***

(1) The amount of compensation so awarded shall be disbursed by the SLSA by depositing the same in a Bank in the joint or single name of the victim / dependent (s). In case the victim does not have any bank account, the DLSA concerned would facilitate opening of a bank account in the name of the victim and in case the victim is a minor along with a guardian or in case, minor is in child care institution, the bank account shall be opened with the Superintendent of the Institution as Guardian. However, in case the victim is a foreign national or a refugee, the compensation can be disbursed by way of cash cards.

Interim amount shall be disbursed in full. However, as far as the final compensation amount is concerned, 75% (seventy five percent) of the same shall be put in a fixed deposit for a minimum period of three years and remaining 25% (twenty five percent) shall be available for utilization and initial expenses by the victim / dependent (s), as the case may be.

(2) In the case of a minor, 80% of the amount of compensation so awarded, shall be deposited in the fixed deposit account and shall be drawn only on attainment of the age of majority, but not before three years, of the deposit.

Provided that in exceptional cases, amounts may be withdrawn for educational or medical or other pressing and urgent needs of the beneficiary at the discretion of the SLSA / DLSA.

(3) The interest on the sum, if lying in FDR form, shall be credited directly by the bank in the savings account of the victim / dependent (s), on monthly basis which can be withdrawn by the beneficiary.

*17. **Appeal** – In case the victim or her dependents are not satisfied with the quantum of compensation awarded by the Secretary, DLSA, they can file appeal within 30 days from the date of receipt of order before the Chairperson, DLSA.*

Provided that, delay in filing appeal may be condoned by the Appellate Authority, for reasons to be recorded, in deserving cases, on an application made in this regard.”

14. From the aforesaid rules, it is clear that the power to decide compensation vests with the Member Secretary, SLSA or DLSA. “Offence”, as defined in Rule 2 (k) means, offence committed against women, punishable under IPC or any other law. In respect of commission of offence against women, compensation is payable under the Scheme of 2018. Rule 2 (p) of the said Rules defines woman victim / survivor of other crimes. Victim means a woman, who has suffered physical or mental injury, as a result of any offence, mentioned in the attached Schedule, including the attempts and abetment. Clause I of the Schedule appended to the Rules of 2018 provides minimum compensation of Rs.5 lakh and maximum up to Rs.10 lakh for “loss of life”. Rule 5 prescribes procedure for making application before SLSA or DLSA. It mandates sharing of soft / hard copy of FIR, immediately after its registration, with SLSA or

DLSA, in respect of commission of offence covered in the scheme, which includes sections 326A, 354A to 354D, 376A, 304B, 498A of the Indian Penal Code. So also, SLSA and DLSA, in deserving cases, may *sou motu* initiate preliminary verification of facts for the purpose of grant of interim compensation. It further provides for filing of application in Form I. As per Rule 6, place of filing of application is provided. Application can be filed even online, on a portal, to be created by SLSA. Rule 11 prescribes the method of disbursement of compensation. Rule 17 provides appellate remedy before Chairman, DLSA, if the victim or dependents are not satisfied with the quantum of compensation.

15. On going through the Scheme of 2018, it is clear that the power of awarding compensation vests with the Member Secretary, DLSA. The Rules do not provide for any role to be played by the Chairman, DLSA in the entire process of granting compensation under the Scheme of 2018. It appears that, since the Chairman is the drawing and disbursing officer, internal procedure is adopted and his signature is obtained on the proposal / order of disbursement of compensation amount. It is, therefore, clear that the Chairman discharges only administrative function while signing the proposal / order of disbursement of

compensation and does not act in judicial or quasi *judicial* capacity. In this case admittedly, the Chairman was not dealing with the order passed by the Secretary, as an appellate authority. The order was placed before the learned Chairman only for his signature for disbursement of 25% amount of compensation to the petitioners. In that view of the matter also, the Chairman has no authority to pass the impugned order, which is passed as if the learned Chairman was considering the order passed by the learned Member Secretary in appellate capacity.

16. The Chairman has exceeded its jurisdiction in passing the impugned order. It is not in dispute that the petitioners are dependents of the victim (mother), who has committed suicide due to harassment meted out to her by her husband, who is facing the prosecution in Sessions Case No. 55 of 2018. The order awarding compensation to the petitioners, passed by the Member Secretary, DLSA is a well reasoned order and needs no interference.

17. In this view of the matter, the impugned order passed by the learned Chairman, DLSA, thereby remitting the matter back to the learned Member Secretary, DLSA for reconsideration and decision afresh, on the ground that how section 306 of the IPC is

covered to grant compensation is not made clear, is without jurisdiction and hence unsustainable. Merely because there is no mention of section 306 IPC in Rule 5 cannot be said to be a ground to remand the matter back for reconsideration. By the impugned order, the learned Member, DLSA, has in fact directed the Secretary to review his order. Since there is no power of review given in the Rules framed under the Scheme of 2018, the impugned order is unsustainable.

18. There is no merit in the submission of the respondents that since section 306 IPC is not mentioned in Rule 5, the Chairman is justified in sending the matter back for reconsideration to the Member Secretary. The said submission is liable to be rejected as the sections mentioned in Rule 5 are not exhaustive. The word "include" used in Rule 5, shows that said sections are not exhaustive. Apart from this, the case of the petitioners for compensation is squarely covered by the Scheme of 2018 and the Rules quoted above. In that view of the matter also the impugned order cannot be sustained.

19. Even on merits, the impugned order is unsustainable, as the learned Chairman, while passing the impugned order, has misread and misconstrued the Rules and / or has ignored the relevant rules. The Scheme of 2018 is applicable in cases where

offence, punishable under IPC or any other law, is committed against women. Admittedly, in the present case, offence punishable under section 306 and 498A of the Indian Penal Code is committed against mother of the minor petitioners and their father is chargesheeted for commission of offence punishable under section 306 and 498A of the Indian Penal Code. Schedule I of the Rules framed pursuant to the Scheme of 2018 provides for minimum and maximum compensation for loss of life. In this case, admittedly, mother of the minor petitioners has lost her life. Therefore, the learned Member Secretary was right in awarding compensation of Rs.5 lakh to the minor petitioners.

20. The explanation given in the affidavit in reply by the Chairman is unacceptable in the facts of the present case. Since the impugned order is without jurisdiction, the same is unsustainable and is liable to be quashed and set aside.

21. In the result, following order:

ORDER

- A. Writ petition is allowed.
- B. Order dated 13th December, 2019 passed by Chairman, DLSA and Principal District and Sessions Judge, Beed is

hereby quashed and set aside.

- C. Impugned order dated 20th December, 2019 passed by Secretary, DLSA, Beed and consequent notice dated 13th January, 2020 are hereby quashed and set aside.
- D. The respondents are directed to disburse 25% amount of compensation to the minor petitioners and deposit the remaining 75% of the amount of compensation in any nationalized bank in the joint names of petitioners No.1 to 4, for 5 years, within a period of four week from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI]
JUDGE