

(2020) 03 CAL CK 0020
In the Calcutta High Court

Case No : Writ Petitions (WP) No. 19305 Of 2019, 233 (W) Of 2020

Achiya Bibi Alias Achiya Sardar And Others	APPELLANT
Vs	
State Of West Bengal And Others	RESPONDENT

Date of Decision : 11-03-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 300A
National Legal Services Authority Rules, 1995 — Rule 2(d), 6, 11
Code Of Criminal Procedure, 1973 — Section 357A, 357A(2), 357A(2)(c)
Legal Services Authorities Act, 1987 — Section 2(1)(c), 4, 4(a), 4(B), 4(c), 7, 7(1),
14, 16, 28

Citation : (2020) 03 CAL CK 0020

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Kaushik Gupta, Arnab Nandi, Debayan Sen, Shiv Shankar Banerjee,
Arijita Ghosh

Final Decision : Allowed

Judgement

Sabyasachi Bhattacharyya, J

- Both the writ petitions arise from similar orders passed by the Member Secretary, State Legal Services Authority, West Bengal (hereinafter referred to as "the SLSA"). In W.P. No. 233(W) of 2020, the victim Achiya Bibi was awarded a sum of Rs. 3 lakh as compensation for being the victim of human trafficking, in terms of Section 357A of the Code of Criminal Procedure, vide order dated September 6, 2019.
- On the other hand, in W.P. No. 19305(W) of 2019, the petitioner Supiya Bibi was granted compensation of Rs. 4 lakh, being Rs. 3 lakh for having been trafficked and Rs. 1 lakh, since she was a victim of rape.
- By an order dated August 9, 2019 in the case of Achiya Bibi and an order

dated September 6, 2019 in the case of Supiya Bibi, the Member

Secretary, SLSA directed that 75 percent of the awarded amount was to be deposited by the victim girl with a nationalised bank in a Monthly Income

Scheme in the name of the victim for a period of ten years, with auto renewal option, and to submit a compliance of the same within 40 days from the

date of receipt of the victim compensation. It was further recorded in the order that, in default, necessary action would follow. The victims were

directed to furnish an acknowledgement after receipt of the compensation amount without delay to the SLSA through the District Legal Services

Authority (hereinafter referred to as "the DLSA"), District: South 24 Parganas (in W.P. No. 233(W) of 2020) and North 24 Parganas (in W.P.

No. 19305(W) of 2019) respectively.

4. It is argued by learned counsel for the petitioners in both the matters that such fetter imposed on the petitioners in each of the matters was de hors

the provisions of the West Bengal Victim Compensation Scheme, 2017, framed by the Government of West Bengal in exercise of the powers

conferred by Section 357A of the Code of Criminal Procedure.

5. It is further argued by the petitioners that the said direction was apparently borrowed from clause 11 of the Model Scheme framed for the National

Legal Services Authority (hereinafter referred to as "the NLSA"). Clause 11 of the NLSA scheme contemplates such a provision of deposit of

75 percent of the final compensation to be put in a fixed deposit for a minimum period of three years and that the remaining 25 percent shall be

available for utilization and initial expenses by the victim/dependent(s), as the case may be. The said amounts, in the case of minors, was 80 percent of

the amount of compensation so awarded, which shall have to be deposited in the fixed deposit account and shall only be drawn on attainment of the

age of majority but not before three years of the deposit. However, in the said scheme as well, it is provided that, in exceptional cases amounts may

be withdrawn for educational or medical or pressing and urgent needs of the beneficiary at the discretion of the concerned authorities.

6. It is argued by learned counsel for the petitioners that the said scheme is not directly applicable to the State of West Bengal, in view of the special

scheme formulated by the State Government in that regard, under the powers conferred by Section 357A of the Code of Criminal Procedure.

7. Moreover, it is argued that the NLSA scheme contemplates a higher amount of compensation than the State's scheme. As such, only partially

adopting the restriction in the said scheme on the one hand but reducing the quantum of compensation on the other would, in any event, be unlawful.

8. In reply, learned counsel appearing for the respondent authorities submits that the compensation granted as per the respective schemes are not

governed by Article 300A of the Constitution of India, which protects persons from being deprived of his/her property save by the authority of law. In

the present case, it is argued the compensation is not "property" as contemplated in the said Article but only falls within the specific ambit of

Section 357A of the Criminal Procedure Code and the Legal Services Authorities Act, 1987 (hereinafter referred to as "the LSA Act").

9. Learned counsel further argues that it is the choice of the authority concerned to provide compensation in whatever mode that the authority may

deem fit and proper. Such compensation, for example, may also come in the form of maintenance payable on a regular basis. It is argued that, as per

Section 357A of the Criminal Procedure Code, every State Government, in coordination with the Central Government, shall prepare a scheme for

providing funds for the purpose of compensation to the victim or his/her dependents who have suffered loss or injury as a result of the crime and who

require rehabilitation. It is argued that it is entirely the discretion of the SLA to decide as to whether the compensation shall be disbursed with some

conditions or not. Moreover, it is submitted that the direction to deposit 75 percent of the compensation amount in a bank was issued for the benefit of

the victim herself, to protect her from misuse/abuse of the compensation amount in order to secure proper rehabilitation.

10. Learned counsel further submits that the compensation, as per the provisions of the scheme, have to be disbursed by the Legal Services

Authorities as contemplated within the LSA Act, 1987. Learned counsel relies on Rule 6 of the National Legal Services Authority Rules, 1995

(hereinafter referred to as "the NLSA Rules") and submits that it is the power and function of the Member-Secretary, inter alia, to work out

modalities of the Legal Services Schemes and Programmes approved by the Central Authority and ensure their effective monitoring and

implementation throughout the country.

11. Learned counsel further relies on Section 4 of the LSA Act to submit that the Central Authority shall, inter alia, lay down policies and principles for

making legal services available under the provisions of the Act, frame the most effective and economical schemes for the purpose of making legal

services available under the provisions of this Act and utilize the funds at its disposal and make appropriate allocations of funds to the State Authorities

and District Authorities.

12. Next placing reliance on Section 7 of the LSA Act, learned counsel for the respondent authorities submits that it is the duty of the State Authorities

to give effect to the policy and direction of the Central Authority and as such, it is argued, the SLSA is bound to follow the policy framed by the

NLSA.

13. Next placing reliance on Section 14 of the LSA Act, it is pointed out that the Central Government, after due appropriation made by Parliament by

law in this behalf, pay to the Central Authority, by way of grants, such sums of money as the Central Government may think fit for being utilized for

the purpose of the Act. On the other hand, it is provided in Section 16 of the LSA Act that a State Authority shall establish a fund, to be called the

State Legal Aid Funds, and there shall be credited thereto all sums of money paid to it or any grants made by the Central Authority for the purpose of

LSA Act, and from other sources as specified therein.

14. It is thus argued that the SLSA was duty bound to follow Clause 11 of the Model Rules framed by the NLSA for victim compensation.

15. Relying on an annexure to the affidavit-in-opposition filed by the respondent nos. 2 and 3, it is argued that the chart given therein contain examples

of certain instances in some of the districts of West Bengal where the money disbursed as compensation was misused by the victim. This, according

to learned counsel for the said respondents, necessitated the issuance of the impugned direction, so that the money awarded to the victims by way of

compensation remains secure in a bank and fetch them a regular, assured income instead of being spent too soon.

16. Lastly, learned counsel for the respondent nos. 2 and 3 submits that the SLSA is headed by the Chief Justice of the Calcutta High Court and the

senior-most puisne Judge of this court. As such, it is argued that since the best legal brains were behind the impugned order, it ought to be presumed

that the same was for the furtherance of justice and to give effect to the spirit of the Victim Compensation Scheme as envisaged under Section 357A

of the Code of Criminal Procedure.

17. For an adjudication on the present dispute, the following provisions of law are relevant:

â??Criminal Procedure Code:-

357-A. Victim compensation scheme. - (1) Every State Government in co-ordination with the Central Government shall prepare a scheme for

providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as

the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer-in-charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.â??

â??Legal Services Authorities Act, 1987:-

4. Functions of the Central Authority. â?" The Central Authority shall, perform all

or any of the following functions, namely: -

(a) lay down policies and principles for making legal services available under the provisions of this Act;

(b) frame the most effective and economical schemes for the purpose of making legal services available under the provisions of this Act;

(c) utilise the funds at its disposal and make appropriate allocations of funds to the State Authorities and District Authorities;

(d) take necessary steps by way of social justice litigation with regard to consumer protection, environmental protection or any other matter of special

concern to the weaker sections of the society and for this purpose, give training to social workers in legal skills;

(e) organise legal aid camps, especially in rural areas, slums or labour colonies with the dual propose of educating the weaker sections of the society

as to their rights as well as encouraging the settlement of disputes through Lok Adalats.

(f) encourage the settlement of disputes by way of negotiations, arbitration and conciliation;

(g) undertake and promote research in the field of legal services with special reference to the need for such services among the poor;

(h) to do all things necessary for the purpose of ensuring commitment to the fundamental duties of citizens under Part IV-A of the Constitution;

(i) monitor and evaluate implementation of the legal aid programmes at periodic intervals and provide for independent evaluation of programmes and

schemes implemented in whole or in part by funds provided under this Act;

(j) provide grants-in-aid for specific schemes to various voluntary social service institutions and the State and District Authorities, from out of the

amounts placed at its disposal of the implementation of legal services schemes under the provisions of this Act;

(k) develop, in consultation with the Bar Council of India, programmes for clinical legal education and promote guidance and supervise the

establishment and working of legal services clinics in universities, law colleges and other institutions;

(l) take appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular, to educate weaker sections of the

society about the rights, benefits and privileges guaranteed by social welfare

legislations and other enactments as well as administrative programmes and measures;

(m) make special efforts to enlist the support of voluntary social welfare institutions working at the grass-root level, particularly among the Scheduled

Castes and the Scheduled Tribes, women and rural and urban labour; and

(n) co-ordinate and monitor the functioning of State Authorities, District Authorities,

Supreme Court Legal Services Committee, High Court Legal Services Committees, Taluk Legal Services Committees and voluntary social service

institutions and other legal services organisations and give general directions for the proper implementation of the legal services programmes.

... ..

7. Functions of the State Authority. - (1) It shall be the duty of the State Authority to give effect to the policy and directions of the Central Authority.

(2) Without prejudice to the generality of the functions referred to in sub-section (1), the State Authority shall perform all or any of the following

functions, namely:-

(a) give legal service to persons who satisfy the criteria laid down under this Act;

(b) conduct Lok Adalats, including Lok Adalats for High Court cases;

(c) undertake preventive and strategic legal aid programmes; and

(d) perform such other functions as the State Authority may, in consultation with the Central Authority, fix by regulations.

... ..

14. Grants by the Central Government. - "The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay

to the Central Authority, by way of grants, such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

... ..

16. State Legal Aid Fund. - (1) A State Authority shall establish a fund to be called the State Legal Aid Fund and there shall be credited thereto -

(a) all sums of money paid to it or any grants made by the Central Authority for the purposes of this Act;

(b) any grants or donations that may be made to the State Authority by the State Government or by any person for the purposes of this Act;

(c) any other amount received by the State Authority under the orders of any court or from any other source.

(2) A State Legal Aid Fund shall be applied for meetingâ?

(a) the cost of functions referred to in Section 7;

(b) the cost of legal services provided by the High Court Legal Services Committees;

(c) any other expenses which are required to be met by the State Authority.â??

â??National Legal Services Authority Rules, 1995:-

6. Powers and Functions of the Member-Secretary :- The powers and functions of the Member-Secretary, inter alia, shall be â?

(a) to work out modalities of the Legal Services Schemes and Programmes approved by the Central Authority and ensure their effective monitoring

and implementation throughout the country;

(b) to exercise the powers in respect of administrative, finance and budget matters as that of the Head of the Department in a Central Government;

(c) to manage the properties, records and funds of the Central Authority;

(d) to maintain true and proper accounts of the Central Authority including checking and auditing in respect thereof periodically;

(e) to prepare Annual Income and Expenditure Accounts and Balance Sheet of the Central Authority;

(f) to liaise with the Social Action Groups and the State Legal Services Authorities;

(g) to maintain up-to-date and complete statistical information, including progress made in the implementation of various Legal Services Programmes

from time to time;

(h) to process project proposals for financial assistance and issue Utilisation Certificates thereof;

(i) to convene Meetings/Seminars and Workshops connected with Legal Services Programmes and preparation of Reports and follow-up action

thereon;

(j) to produce video/documentary films, publicity material, literature and publications to inform general public about the various aspects of the Legal

Services Programmes; and

(k) to perform such other functions as may be expedient for efficient functioning of the Central Authority.â??

18. The impugned orders in both the writ petitions were passed by the Member Secretary of the SLSA and as such, the argument as to the Chief

Justice, being the patron-in-chief, and the senior-most puisne Judge of this court, in her/his capacity as the executive chairman of the SLSA, having

lent the best brains behind the impugned orders, cannot be accepted. Moreover, even in the event such orders were to be made by the Chief Justice

and/or the senior-most puisne Judge, in their respective capacities of patron-in-chief and executive chairman, such orders would not be passed in their

judicial capacity of Chief Justice and a senior Judge of this Court but in administrative capacity, as authorities designated under the LSA Act, 1987.

Even in such a case, the impugned order would not be exempt from judicial scrutiny/review under Article 226 of the Constitution of India even by the

junior-most puisne Judge of this court in her/his judicial capacity.

19. A perusal of the West Bengal Victim Compensation Scheme, 2017, framed by the Governor in co-ordination with the Central Government in

exercise of the powers conferred by Section 357A of the Code of Criminal Procedure, 1973, as published on behalf of the Government of West

Bengal vide Notification No. 62-JL dated February 15, 2017 published in the Kolkata Gazette, Extraordinary dated February 17, 2017, shows that the

procedure for grant of victim compensation has been laid down comprehensively in Clause 6 thereof. In sub-clause (4) of Clause 6, it is provided that

the compensation awarded under the Scheme shall be disbursed to the victim or his/her dependents, as the case may be, from the Victim

Compensation Fund constituted by the State Government, by remitting the same into the bank account declared by the victim/dependents. Since the

victims in both the writ petitions were major when the compensation was awarded, sub-clause (5), which pertains to minors, is not applicable.

20. Sub-clause (8) stipulates that the State or the District Legal Services Authority, to alleviate the suffering of the victim, may order for immediate

first-aid facility or medical benefits to be made available free of cost, on the certificate of a police officer not below the rank of the officer-in-charge

of the police station or a Magistrate of the area concerned, or any other interim

relief as it may deem fit.

21. Sub-clauses (4) and (8) of Clause 6 of the State Scheme are the only two provisions therein which indicate the mode of disbursement of victim

compensation. Since the compensation granted to the writ petitioners in both the petitions were of a final nature, Clause 6 (4) squarely applies. Hence,

the role of the authorities ends with the remission of the compensation amount into the bank account declared by the victim/dependents.

22. However, Clause 11 of the Compensation Scheme for Women Victims/ Survivors of Sexual Assault/other Crimes, 2018, which is a similar scheme

of the National Legal Services Authority (NLSA), includes, in the method of disbursement of compensation, that only 25 per cent of the final

compensation amount shall be available for utilization and initial expenses by the victim/dependent(s), as the case may be, and the balance 75 per cent

shall be put in a fixed deposit for a minimum period of three years. As per the NLSA Scheme, the Schedule thereto provides that the quantum of

compensation for the victims of rape would range between Rs. 4 lakh and Rs. 7 lakh.

23. Although the NLSA Scheme is applicable to the NLSA and not the state and district authorities per se, the Background of the Scheme, as given in

the preface therein, indicates that the same was prepared as Model Rules for Victim Compensation for sexual offences and acid attacks, as per the

observation of the Honâ??ble Supreme Court in W.P. (C) No. 565 of 2012 [Nipun Saxena v. Union of India]. The said model was accepted by the

Supreme Court, which directed all the State Governments/Union Territory Administrations to implement the same in their respective States/Union

Territories. However, it was further observed in the judgment that while nothing should be taken away from the Scheme, it does not preclude the State

Governments/Union Territory Administrations from adding to the Scheme. The said Scheme was introduced as a sub-scheme in Part-II of the Victims

Compensation Scheme of the NLSA.

24. What is notable is that the West Bengal Victim Compensation Scheme, 2017 has not been amended as yet, by incorporating the NLSA model

scheme, pursuant to the direction of the Supreme Court. Therefore, as of today, the West Bengal Scheme prevails in the state and disbursement of

compensation to major persons would be governed by Clause 6 (4) of the said

Scheme, which stops at disbursal to the victim by remitting the amount into the bank account declared by the victim. Thus, the Notifications impugned in both the writ petitions are de hors the West Bengal Scheme, as it still stands, and hence bad in law.

25. That apart, even if the provisions of Clause 11 of the NLSA Scheme was to be adopted by the State, insofar as the curtailment of the right of the victim to get immediate disbursement of the whole amount by deposit of 75 per cent in a fixed deposit is concerned, that too for ten years (as opposed to minimum three years in the NLSA Scheme), the same would amount to taking away from the NLSA Scheme, which is negated in the rider to the Supreme Court direction. This is because the fetter thus imposed on the right of the victim to get the entire compensation amount at the point of disbursal itself, being penal in nature (even if for a perceived good cause), ought to be strictly construed.

26. On the other hand, the quantum of compensation stipulated in the NLSA Scheme for victims of rape, being Rs. 4 lakh to Rs. 7 lakh, has a higher upper limit than the West Bengal Scheme, which stipulates a meagre 3 lakh as the minimum compensation limit for rape and only Rs. 1 lakh for rehabilitation of victims of human trafficking, etc. Thus, adoption of the minimum amount from the NLSA Scheme or specifying a higher amount would tantamount to adding to the Scheme, which has specifically been stated in the Supreme Court rider to be not precluded. Attributing a liberal construction to such increase in quantum, which the said provision demands, since the NLSA Scheme is in the nature of a beneficial legislation and the benefits should be extended to the maximum to the target victims, while strictly construing the curtailment of such benefit by restricting the initial disbursement to 25 per cent only, which takes away from the benefits conferred by the Scheme would be valid even as per the Supreme Court judgment.

27. Moreover, the NLSA Scheme contemplates deposit of 75 per cent of the compensation amount in a fixed deposit only for a minimum period of three years, while the Notifications/Orders impugned in the present writ petitions stipulate a similar percentage of deposit for a much lesser amount of compensation for a mandatory ten years, which is more than three times the minimum moratorium period of three years, as provided in Clause 11 of

the NLSA Scheme.

28. Hence, the impugned Orders not only violate the existing West Bengal Victim Compensation Scheme, but incorporates a temporal fetter for more

than triple the minimum period of the NLSA Scheme, that too while maintaining the minimum compensation for rape at Rs. 3 lakh, which is less than

the minimum limit in the NLSA Scheme, thus â??taking awayâ? drastically from the model NLSA Scheme, which has been prohibited by the

Supreme Court in its direction to implement such scheme in States and Union Territories.

29. Additionally, the impugned Orders traverse beyond the schemes envisaged in Section 357A of the Code of Criminal Procedure itself, which is the

source of authority of the Governments, both Central and State, to frame such schemes and to implement the said section. This is due to two-fold

reasons:

30. First, Section 357A of the Code specifically provides for the preparation of a scheme for providing funds for the purpose of compensation

(emphasis supplied). Thus, the scheme does not and cannot extend to monitoring the amount of compensation from the point of disbursal onwards.

The scheme has to be framed by the State Government in co-ordination with the Central Government for the sole purpose of providing the funds for

compensation, and cannot touch the mode of distribution or disbursal of the compensation to the victim even as per the language of the parent

provision, that is, Section 357A of the Code of Criminal Procedure.

31. Secondly, the DLSA or the SLSA, under sub-section (2) of Section 357A, can only decide the quantum of compensation to be awarded â??under

the schemeâ? referred to in sub-section (1) and award adequate compensation as per sub- section (5) thereof, upon completing the enquiry

contemplated therein. Neither the DLSA nor the SLSA can monitor or fetter the amount disbursed as compensation under Section 357A, as their

jurisdiction ends with awarding the amount. It is doubtful even as to whether, bereft of the judgment of the Supreme Court referred to above, the

NLSA would have the authority to so monitor within the contemplation of Section 357A of the Code of Criminal Procedure. Although Section 7 (1) of

the LSA Act stipulates that it shall be the duty of the State Authority of give effect to the policy and directions of the Central Authority, clauses (a),

(b) and (c) of Section 4 of the LSA Act restrict the functions of the Central Authority itself to laying down policies and principles and frame the most effective and economical schemes for the purpose of making legal services available under the provisions of the LSA Act itself. As defined in Section 2 (1) (c) of the LSA Act, "legal service" includes the rendering of any service in the conduct of any case or other legal proceedings before any court or other authority or tribunal and the giving of advice on any legal matter. Although the definition is inclusive, it indicates the nature of services, which ought to pertain to services envisaged within the LSA Act itself, that is, in relation to conducting and advising on litigations and legal matters and/or legal awareness.

32. However, the power to decide and grant victim compensation is conferred on the State and Central Authorities, and the power to frame schemes of providing the funds therefor (and not relating to the method/modality of disbursement) flows from Section 357A of the Code of Criminal Procedure itself, and not from the LSA Act, the latter only contemplating funds and schemes for providing legal services available under the LSA Act itself.

Thus, where the functions of the Central Authority under Section 4 of the LSA Act itself revolves around the legal services available under that Act,

the functions of the State Authority restricts the said authority's duty, as per Section 7 (1), to give effect to the policy and directions of the Central

Government within the confines of the LSA Act itself. No such compulsion is imposed on the State Authorities under Section 357A of the Code of

Criminal Procedure, which is the only source of power to disburse victim compensation and frame schemes for providing funds therefor. Section 357A

does not mandate the State Authorities to give effect to the policy and directions of the Central Authority automatically, as far as victim compensation

is concerned. Such compulsion operates on the State Authorities only while functioning within the periphery of the LSA Act, as envisaged in Section 4,

read in conjunction with Section 7, of the LSA Act and not while functioning as the concerned authorities under Section 357A of the Code of Criminal

Procedure.

33. Even the preamble of the West Bengal Victim Compensation Scheme recognizes Section 357A of the Code of Criminal Procedure as the source

of authority to frame the Scheme, and not any provision of the LSA Act. Section

357A merely enables the Central, State and District Authorities to award the compensation and disburse the same and empowers the State Governments, in co-ordination with the Central Government, to frame schemes only relating to providing the funds for such compensation.

34. In fact, Section 14 of the LSA Act, which envisages that the Central Government shall pay to the Central Authority such sums as the Central Government may think fit for being utilised for the purposes of the LSA Act. The said section does not apply the provision of such funds for the purpose of Section 357A of the Code of Criminal Procedure, which independently authorizes the State Government to prepare a scheme to provide such funds, â??in co-ordination withâ?? the Central Government.

35. Thus, the funds for payment of victim compensation are independent of Section 16 of the LSA Act, or at best may fall within the purview of Section 16 (2) (c) to enable the applicability of Section 357A of the Code of Criminal Procedure for â??any other expenses which are required to be met by the State Authorityâ??.

36. The reliance placed by the respondent authorities on Rule 6 of the NLSA Rules, 1995 is misplaced, since the same discusses the powers of the Member- Secretary of the NLSA, as defined in Rule 2 (d) of the LSA Rules, and is not applicable to the SLSA Memb-eSrecretary. Neither party has cited any Rules framed by the State of West Bengal, as empowered under Section 28 of the L.S.A. Act. Even two of the most wellknown search engines on the internet failed to come up with results for the SLSA website and/ or any such Rules having been framed by the State, when I searched for the same.

37. Rule 11 of the NLSA Scheme is also erroneously relied on by the respondent authorities, since the same governs the Central Scheme and could, at best, operate as a model for the Rules, if any, to be framed by the State.

38. As regards the alleged misuse of compensation in some cases, as sought to be cited by the respondent authority on the basis of the annexure at page 14 of their affidavit-in-opposition, those are only isolated events spread over several districts. Moreover, it is unfortunate that instances of use of the compensation for personal use by the victim, or purchasing property by the victim, or spending the amount for making ornaments or for the

marriage of the victim, education of the victim's child, etc. have been labelled as instances of 'misuse' of the compensation by the said

victims, since most of the reasons could have been justified on the ground of the necessity of the victim's rehabilitation, in various forms. Thus, the

argument of legality and justification of the impugned orders/notifications on the strength of such isolated events are not tenable in the eye of law.

39. That apart, the SLSA has no authority to control and monitor the amount of compensation disbursed to a victim who has attained majority. She or

he has every right and the liberty to choose the mode of expending the compensation amount, as she/he feels appropriate for her rehabilitation after

the trauma of the offence. As it is, the quantum of compensation is meagre and ought not to be further fettered. The SLSA can at best offer

post-disbursal schemes to the victim to safeguard her/his best interests, but that has to be optional, chosen by the victim only in the event she/he opts

for it, and not mandatory. That would be a far better option than imposing the restriction on the victim and subsequently leaving it to the discretion of

the SLSA to dictate the mode of expenditure and savings. Such a method is counterproductive to the scheme of Section 357A of the Code of Criminal

Procedure and would be an illegal fetter on the personal liberty of the victim.

40. We are in 2020 now, and not in '1984' (as contemplated by George Orwell). As such, the 'Big Brother' approach of the disbursing

authority should be shunned and the victim should be free to spend the compensation granted to her/him at her/his option. The right to commit a

mistake inheres in the right to personal liberty and freedom and should not be curtailed mandatorily and arbitrarily by the SLSA merely because it is in

charge of the purse-string, that too for such meagre amounts of compensation as contemplated under the Scheme.

41. In view of the foregoing discussions, W.P. No. 233 (W) of 2020 and W.P. No. 19305 (W) of 2019 are allowed on contest, thereby setting aside

and quashing the impugned orders, being the order dated August 9, 2019 in the case of Achiya Bibi and the order dated September 6, 2019 in the case

of Supiya Bibi respectively, and the associated notifications.

42. There will be no order as to costs.

43. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.