



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.759 OF 2022.

1. Dr. Kshipra Kamlesh Uke,
Age: 47 yrs. Occupation –
Research & Training, resident of
173, RPTS Road,
Laxminagar, Nagpur.

2. Dr. Shiv Shankar Das,
Age 38 yrs. Occupation –
Research & Training,
resident of 173, RPTS Road,
Laxminagar, Nagpur

..... **PETITIONERS.**

VERSUS

1. The Principal Secretary,
Government of Maharashtra,
Department of Social
Justice & Special Assistance,
Mantralaya, Mumbai.

2. Shri. Amitesh Kumar (IPS),
Commissioner of Police,
Nagpur City, having
office at 6th Floor, Police
Bhawan, Civil Lines, Nagpur

3. District Collector cum
District Magistrate,
Nagpur District having office
at Civil Lines, Nagpur.

4. Smt. Aswati Dorje (IPS),
Head of Special Investigating
Team & Joint Commissioner
of Police, Nagpur City,
having office at 6th Floor,
Police Bhawan, Civil Lines, Nagpur.

5. National Commission for
Scheduled Castes, New Delhi,
through its Secretary,

having office at 5th Floor,
Loknayak Bhawan,
Khan Market, New Delhi-110003. ... **RESPONDENTS.**

Petitioners in person.
Shri M.K. Pathan, A.P.P. for Respondents No.1 and 3.
Shri S.A. Choudhry, Advocate for Respondent No.5.

**CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.**

**Reserved on : 05/07/2023.
Pronounced on : 10/11/2023.**

JUDGMENT : (Per : Valmiki Sa Menezes, J.)

Rule. Rule made returnable forthwith and with the consent of the parties, Petition is taken up for hearing and disposed of.

2. This Petition seeks a writ of mandamus to the Respondent No.1 to 4 to implement all the recommendations of the National Commission for Scheduled Caste as recorded in its Minutes of hearing held on 12/4/2022 in File No.Maha/30/2019-APCR. The

Petition also seeks further directions to Respondents No.3 and 4 to complete the investigation by a Special Investigating Team (SIT) within a time frame and to submit a report to the Sessions Court/Special Court under Section 173 Cr.P.C. against certain Police personnel; a further direction is sought to the Respondents to take up the matter of assessment of loss/damage to property in terms of Rule 12(4) and (5) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Rules 1995 (said Rules).

3. The Petitioners have appeared in person and have declined any assistance of legal Counsel through the Legal Aid Scheme and have expressed their desire to prosecute this Petition themselves.

4. It is the case of the Petitioners that they both belong to Scheduled Caste possessing Ph.D. Degrees from Javaharlal University, New Delhi with specialization in International Politics and Political Science, respectively. They aver that they have been engaged in a personal research project at their own expense since the year 2014

in Nagpur, to study Socio-political awareness amongst youth in the City, and during their research had collected more than 500 samples for their survey, from students of various educational centres. They allege that while they were out of the city, the son of the owner of their house, who belongs to a higher caste, in connivance with the Bajajnagar Police Station, Nagpur, broke the locks of the premises where the Petitioners resided and took away raw research data, survey forms and process data by stealing the Petitioners' laptops. On their return, the Petitioners lodged a complaint, in which investigation was launched. However, as a result of the aforementioned caste atrocity, they have lost all their intellectual property in the form of data done during their research for which they had sought relief in the form of compensation from the State.

5. It is their contention that the Petitioners had approached the National Commission for Scheduled Caste to take action by making necessary recommendations to the State Government and District Magistrate in terms of the provisions of the Scheduled Caste and Scheduled

Tribes (Prevention of Atrocities) Act, 1989 (Atrocities Act) and the said Rules, but since no progress was made by the said National Commission, they were constrained to file Criminal Writ Petition No.647/2021 to seek directions from this Court, to the said National Commission to initiate an inquiry on their complaint bearing File No. Maha/30/2019-APCR. This Court, by Judgment dated 11/3/2022, directed the National Commission for Scheduled Caste to complete the inquiry on the Petitioners' complaint.

6. In compliance with the directions of this Court, the Commission completed the inquiry. During the course of the inquiry, the Petitioners submitted a Ten Point demand, which are at Annexure 'E' of the file, seeking various reliefs/compensation for loss caused to them due to the damage to their intellectual property in terms of Rule 12(4),(5) and (7) of the said Rules read with Section 15A(11) (d) of the Atrocities Act. The Commission submitted its recommendations in form of Minutes of Hearing dated 12/4/2022, which was sent to the District Administration

of Nagpur District i.e. District Magistrate (Respondent No.3) recommending the following :

(A) That the District Magistrate considers the Ten Point demand raised by the Petitioners,

(B) That a Three Member Committee (SIT) be constituted at senior level under chairmanship of an officer not below the rank of Joint C.P. to investigate the matter and submit an action taken report within one month to the Commission,

(C) That compensation, as per the Atrocities Act, be provided to the Petitioners within seven days

7. In response to the recommendations, a SIT was formed, investigation conducted and a charge-sheet has been filed on the basis of the alleged criminal incident under the Atrocities Act before the Special Court/Sessions Court at Nagpur.

In so far as the recommendations for the District Administration to consider the Ten Point demand raised by

the Petitioners and that compensation/relief be provided to the Petitioners in terms of the Atrocities Act, the District Magistrate has granted Relief to Petitioner No.2 in terms of Rule 12(4) of ₹1.00 lakh, in terms of Clause No.35 of the Schedule to the said Rules, compensation/relief to the Petitioner No.1 of ₹1.00 lakh, in terms of Clause No.36E of the Schedule to the said Rules, Relief to the victims after adding new Section 3(2)(va) of the Atrocities Act to the Charge-sheet of ₹ 3.00 lakhs; this Relief was partly transferred in terms of the said Rules to the Petitioners on various dates, the last of which was transferred on 12/5/2022.

8. It is the Petitioners' case that though, certain reliefs have been granted in terms of the above Clauses of the Schedule to the said Rules, that by a communication dated 15/6/2022, the Authorities have taken a stand that there is no provision in the Act or the Rules to grant any additional relief to the Petitioners in the form of compensation for the loss in respect of damage to their intellectual property, which resulted from the theft and

destruction of the data collected by them for the project. This appears to be the main thrust of Point No.2 raised by the Petitioners in their Ten Point demand which was considered by the District Magistrate after receiving the recommendations from the National Commission, but, however granted only the reliefs specified in the preceding paragraph. The Petitioners now seek a direction/writ of mandamus to the District Magistrate to consider the Petitioners' Ten Point demand which was formed part of the National Commission's recommendations, and to more specifically consider, assess and grant relief in the nature of a compensation arising from the damage caused to their intellectual property.

9. The Petition has been opposed by the Respondents, who have filed affidavit-in-reply dated 24/11/2022 through the Regional Deputy Commissioner, Social Welfare Department that the Petitioners were paid compensation in terms of a chart annexed to the Affidavit and in fact, part of the compensation has been paid to the Petitioners between 4/1/2019 and 5/5/2022 totaling ₹4,50,000/- as against

sanctioned compensation of ₹6,00,000/-.

In that affidavit, a specific stand has been taken that there is no provision in the Atrocities Act for granting compensation/reliefs as prayed for in the Petition and as such, the Petition was not maintainable. The affidavit appears to be based upon communication dated 15/6/2022 from the Government of Maharashtra to the Petitioners wherein the stand taken in paras 2 and 3 of the letter which is annexed are at Annexure IV to the affidavit, was that the loss to the intellectual property rights could not be quantified or claimed as a relief or compensation under the provisions of the Atrocities Act.

In other words, the Respondent No.1 denies that the Petitioners can claim a relief or compensation in terms of the provisions of the Atrocities Act for loss incurred by the petitioners on account of the fact that their data/intellectual property in their research which was lost in the theft case.

10. Along with the affidavit of Respondent No.1, a

scheme in the form of Government Resolution dated 23/12/2013 was produced at Annexure R-IV. It also takes note that the proforma of the report to be filed in terms of sub-Rule 7 of Rule 12 under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (Atrocities Rules) has been produced before us; the proforma is of the report to be filed by the District Magistrate to the Special Court, specifying the relief provided to the victims, which would enable the Special Court to, if it were not satisfied with the payment of relief, to make further order granting further relief or any other kind of assistance.

11. In this backdrop, two questions raised in this Petition are:

(A) Whether the Petitioners are entitled, in terms of the provision of Section 15A(11)(b) r/w sub-Rules (4) and (5) of Rule 12 of the Atrocities Rules, to claim relief from the State in respect of damage to their property, i.e. whether they are entitled to

compensation due to loss of intellectual property in the data and other research material lost due to the theft committed in the concerned crime?

(B) If the Petitioners are held entitled to the relief/ compensation in terms of the above provisions, what directions are necessary in this Petition.

12. For the purpose of answering question A posed above, we would be required to analyse certain provisions of the Atrocities Act and the Rules frame thereunder.

The preamble of the Act specifies that apart from attempting to prevent the commission of offences of atrocities against the members of Scheduled Caste and Scheduled Tribes and to provide for special Courts to try offences thereunder, the Act was also enacted to grant relief and rehabilitation of victims of such offences.

The object of the Act is, therefore, to charge the State and several of its authorities which are specified in the various provisions, with the responsibility of preventing

such atrocities and to provide for relief in the form of compensation for loss incurred by a member of such community, due to the commission of an offence of atrocity defined under Section 3 of the Act.

13. In the present case, the admitted position is that, based upon the FIR No.155/2018 filed by the authorities, the complaint of theft was investigated by a Special Investigation Team i.e. SIT pursuant to which a charge-sheet was filed under Section 341, 448, 454, 457, 380, 120B, 201 and 34 IPC and under Sections 3(2)va, 3(1)b, 3(1)p, 3(1)q, 3(1)t, 3(1)z, 3(1)zc and 3(1)za-E of the Atrocities Act before the Special Court at Nagpur against three accused persons. This case is pending disposal before the Special Court.

It was thus incumbent upon Respondent No.3 District Magistrate, in terms of sub-Rule 7 of Rule 12 of the Atrocities Rules to file a report of the relief provided to the Petitioners/victims, stating therein the relief granted by and whether it had considered and quantified the claim of

the relief towards loss suffered due to the loss of data/ intellectual property in the research material which was subject matter of the crime.

14. Chapter IVA of the Act specifies the rights of victims and witnesses; Section 15A casts the duty and responsibility on the State to provide witness and victim protection and sub-section (11) of Section 15A enjoins the State to specify a specific scheme to ensure implementation of the rights and entitlements of the victims. Under clause (d) of sub-section (11) of Section 15A, the State is charged with the duty to provide relief in respect of death or injury or **damage to property.**

Rule 12 of the Atrocities Rules requires the District Magistrate, Superintendent of Police and the Special Court to ensure implementation of the provisions of the Act; more particularly, sub-Rule (4) of Rule 12 requires the District Magistrate to make necessary administrative and other arrangements and provide relief within seven days to the victims of atrocities in terms of Annexures I and II of the

Schedule, while under sub-Rule (5), the relief to be provided by the District Magistrate to **damage to property**, shall be in addition to any other right to claim compensation under any other law.

15. We have heard the Petitioners in person and Shri M.K. Pathan, learned APP for the State/Respondents; we have perused the record of the Petition.

The argument of the Petitioners, in short, is that the word “property” referred to in the above mentioned provision, encompasses property such as data, electronic material and intellectual rights to such data and material contained in electronic or digital form which was to be used in the project being undertaken by the Petitioners, which are detailed in their claims addressed to the District Magistrate on 7/12/2020 and which are contained in greater detail in tabular form in a chart captioned “Details of damaged items” at pages 401(A), 407(F) of the Petition. Consequently, the Petitioners argued that refusal of the State Government and the District Magistrate even attempt

at evaluating the compensation/relief due to them for loss of property, amounted to abdicating their duty under the aforementioned provisions of the Act and Rules and therefore, it entitled them to a writ of mandamus under Article 226 of the Constitution of India, for appropriate direction to perform their duty.

In counter to this argument, the Respondents had submitted that the words “damage to property” contained in the aforesaid provisions are required to be interpreted to mean tangible and physical property such as a house or movable items and cannot be interpreted to mean intellectual property or data in intangible form.

16. From the stand taken by the State in this matter, it appears that the interpretation given by the State government and the District Magistrate to the words “damage to property” in the above referred provision has been narrow and according to these authorities, does not include the right to relief or compensation for loss arising from loss of data and research material collected by the

Petitioners during the course of their profession. The further stand taken by the State is that even if the Petitioners were entitled to such relief, the District Magistrate is not in a position to assess or quantify such compensation/relief as loss of data and research material is intangible and not capable of being valued for the purpose of the fact, consequently, the Petition would not be maintainable and the Petitioners would have to seek relief elsewhere.

17. A plain reading of sub-clause (d) of sub-Section 11 of Section 15A enjoins the State to provide relief in respect of three situations namely, death or injury or damage to property. The word “property” is not defined in any provision of the Atrocities Act and, therefore, must be given a plain and literal meaning to the word, which would include immovable and movable property, whether tangible or intangible or in any form of whatsoever nature which is capable of being valued. The meaning to be assigned to the word “property” would include incorporeal property such as a right *in rem*, a right over material or immaterial thing

and includes a legal right in a property not having any physical existence such as a Patent, a Copyright or a Design which are intangible in nature and lack physical existence. Intellectual rights are rights in property even though they lack physical existence and are, therefore, capable of valuation for the purpose of deciding compensation or relief under the provisions of the Atrocities Act. We would be further fortified in our above interpretation by making reference to sub-Rule (5) of Rule 12 which provides for relief due to damage suffered by victim from “damage to property” which is a relief in addition to other right to claim compensation. Under sub-Rule (7) of this Rule, after the District Magistrate has sent a report of relief granted by him to the Special Court, the Special Court is within its powers, if it concludes that such compensation is not adequate or sufficient, it may order to make a higher amount as compensation to the victim.

18. John Salmond in “Jurisprudence” defines “property” to mean:

“In its widest sense, property includes all a person’s legal rights, of whatever description. A man’s property is all that is *his in law*. This usage, however, is obsolete at the present day, though it is common enough in the older books....In a second and narrower sense, property includes not all a person’s rights, but only his proprietary as opposed to his personal rights. The former constitute his estate or property, while the latter constitute his status or personal condition. In this sense a man’s land, chattels, shares, and the debts due to him are his property; but not his life or liberty or reputation. ...In a third application, which is that adopted [here], the term includes not even all proprietary rights, but only those which are both proprietary and *in rem*. The law of property is the law of proprietary rights *in rem*, the law of proprietary rights *in personam* being distinguished from it as the law of obligations. According to this usage a freehold or leasehold estate in land, or a patent or copyright, is property; but a debt or the benefit of a contract is not.... Finally, in the narrowest use of the term, it includes nothing more than corporeal property — that is to say, the right of ownership in a material object, or that object itself.”

19. Chapter XVII of the Indian Penal Code provides for

offences against property. Under the Indian Penal Code “movable property” is defined in Section 22 to include corporeal property of every description, except land and thing attached to the earth or permanently fastened to anything which is attached to the earth.

Thus, the definition of movable property includes all property other than immovable property which would include data, intellectual property and property of any description which is not fastened to the earth.

Considering the meaning of the word “property” from any angle, we are of the firm opinion that for the purpose of giving a meaningful interpretation to the word in Section 15A of the Act and in Rule 12 of the Atrocities Rules, the provisions do not admit of any exclusion to forms of property and would, thus, have to be given a wide and purposeful meaning. We, therefore hold that the intellectual property contained in the form of data or electronic material or any other material contained in the soft copy or digital form that may have been subject matter

of the offence/crime and atrocities committed against the Petitioners, as claimed by them in their Ten Point claim and details of damaged items would be capable of valuation for the purpose of granting reliefs in terms of the provisions of Section 15A read with Rule 12 of the Atrocities Act and Rules made thereunder.

20. Having held that the provisions of the Act would entitle the Petitioners to make a claim for relief for loss of their intellectual property as aforesaid, the question would be as to what relief the Petitioners would be entitled to.

Clearly in terms of Section 15A, and in terms of sub-Rules (4), (5) and (7) of Rule 12, the Petitioners would be entitled to claim relief/compensation for the loss of intellectual property claimed by them as stated in their claim submitted on 7/12/2020 to the District Magistrate along with “Details of damaged items” at page 401(A) to 407(F) of the Petition. Since this would be the process that the District Magistrate would have to undertake in terms of Rule 12, to assess the value to be set down to grant the

relief to the Petitioners, we deem it appropriate to direct the District Magistrate to consider the above referred claims of the Petitioners in the light of the provisions quoted above and to arrive at a valuation and consequent relief/compensation in terms of the above quoted provisions.

21. Consequently, we partly allow this Writ Petition. The District Magistrate/Collector of Nagpur District (Respondent No.3) shall inquire into the Ten Point demand of the Petitioners dated 12/4/2022 along with “Details of damaged items” at page 401(A) to 407(F) of the Petition, more specifically the demand for Relief/Compensation to be assessed and decide the quantum of Relief/Compensation to be paid to the Petitioners for the damage caused to their intellectual property in terms of the loss of data. In deciding this Relief, the District Magistrate shall also consider the document titled “INDEX-EVIDENCES SUBMITTED TO DM, DATED 7/12/2020” found at page 390 of this Petition and submitted to the Collector Nagpur on 7/12/2020 along with any other

material that the Petitioners place before the District Magistrate to support their claim for additional relief/compensation. The District Magistrate to take a decision on the grant of relief to the Petitioners within a period of three months from the date of receipt of this order and file an appropriate Report in terms of sub-Rule (7) of Rule 12 of the Rules to the Special Court.

In so far as the other reliefs claimed in the Petition are concerned, the Petitioners are at liberty to approach the Special Court before whom their case is pending on a Charge-sheet filed in Crime FIR No.155/2018 and file such proceedings as they deem fit under Section 173 of the Code of Criminal Procedure to seek further investigation or any further report that they may deem appropriate in that matter. Rule is made absolute in the above terms, with no order as to costs.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)