

04.04.2023

sayandeep

Sl. No. 08

Ct. No. 05

WPA 5441 of 2023

X(Redacted)

-Versus-

The State of West Bengal & Ors.

Mr. Kaushik Gupta

Mr. Arijit Bhusan Bagchi

.....for the petitioner

Mr. Debasish Ghosh

Mr. Debapriya Chatterjee

.....for the State

Ms. Soma Chowdhury(Bandhu)

....for the respondent

The petitioner before the Court is a minor and is a victim of trafficking and rape. The petitioner is aggrieved by an order dated 14.09.2022 passed by the District Legal Services Authority, North 24 Parganas, Barasat, by which the petitioner's appeal from the first order of 04.12.2019 was dismissed. To explain the cause of the petitioner's grievance, the 1st Court had computed the interim compensation payable to the petitioner under the West Bengal Victim Compensation Scheme, 2017 and the schedule appended thereto for an amount of Rs. 1,25,000/- for rape and Rs. 25,000/- for sexual assault. The petitioner challenged this order before the appellate authority which is the DLSA and the appellate authority agreed with the view taken by the 1st Court and held that the petitioner's compensation would be in accordance with the 2017

Scheme and the appellate authority was hence not inclined to interfere with the said order.

Learned counsel appearing for the petitioner claims compensation in accordance with the specific Scheme of the NALSA which provides for a minimum compensation of Rs. 4,00,000/- for a woman who is a victim of rape and Rs. 7,00,000/- as the upper limit. Counsel submits that by an order dated 5th September, 2018 in *Nipun Saxena & Anr. vs. Union of India*, a three Judge Bench of the Supreme Court made the Scheme and the Guidelines operational from 2nd October, 2018. Counsel also relies on a Judgment of the Supreme Court in *Suresh & Another vs. State of Haryana; (2015)2 SCC 227* which held, *inter alia*, that the States shall adopt higher scale of the Schemes notified for the victim.

Learned counsel appearing for the SLSA and DLSA submits that the petitioner is entitled to receive compensation under the State Scheme of 2017. Counsel further submits that the Scheme of NALSA and the amounts recommended under the Scheme are not made available to the SALSAs or the State Government and hence the respondents cannot award compensation in accordance with the NALSA Scheme.

This Court is unable to comprehend as to why NALSA's Compensation Scheme for Women Victim/Survivors of Sexual Assault/ other Crimes, 2018

would not be available to the SLISA or the DLISA and the victims in the State would be deprived of the amounts recommended under the said Scheme.

The answer to this question is crucial since the Schemes of NALISA are made to benefit all (women) victims of crimes regardless of the particular State in which they are located.

Learned counsel appearing for the petitioner is hence directed to make the NALISA a party to the writ petition and serve a copy of the writ petition to NALISA. A copy of this order shall also be communicated to NALISA.

List this matter on 19th April, 2023.

Leave is given to the counsel appearing for the petitioner to amend the cause title of the present writ petition.

(Moushumi Bhattacharya, J.)

19th April, 2023
(D/L No.09)
(SKB)

W.P.A. 5441 of 2023

X (Redacted)
Versus
The State of West Bengal and others

Mr. Kaushik gupta,
Mr. Arijit Bhusan Bagchi,
Ms. Srimoyee Mukherjee
... for the petitioner.

Mr. Kallol Mandal,
Ms. Soma Chowdhury (Bandhu)
... for the respondent nos.2 & 3.

Mr. Debasish Ghosh,
Mr. Debapriya Chatterjee
... for the State.

Learned counsel appearing for the NALSA submits that the State of West Bengal is the only State which is yet to implement the NALSA's Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018.

The State is represented. Since this is a serious issue, learned counsel is directed to take instructions in the matter and file an affidavit containing the instructions on the returnable date.

List this matter on 24th April, 2023.

(Moushumi Bhattacharya, J.)

26th April, 2023
(D/L No.9)
(SKB)

W.P.A. 5441 of 2023

X (Redacted)
Versus
The State of West Bengal and others

Mr. Kaushik Gupta,
Mr. Arijit Bhusan Bagchi,
... for the petitioner.

Mr. Kallol Mandal,
Ms. Soma Chowdhury
... for the respondent nos.2 & 4.

Mr. Debasish Ghosh,
Mr. Debapriya Chatterjee
... for the State.

1. The petitioner before this court is a minor victim of trafficking and rape. The petitioner was 17 years of age at the time of filing the writ petition. The petitioner claims compensation under the National Legal Services Authority's (NALSA) Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes-2018.
2. According to learned counsel appearing for the petitioner, the petitioner is entitled to Rs.7.75 lacs on the basis of the NALSA Scheme and the petitioner is also entitled to get 50% of the total amount by reason of being below 18 years of age on the date of commission of the offence. The petitioner is, however, deprived of this benefit of 50% under the West Bengal Victim Compensation Scheme, 2017, which gives the benefit of 50% to the victims aged below 14 years. The claim of the petitioner is now Rs.7.75 lacs. Counsel has also placed a decision of the Supreme Court which held that the victim is entitled to claim the higher of two amounts which

may be available to the victim under the abovementioned two schemes.

3. Learned counsel appearing for the State places an order of the Division Bench presided over by the former Hon'ble the Chief Justice of this Court. The order is of 5th December, 2022 and records the submissions made by the learned Advocate General that sufficient funds would be provided by the State to the Judicial Department for implementing the said Scheme as well as the NALSA Scheme for the victims/survivors of sexual assault. Counsel submits that necessary steps have been taken by the Finance Department and the sanction of funds is pending approval.
4. Be that as it may, this court is of the view that the petitioner/victim before the court cannot be asked to wait until the funds are sanctioned by the State Government and reach the Judicial Department. The State shall hence pay a sum of Rs.7 lacs to the petitioner within seven days from date and file a compliance report in the form of an affidavit on the next date of hearing.
5. List this matter on 4th May, 2023.

(Moushumi Bhattacharya, J.)

04.05.2023
sayandeep
Sl. No. 16
Ct. No. 05

WPA 5441 of 2023

X(Redacted)
-Versus-
The State of West Bengal & Ors.

Mr. Kaushik Gupta
Mr. Arijit Bhusan Bagchi

.....for the petitioner

Mr. Debasish Ghosh
Mr. Debapriya Chatterjee

.....for the State

Ms. Soma Chowdhury(Bandhu)

....for the respondent

Mr. Kollol Mondal

.....for the respondent No. 4

Learned counsel appearing for the petitioner submits that the petitioner has been informed that the compensation amount has been despatched by the State Government but the petitioner is yet to receive the amount.

List this mater on 11th May, 2023 as prayed for.

(Moushumi Bhattacharya, J.)