

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present: Hon'ble Justice Ashim Kumar Roy.

W.P. No. 34704 (w) of 2013

Sabana Khatun

-vs-

The State of West Bengal & Ors.

For the petitioner: Mr. Debasish Banerjee,
Mr. Debrup Bhattacharyya

For the State : Mr. Sumon Sengupta,

Heard on : 21.02.2014

Judgement on: 28.02.2014

Ashim Kumar Roy,J.:

Invoking its writ jurisdiction an acid attacked victim, approached this court against State inaction to consider her prayer for compensation in terms of the decision of the Hon'ble Supreme Court in the case of Laxmi -vs- Union of India [Writ Petition (CrI) 129 of 2006].

It is her case that in an incident took place on 23rd of June, 2012, the respondent no. 5 with whom she had a love affair and his family members, the respondent nos. 6 to 8 forcibly poured acid in her mouth, which caused severe burn injuries in her person both internally and externally and she has to remain hospitalised for about 18 days. After her release from hospital, sometime in the 1st week of August 2013 she reported the incident to the Chief Secretary, Government of West Bengal with a prayer for awarding compensation, but till date her case has not been considered and no compensation has been paid.

The learned Counsel for the writ petitioner in this regard referred the decision of the Hon'ble Supreme Court in the case of Laxmi -vs- Union of India and Ors. (Writ Petition(Crl.) 129 of 2006) and contended according to the direction issued in connection therewith on 18th July, 2013, she is now entitled to a minimum of compensation of Rs. 3 lakhs from the State, that too within 15 days from the date of reporting the incident. He then added although the Chief Secretary, Government of West Bengal was informed on August 21, 2013 but still, her prayer has not been considered by him. It is further submitted that this inaction on the part of the State respondent is not only contemptuous violation of the order of the Hon'ble Apex Court but is wholly illegal. He, therefore, submitted immediate intervention of this court is necessary for ends of justice.

On the other hand, the learned Counsel for the State produced a written instruction, received from the Joint Secretary to the Government of West Bengal, Department of Home and submitted that the State Government never intended to disobey the Apex Court's order and further submitted that in this State already a scheme being the West Bengal Victim Compensation Scheme, 2012 is existing covering compensation for Acid Attacked victim and now in terms of the decision of the Hon'ble Apex Court in the case of Laxmi -vs- Union of India & Ors.(supra), the State Government is going to amend the existing scheme so far as the quantum of compensation for acid attacked victims are concerned. In this regard, he also handed over an order issued by the State Government of West Bengal, notified in Extraordinary Kolkata Gazette on November 30, 2013. It is contended according to the Sub-Section (2) of Section 357A Cr.P.C., a victim is entitled to compensation only when her case is recommended by a Court of Compensation or Legal Services Authority and not by approaching the State Government straight way and only entitled to that much of compensation as has been prescribed in the schedule of the scheme and here in this case, the victim not being referred either by a Court of Compensation or by the Legal Services

Authority her claim can not be sustained. He heavily insisted that no order be passed for payment of compensation to the writ petitioner till the existing scheme that is the West Bengal Victim Compensation Scheme, 2012 is suitably amended in terms of the order of the Hon'ble Supreme Court. He lastly, contended the direction of the Apex Court being interim in nature is not binding on the State.

This is a case, where the prayer for compensation of the writ petitioner, an acid attacked victim received no response from the State authorities for last seven months, although she approached the Chief Secretary of the State of West Bengal, in writing. The writ petitioner prayed for compensation in the light of the directions of the Apex Court in the case of Laxmi -vs- Union of India (supra). In this regard, the directions of the Apex Court delineated in Paragraph 12 and 13 of the said case are relevant and are quoted below:-

“ 12. We are informed that pursuant to this provision, 17 States and 7 Union Territories have prepared ‘Victim Compensation Scheme’ (for short “Scheme”). As regards the victims of acid attacks the compensation mentioned in the Scheme framed by these States and Union Territories is un-uniform. While the State of Bihar has provided for compensation of Rs.25,000/- in such scheme, the State of Rajasthan has provided for Rs.2 lakhs of compensation. In our view, the compensation provided in the Scheme by most of the States/ Union Territories is inadequate. It cannot be overlooked that acid attack victims need to undergo a series of plastic surgeries and other corrective treatments. Having regard to this problem, learned Solicitor General suggested to us that the compensation by the States/ Union Territories for acid attack victims must be enhanced to at least Rs.3 lakhs as the after care and rehabilitation cost. The suggestion of learned Solicitor General is very fair.

13. We, accordingly, direct that the acid attack victims shall be paid compensation of at least Rs. 3 lakhs by the concerned State Government/Union Territory as the after care and rehabilitation cost. Of this amount, a sum of Rs.1 lakh shall be paid to such victim within 15 days of occurrence of such incident (or being brought to the notice of the State Government/Union Territory) to facilitate immediate

medical attention and expenses in this regard. The balance sum of Rs. 2 lakhs shall be paid as expeditiously, as may be possible and positively within two months thereafter. The Chief Secretaries of the States and the Administrators of the Union Territories shall ensure compliance of the above direction.”

It is manifest from the observations of the Apex Court as above that the Apex Court was grossly dissatisfied with the lack of uniformities in the “Victim Compensation Scheme” of the different States Governments and the Union Territories and inadequacy of the amount of compensation. The Apex Court held that the minimum compensation would be at least Rs. 3 lakhs as the after care and rehabilitation cost and directed out the said amount a sum of Rs. 1 lakh to be paid to the Acid attacked victim within fifteen days of occurrence of such incident or being brought to the notice of the State Government or Union Territories and the balance Rs. 2 lakhs positively be paid within two months. The Chief Secretaries of different State Governments and the Administrator of the Union Territories were directed to ensure compliance.

On the question of binding effect of the said order of the Apex Court so far as the State Government and Union Territories are concerned, there cannot be any scope of debate that same is not only binding on them, but if there is any non-compliance that would entail serious legal consequences against the concerned authority. After 18th July, 2013, the aforesaid writ petition once again listed on 3rd December, 2013, when the Apex Court issued further direction. It is expressly clear from the face of the order, the directions issued on 3rd December, 2013 was in addition to directions which were earlier issued on 18th July, 2013. The mandate of the court was against the Chief Secretaries of the States and the Administrators of the Union Territories and they were to ensure the directions of the court given on July 18, 2013 are complied with. In this regard, observation of

the Apex Court in Paragraph 3 of its order passed on 3rd of December, 2013 be referred. The relevant portions of the said order is extracted below:-

“ In the circumstances, we direct the Chief Secretaries of the States and the Administrators of the Union Territories to comply with the directions given in the order dated 18.07.2013 and put in place the rules in line with the Model Rules framed by the Central Government to regulate sale of acid and other corrosive substances at the earliest and positively before March 31, 2014.”

The submissions of the learned Counsel for the State that since the writ application before the Apex Court is still pending, the interim order passed therein is not binding on the State is totally unsound and without any substance. The order so passed by the Apex Court is mandatory in nature and that mandate cannot be disobeyed by the persons against whom such direction was made. Moreover, it may be noted pursuant to the order passed by the Apex Court on 18th July, 2013 in the above matter, the State of West Bengal issued a Gazette Notification on 30th November, 2013 regulating the sale of acid and corrosive substance. Therefore, a part of the order has been complied with the order. Now, in view of the order of the Apex Court, where the Apex Court fixed Rs. 3 lakhs be the compensation amount for an acid attacked victim as after care and rehabilitation cost, the amount of compensation fixed by the State Government under the West Bengal Victim Compensation Scheme, 2012 stands completely superseded and now the State Government is bound to pay each acid attack victim a sum of Rs. 3 lakhs unless the order is modified. Since the Apex Court, categorically, directed that the acid attacked victim be paid a total sum of Rs. 3 lakhs out of which a sum of Rs. 1 lakh within fifteen days from occurrence or being brought to the State Government/Union Territories, the respondent authorities cannot take a plea that the prayer for compensation cannot be processed or considered without same being forwarded to it by the

Court of Compensation or by the Legal Aid Authorities. In any event, after the Apex Court directed the payment of Rs.3 lakhs to an acid attacked victim as an interim measures, it cannot be urged by the State respondent until the scheme is finally formulated, no order for compensation be made. The submissions of the learned Counsel for the State are far from satisfactory and without any merit. In the result, this writ application stands allowed.

The respondent authorities more particularly, the Chief Secretary of the State of West Bengal is directed to pay a total sum of Rs. 3 lakhs to the writ petitioner, an acid attacked victim and out of the said amount a sum of Rs. 1 lakh be paid within fifteen days from the date of communication of this order and thereafter the balance amount be paid within two months thereafter as prescribed by the Hon'ble Apex Court in its order passed in connection with Laxmi -vs- Union of India(supra).

This order be communicated to the Chief Secretary of the State of West Bengal through the learned Registrar General of this Court at once for taking necessary steps.

At the same time, the petitioner shall have the liberty to communicate this order.

Urgent photostat certified copy of this order, if applied for, be given to the learned Counsel for the parties on usual undertaking.

(Ashim Kumar Roy,J.)