

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION (CIVIL) NO. 214 OF 2022
IN
WRIT PETITION NO. 291 OF 2022**

The State of Maharashtra,
Through the Principal Secretary,
Women & Child Development Department,
Mantralaya, Mumbai. .. Applicant
(Orig. respondent)

VERSUS

1. Shaheen Siraj Pathan (mother of victim in Special
POCSO case No. 173/2016 Session Court Aurangabad)
Age : 33 Years, Occ. Household,
R/o. Pangra Chittegaon Tq. Paithan,
District Aurangabad
2. The District Legal Service Authority,
Aurangabad, Through its Secretary/President/
Authorized Officer, District & Sessions Court,
Adalat Road, Aurangabad.
3. The State Legal Service Authority, Maharashtra
Through its Secretary/President/Authorised Officer,
105, High Court (PWD) building, Fort,
Mumbai. 400032. .. Respondents

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Mr. S.G. Sangle, AGP for the Applicant/State.

Mr. V. P. Bakal, Advocate for respondent No.1

Mr. A. B. Kadethankar, Advocate for respondent Nos.2 & 3

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**CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, J.J.**

**RESERVED ON : MARCH 10, 2023
PRONOUNCED ON: MAY 3, 2023**

JUDGMENT (PER S.G. MEHARE, J.) :-

1. We have heard the respective counsels at length.
2. The State of Maharashtra has preferred the present petition to review the order of this Court in Writ Petition no. 291 of 2022, dated May 6, 2022.
3. In the above Writ Petition, the following order was passed;

“9. We accordingly direct the State Government to issue clarifactory new Government Resolution so as to give benefits to all the victims under POCSO Act, some of whom are already given benefits under the said Government Resolution dated 30.12.2017 to all the victims irrespective of the facts that whether the incident had taken place prior to the date of the said Resolution or thereafter and whether their application were filed before the authority before the date of the said Government Resolution or after the date of the said Government Resolution. Such Government Resolution shall be issued within a period of four weeks from today without fail.

10. We also direct the State Government to accordingly give benefits to the petitioner and large number of other victims irrespective of the fact whether incident had taken place prior to the date of the said Government Resolution dated 30.12.2017 or thereafter subject to compliance of the other conditions set out therein.”

4. The review has been prayed for the reasons;
 - a) Granting compensation is a policy decision and is under the domain of the State Government. It was an exclusive jurisdiction of the legislature. Hence, the Court should not have exercised its Jurisdiction under Article 226 of the Constitution of India.
 - b) The Government Resolution dated 30.12.2017 was not challenged in the petition. The scheme of 2013 was modified as per the Supreme Court directions vide G.R. dated 01.08.2017. However, it was challenged in W.P. Cri.PIL no. 35/2013 and W.P. (O.S) No. 1517/2017 and PIL (O.S.) (LDG) No. 87/2017. The High Court had constituted a committee consisting of the High Court Judges, the Advocate General and the Principal Secretary Women and Child Development Department. The said committee composed a model scheme 2017, and placed it before the bench through Maharashtra Legal Services Authority. The Advocate General, on behalf of the State had accepted the scheme, and accordingly, those petitions were disposed of. Thereafter, by G.R. dated 30.12.2017, a modified scheme was published and made applicable. In the said scheme, a specific clause of prospective effect has been incorporated. It was operationalized and brought into effect from the date of the G.R. date 30.12.2017. The High

Court itself approved the scheme.

- c) It would not be out of context to state that floodgates would be opened to avail the benefits under the Modified New Manodhairya Scheme, irrespective of the date of occurrence and would lead to a financial burden.

5. The learned AGP for the State has reiterated the above grounds and added that it is the legislature to decide whether to give retrospective effect to the scheme or not. Though the statement was made before the High Court about giving retrospective effect to the schemes, the Govt has to consider the financial burden on the exchequer. The High Court cannot direct the Government to apply the scheme retrospectively. *It was a policy decision.* By issuing such directions, the High Court has exceeded its jurisdiction. For these reasons, the impugned order is *prima facie* erroneous.

6. Per contra, the learned counsel for the original petitioner contended that the State Government had assured in Writ Petition No. 2165/2014 and connected matters that the State government is contemplating to give benefits of policy retrospectively. However, to date, no effective steps have been taken, and Government is stuck to the cut-off date for its application in G.R. dated 30.12.2017. He has

argued that though the incident happened before the date of the said G.R., the petitioner applied on 19.06.2018 when she became entitled to get compensation under Manodhairya Scheme. Therefore, the rule of retrospective effect would not apply in this case. The scheme in force on the date of the entitlement of compensation would apply, irrespective of the date of the incident. Therefore, the judgment under review is legally correct and has no errors on the face of the record. The victim has not received the compensation yet. The petition is liable to be dismissed.

7. The brief history of the schemes framed and the orders issued by the High Court from time to time in various schemes need a view.

8. That State Government had framed the first scheme by Government Resolution dated October 21, 2013. It was made applicable to the incidents that happened from 02.10.2013. The said scheme was challenged in the Writ Petition 2951/ 2016. The High Court, by its order dated 08.03.2017, directed the Government to increase the compensation amount at par with the State of Goa and to delete the Cut-off date 02.10.2013. Following the directions, the Government modified the scheme as per Govt Resolution dated 01.08.2017. However, the Government did not take the decision to give a retrospective effect. The other Writ Petitions bearing Nos.

2165/2014 and 3123/2015 were also before the High Court. In the said Writ Petitions, the directions were issued to the Government to apply the scheme deleting the cut-off date of 2.1.2013. Meantime one more Writ Petition No.25/2013 was pending. In the said Writ Petition, the then the Hon'ble Chief Justice led bench constituted a committee consisting of High Court Judge and others. The committee has submitted a draft scheme. The Govt accepted the said scheme with few modifications, and lastly, "Sudharit Navin Manodhairya Yojna", under G.R. dated 30.12.2017, was framed. A specific clause was inserted in the scheme that the new scheme would not be applied retrospectively. It would apply to all pending applications for the incidents that happened before the said scheme. However, the applications decided by the District Committee, as per the parameters of the scheme dated 21.10.2013, shall not be reopened. The beneficiaries who have been granted compensation as per the parameters of G.R. dated 20.10.2013 would not be entitled to receive the enhanced financial compensation but would be entitled to other benefits. It was also declared in the said scheme that a separate policy decision would be taken about giving the retrospective effect to the scheme for the incidents that happened before 21.10.2013 as per the directions of the High Courts in Writ Petitions Nos. 2165/2014 and 3123/2015. Under these premises, the

petitioner claimed that her application for compensation was for the incident before G.R. dated 30.12.2017, but she applied after its implementation. Hence, she was entitled to the benefits as per G.R. dated 31.12.2017.

9. Before advertng to the issues, it may be appropriate to go through the statement of the Government about the application of the scheme retrospectively in W.P.No.2165/2014 with W.P. No. 3123 of 2015 (now dismissed for non-prosecution on 10.03.2023) and observation therefor in an order dated 22.03.2016. In the said order, there was mention of the Maharashtra Victim Compensation Scheme 2014. In paragraph no. 3, it was observed thus:-

“The State Government would contemplate as to whether in deserving cases, the benefits under the Manodhairya scheme as well as Maharashtra Victim Compensation Scheme 2014 could be provided to the victims retrospectively.”

10. It appears that the above order was not directive but suggestive. However, the fact remains that the State Government to date did not take decisions about the retrospective effect of the scheme of 2013.

11. As argued by the learned AGP, we have to answer whether the

High Court can direct the State Government to implement the scheme with retrospective effect on the bare statement of the Government before the High Court that it would take an appropriate decision about the retrospective effect of the scheme separately.

12. The learned A.G.P. has argued that under Article 226 of the Constitution, the High Court can not expand its jurisdiction directing the Government to implement the monetary welfare scheme retrospectively.

13 The law is settled that framing the scheme is in the exclusive domain of the Government. The Court should stay out of the governance. The High Court can not frame any scheme as it is the prerogative of the Government. Considering the jurisdiction of the High Court under Article 226 of the constitution of India, unless the policy or action is inconsistent with the constitution and the laws or arbitrary or irrational or abuse of power, the Court cannot interfere with such matter. The scheme was framed to help the victims of sexual assaults financially. As the framing of the scheme was in the domain of the Government, it was also in the domain of the Government to apply the scheme retrospectively.

14. Unless specifically provided, every law is prospective.

Considering the prerogative of the Govt, the Court is of the opinion that the petitioner had no locus to claim a writ of mandamus directing the Govt to apply the schemes retrospectively. In the earlier petitions also, the prayers were made to apply the Schemes retrospectively. However, no directions were issued to apply the schemes retrospectively.

15. Considering the jurisdiction of the High Court under Article 226 of the Constitution, the Court is of the view that the order under review needs modification as it was a policy decision to be taken by the Government considering the burden on its exchequer.

ORDER

- (a) The review application is partly allowed.
- (b) Clause No.9 and 10 of the order under review is modified as under :-
 - (i) The State Government may take a decision at the earliest about the retrospective effect of the Schemes, namely Manodhairya and New Manodhairya Scheme, in the interest of the victims of the Sexual assault.

- (ii) The petitioner shall apply for compensation if the Government takes a decision on the retrospective effect of the Manodhairya Schemes (old and new) if eligible in future.

(S.G. MEHARE)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

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