

(2023) 07 DEL CK 0212

In the Delhi High Court

Case No : Civil Writ Petition No. 1501 Of 2020

Shaheen Malik

APPELLANT

Vs

State Of Gncd Through Principal Secretary & Ors

RESPONDENT

Date of Decision : 27-07-2023

Acts Referred:

Citation : (2023) 07 DEL CK 0212

Hon'ble Judges : Satish Chandra Sharma, CJ;Sanjeev Narula, J

Bench : Division Bench

Advocate : Anuj Kapoor, Santosh Kumar Tripathi, Arun Panwar, Kartik Sharma, Utkarsh Singh

Final Decision : Disposed Of

Judgement

Sanjeev Narula, J

1. The Petitioner, an acid attack survivor, is a dedicated activist actively engaged in assisting acid attack victims with aftercare, rehabilitation, legal recourse, and pursuit for compensation. Her efforts aim to protect the public from becoming victims of such heinous attacks. To further this cause, through the present Public Interest Litigation ["PIL"], she seeks directions for a total ban on over-the-counter sale of acid in retail stores, across Delhi.

2. The crux of Petitioner' case is that despite Supreme Court's recognition of traumatic challenges faced by acid attack survivors and explicit directives to regulate the sale of acid in Laxmi v. Union of India and Ors. Vide several orders in W.P.(CrI.) No. 129/2006. and Parivartan Kendra v. Union of India and Ors. (2016) 3 SCC 571, Respondent No. 1 – Government of National Capital Territory of Delhi ["GNCTD"] has failed to address the problem. In this regard, Petitioner highlights the delay on GNCTD's part in notifying the Delhi Poisons Possession and Sale Rules, 2015 [hereinafter, "2015 Rules"]. She contends that despite this delayed legislative action, the ground reality remains unchanged and occurrences of such horrific attacks are on the rise due to unfettered and effortless access to

acid. To ascertain the prevailing situation and highlight the inefficiency on the part of GNCTD in curbing and regulating the sale of acid, Petitioner conducted a fact-finding survey within the city of Delhi by enlisting interns and volunteers. During this exercise, it was observed that the volunteers, some of whom were minors, were able to procure acid from almost every part of the city, without any difficulty. This alarming revelation indicates that the existing rules and regulations are neither being diligently adhered to, nor effectively enforced.

3. Against this backdrop, Petitioner asserts that unrestricted access to this hazardous substance poses a significant threat to public safety and perpetuates the risk of acid attacks. To further her case for a blanket prohibition, she reasons that acid sold at retail outlets is predominantly used for cleaning toilets and choked sewers. She contends that there are viable alternatives available for these cleaning tasks, and therefore, permitting open sale of acid, which is relatively inexpensive, is unnecessary. She further argues that perceived advantages of acid are relatively trivial when weighed against the potential damages that it can cause. Petitioner justifies her request for a total ban by pointing out that the acid used for manufacturing purposes is of industrial grade, which is distinct from acids that are usually used in attacks. Consequently, she prays for directives banning the sale of acid through retail counter shops in Delhi, and repealing the amendment dated 25th August 2017 to the 2015 Rules, which permits sale on license basis.

4. The issue raised by the Petitioner is undeniably significant, and the judgments of the Supreme Court referred above provide compelling grounds for Petitioner's concern and angst. The gravity of the problem was brought to focus in *Laxmi (Supra)*, which was a PIL filed by a courageous acid attack survivor named Laxmi. In the said case, the Supreme Court issued several recommendations aimed at benefiting acid attack survivors, thus paving the way for significant changes in the legislative framework. The Court's decision led to amendment in criminal laws and introduction of guidelines to provide better support and assistance to acid attack survivors. Following the afore-mentioned developments, another PIL titled *Parivartan Kendra (Supra)*, was filed by a registered NGO highlighting the deficiencies and inadequacies in the legal measures. The Supreme Court again intervened, this time to deliberate on the question of quantum of compensation to be provided to the survivors.

5. In light of these landmark judgments and the concerns raised by the Petitioner, the Court must now determine whether a complete ban on the sale of acid is the appropriate approach to the problem. This decision warrants a comprehensive examination of existing legal framework and careful consideration of implications of various approaches as well as their potential effectiveness. While the concerns shared by the Petitioner are genuine and her survey provides insights on the prevailing conditions, it does not encompass all perspectives. A total ban could have unintended consequences, affecting sectors where acid is responsibly and safely utilized. Therefore, striking a balance between public

safety and the legitimate uses of acid for industrial and other regulated purposes is crucial. Acid serves various legitimate uses and applications in different industries, and a blanket prohibition could inadvertently affect businesses and individuals who require it for lawful purposes. At the same time, we must and do acknowledge the threat posed by uncontrolled acid sales and the need for stringent measures to prevent such heinous crimes. Therefore, on the basis of material before us, we are of the opinion that an outright ban on the sale of acid may not be the most appropriate approach. Instead, we propose that the State must focus on stringent implementation of the existing rules and regulations governing the sale. By enforcing 2015 Rules with full rigor, the authorities can effectively regulate the sale of acid and prevent its misuse for criminal purposes. This approach would balance the concerns addressed by the Petitioner with the need for safeguarding the legitimate needs of various industries and individuals.

6. Mr. Santosh Kumar Tripathi, Standing Counsel for GNCTD, assures that the State is implementing the 2015 Rules strictly and draws our attention to the reports received from Districts/ Units, indicating that 50 FIRs were registered with the Delhi Police between 01st January, 2022 and 20th May, 2023 against persons found selling acid illegally, in contravention of the applicable guidelines. Additionally, he highlights that Delhi Police has filed a counter affidavit in W.P.(C) 03/2018 on the same subject matter, which is still pending consideration before the Apex Court.

7. Mr. Tripathi's assurances alone are not enough. The issue demands continued vigilance and proactive measures. While a regulatory mechanism is in place, we believe much more needs to be done. The 2015 Rules incorporate provisions that permit sale of acid to vendors who are licensed at the discretion of the licensing authority. The license is issued only to applicants who demonstrate compliance with the stipulated provisions. These provisions must be diligently and strictly enforced, and the State must ensure effective safeguards to ensure that acid does not fall into the hands of offenders. Therefore, rather than striking down the 2015 Rules or directing a complete ban, we direct the GNCTD to ensure proper implementation of the existing legal framework. In cases of non-compliance of the aforesaid Rules or unlawful sale, the authorities must take swift and decisive action against the offenders. By imposing strict penalties on those found to be involved in the illegal sale or misuse of acid, the State authorities can create a deterrent effect and encourage compliance with the Rules. Through strict regulation and monitoring of sale by the law enforcement agencies, the likelihood of occurrence of acid attacks can be significantly reduced. Adopting such a proactive approach will send a clear message that perpetrators will face consequences for their actions.

8. Further, we direct the GNCTD to conduct a comprehensive empirical study, aimed at assessing the potential consequences of a complete ban on acid sale on various sectors, individuals, and businesses. Adopting an evidence-based approach will enable the State to better understand the existing policy, the

ramifications of changes advocated by the Petitioner, and ascertain its impact on public safety, industry, and other legitimate uses of acid. The study should analyse the historical data on acid-related incidents and also examine the effectiveness of past regulations and their impact on reducing incidence of acid attacks. This enquiry should also explore alternative measures to enhance public safety, in the event a total prohibition is found inviable. For these purposes, engagement with various stakeholders, including advocacy groups, industry representatives, legal experts and medical professionals can provide valuable insights. Based on the findings of the empirical study, GNCTD can analyse and identify any gaps or shortcomings in the existing regulatory scheme and take a well-informed decision.

9. We would also like to emphasize that our decision should not be construed as a complete closure to the debate on the issue. We grant the Petitioner the liberty to approach this Court again in case breaches in implementation of the regulations continue, even after a reasonable period of time. By granting this liberty, we endeavour to ensure that the Petitioner's concerns are adequately addressed and there is room for further exploration of alternatives, if the need arises.

10. Having personally experienced the traumatic impact of an acid attack, the Petitioner's dedication to aiding survivors demonstrates a deeper understanding of the issue and implications arising from unrestricted sale of acid. As an activist, her work is a testament to her commitment towards seeking justice, rehabilitation and societal support for acid attack survivors. We appreciate her efforts in this regard. It is our hope that the GNCTD and the Delhi Police will approach this matter with utmost seriousness and will demonstrate a vigilant and decisive approach in strict implementation of the provisions of law. The material enclosed with the petition will be carefully scrutinized by them to assess the gravity of the ground situation while implementing the afore-noted directions.

11. With the above directions, the present petition is disposed of with liberty as aforesaid.