

226 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-2923-2017(O&M)
Date of decision : 09.08.2017

Master Aditya Raj

..... Petitioner

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Ms.Veena Kumari, Advocate for the petitioner.

Mr.Saurav Mohunta, DAG, Haryana.

Mr. Munish Behl, Advocate
for respondent No.3.

RAKESH KUMAR JAIN, J. (Oral)

This petition is filed by a minor, aged about 2 ½ years, through his father as a natural guardian, seeking a mandamus for expanding the policy dated 16.01.2014 to include the male child in the definition of 'acid victim' and also for directing to pay compensation, medical and surgical treatment and rehabilitation etc.

In brief, the petitioner is the son of a daily wager/labourer who resides in slums and is to take care of the family of five persons including the petitioner. On 13.12.2016, the petitioner was playing in the street. At around 6.00 p.m. he was kidnapped and his mother lodged an FIR No. 1359 dated 14.12.2016 under Section 364 IPC at Police Station City, Gurgaon. The petitioner was discovered by a truck driver from a dust-bin on 14.12.2016. He was having burn injuries because of acid attack and perhaps kidnapper threw him in the dust bin considering him dead. The kidnapper

was, however, arrested on 18.12.2016 with the help of CCTV footage. The prosecution added Sections 326-A/307 IPC also in the FIR No. 1359. The petitioner was taken to the Civil Hospital, Gurgaon on 14.12.2016 and after providing him first aid, was sent to Safdarjung Hospital, New Delhi where he remained admitted till 21.12.2016. He was discharged on 21.12.2016 and because of the poor financial resources, he was taken back home where he developed infection and was taken to Medanta Hospital, Gurgaon on 27.12.2016 where he remained admitted till 29.12.2016. Ironically, one acid attack survivor came forward for the rescue of the petitioner as she herself is passing through that phase of pain and suffering. The petitioner was then admitted in Sir Ganga Ram Hospital, New Delhi on 29.12.2016 and was discharged on 16.01.2017. Since the petitioner is a resident of Gurgaon and his father is a labourer, therefore, they were not in a position to manage the treatment in Sir Ganga Ram Hospital and the petitioner was shifted to B.L.Kapoor Hospital at Gurgaon on 17.01.2017 which is an approved hospital by the State of Haryana and there he was operated upon. He was discharged from B.L.Kapoor Hospital on 20.01.2017. After that the petitioner prayed for compensation from the State but he was informed that the policy in the case of acid attack victims is only for women and not for male children. Aggrieved against the apathy of the State, the present petition has been filed in which the petitioner has invoked the provisions of Article 21 of the Constitution of India which ensure Right to Life and has made a prayer in this regard as mentioned herein above.

After notice, respondents have filed their respective replies. A joint reply has been filed on behalf of respondents No. 1 and 2 in which the following averments have been made:-

“ 1. That the Department of Women and Child Development Department, Haryana is implementing a scheme for Relief and Rehabilitation of Women Acid Victims under which the assistance is provided to the victims of acid attack, who are residents of Haryana and have become victims of acid attack in Haryana. An amount of Rs. 25,000/- is to be provided by the concerned Deputy Commissioner/SDM as adhoc relief to the Acid Victims and 100% reimbursement of the complete medical treatment including plastic surgery if any provided the surgery is under taken at PGI, Rohtak/Chandigarh and AIIMS, New Delhi vide Notification issued on dated 02.05.2011(Annexure R-1) amended in 9.1.2013 (Annexure R-2) that a sum of Rs. 5.00 lacs will be given in death case of the acid victim to the legal heirs(the children of the deceased if she has any so as to protect the interest of the child). This would be in addition to any expenses incurred towards the treatment of the victim, In addition, the treatment can be taken from amongst the hospital approved by the Government of Haryana under the category of “All diseases” and “Artificial Appliances”. The amendments and deletion/addition of the hospital made by the Government from time to time would also be automatically applicable under the Scheme also further amended in the year 2014 (Annexure R-3). Under the scheme the provision of compensation of Rs. 3,00,000/- to acid attack victim was made by the Home Department, Haryana and the treatment of acid victim was extended to the Government Hospitals and all Government approved hospitals. Further victim of acid attack shall be given preference in allotment of fair price shops by the Food & Supply Department, Haryana. It is further stated that the Notification of Haryana Acid Victim issued on 25.03.2016(Annexure R-4) with the following provisions that:-

1. The eligibility criteria was extended, where the acid victim has not been finally cured and all process over, which victim shall be considered due

to continuing cause of action.

ii. Severe acid victim should be treated in disable person category as certified from the Medical Board of the concerned district.

iii. Monthly Financial assistance of Rs. 8,000/- to acid victim who come in the definition of Disability Act, 1995 will be provided by the Social Justice & Empowerment Department, Haryana.

iv The adhoc relief was increased up to 1.00 lac for the acid victim.

v. 100% Medical treatment including medicine, food, bedding, plastic/reconstructive surgery, if any, from amongst any of the Government/Government approved hospitals.

2. That the inclusion of the benefit to male child upto age of 18 years under the said scheme has been approved by the Hon'ble Chief Minister, Haryana and now the approval from Planning and Finance Department which is in process. As and when the approval is received the necessary action will be initiated.”

Respondent No.3 has also filed a separate reply in which it has been averred that in so far as the rehabilitation etc. is concerned, it is for the State Government to look into but compensation shall be paid by the Legal Services Authority in terms of the Haryana Victim Compensation Scheme 2013. Learned counsel for the petitioner has placed this scheme on record as Annexure P-9 from which it is very easy to assess the extent of treatment the child requires for living a natural life in future. She has also referred to Annexure P-6, a certificate issued by the doctor (Maj. Gen) Avtar Singh Bath, Unit Head and Senior Consultant, Plastic & Cosmetic Surgery

Department, BLK Super Speciality Hospital, Pusa Road, New Delhi-110005

in which he has made the following averment:-

“This is to certify that Master Aditya Raj, MRD 502880, 2 years 6 months old, male child sustained acid burns over the face, trunk and extremities on 14th December, 2016. He had 20% 3rd degree burns and was treated at various hospitals by excision of burn eschar and skin grafting. At present, the patient has ectropion of all eye lids and post burn scarring with contractures over the face, trunk and extremities. He will need 3 sittings of excision of scar/contracture and skin grafting at an interval of 3 months each. Cost of each sitting will bear approx. 3.30 lacs. Overall cost approx. will be around 10 lacs.”

Learned counsel for the petitioner has further submitted that the father of the petitioner is so poor that he cannot afford the treatment.

I have heard learned counsel for the parties and perused the available record with their able assistance. The issue involved in this case is as to whether the petitioner is entitled to compensation under the Acid Attack Victim Compensation Scheme despite the fact that the inclusion of the benefit to the male child up to the age of 18 years under the scheme has been approved by the Chief Minister, Haryana but the matter is pending with the Planning & Finance Department? The Haryana Victim Compensation Scheme 2013 has been prepared in terms of Section 357-A of the Code of Criminal Procedure 1973 with the laudable object to provide 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 also require rehabilitation. As per clause 3 of the Scheme, there shall be a fund namely Victim Compensation Fund which should be consisted of budgetary allocation for which necessary provision shall be made in the annual budget

by the State, receipt of amount of fines imposed under Section 357 of the Act and ordered to be deposited by the Courts in the fund and the amount of compensation recovered from the wrongdoer/accused under clause 7 of the scheme and donations/contributions from international/National Philanthropist/charitable institution/organization and individuals. Sub clause (3) of Clause 3 provides that the Administration of Justice department shall be the Nodal Department for regulating, administering and monitoring the scheme and sub clause (4) of Clause 3 provides for the exercising authority i.e. the State Legal Services Authority which will be accountable for its functions under the scheme and for furnishing periodical returns of the sums distributed to them by the State Government through the Nodal Department. It is also provided under sub clause (5) of Clause 3 that the fund shall be operated by the Member Secretary, State Legal Services Authority. Learned counsel for the petitioner has referred to the Notification dated 25.03.2016 issued by the Women and Child Development Department to amend the Relief and Rehabilitation of Women Acid Victims Scheme. It may be noticed that the first scheme was notified by the State of Haryana on 02.05.2011 which was amended by notification dated 09.01.2013, notification dated 16.01.2014 and now by notification dated 25.03.2016. Learned counsel for the petitioner submits that the financial assistance as per the scheme has to be provided as under:-

“9. Financial Assistance

1. A sum of Rs. 1.00 lakh shall be paid to acid victim within 15 days of occurrence of such incident(Rs. 25,000/- as ad-hoc relief immediately by the concerned Deputy Commissioner to the acid victim which shall be recouped by WCD and the rest of the amount of Rs. 75,000/-

within 15 days by the WCD) to facilitate immediate medical attention and expenses in this regard.

2. The Acid Attack victim of Haryana shall be entitled to receive free of costs 100% medical treatment including medicine, food, bedding and plastic surgery/reconstructive surgery, if any, from amongst any of the Government Hospitals/Government approved Hospitals. The amount shall be reimbursed by the Women & Child Development Department. The amendments and the deletion/addition of Hospitals made by the Govt. from time to time shall also be automatically covered under the scheme. The lists of the said Hospitals is posted on website of the Haryana Health Department at (<http://haryanahealth.nic.in/menudesc.aspx?page=232>).

According to learned counsel for the petitioner, Rs. 1 lac has to be paid to the acid victim within 15 days of occurrence out of which ₹ 25,000/- has to be paid immediately by the Deputy Commissioner and remaining ₹ 75,000/- within 15 days. In so far as the treatment is concerned, it is mentioned in clause 9(2) that the acid attack victim shall be entitled to receive free of cost 100% medical treatment including medicine, food, bedding and plastic surgery/reconstructive surgery from any of the Government Hospitals/Government approved Hospitals. The amount shall be reimbursed by the Women & Child Development Department.

Learned counsel for the petitioner has relied upon two decisions, one by the Supreme Court in the case of **Parivartan Kendra vs Union of India and others**, 2016(1) RCR(Criminal) 336 and one by this Court in case of **Anju vs State of Haryana and others**, CWP No. 21842 of 2015 decided on 04.04.2016. Learned counsel for the petitioner has submitted that so far the petitioner has not received any compensation

either from the Government or from the Legal Services Authority.

The question of compensation and rehabilitation hinges upon the decision of the Government to include benefit to the male child up to the age of 18 years which is pending approval of the Planning and Finance Department, despite the fact that the approval has been accorded by the Chief Minister. Learned counsel for the State has argued that as soon as the approval of the Planning and Finance Department is received, the benefit of 2016 scheme would be available to the petitioner and he would get all the benefits emanating from the said scheme.

Learned counsel for the petitioner has argued that the financial condition of the family of the petitioner is such that it cannot brook any delay awaiting the decision of the Planning and Finance Department because of the urgency of treatment.

I have heard learned counsel for the parties and perused the available record with their able assistance. There is no doubt about the fact that the scheme of relief and rehabilitation has been prepared keeping in view the acid attack on the women in general. The Government at the time when framed the scheme did not perceive that the male children can also be the target of acid attack by heartless criminals. Therefore, they only thought of rehabilitating and compensating the women. It is needless to mention that Hon'ble Chief Minister, Haryana has been very sympathetic and approved the scheme to include the benefit to male child up to the age of 18 years but the matter is still hanging fire for want of approval from the Planning and Finance Department. I do not know as to how long it would take to get the approval from the Planning and Finance Department but the fact remains that the child needs immediate treatment. Therefore, exercising my powers

under Article 226 of the Constitution of India coupled with Article 21 of the Constitution, I direct the State of Haryana to apply the scheme dated 25.03.2016 in the case of the petitioner as well. Consequently, a direction is issued to grant compensation, as per the Scheme of 2016, to the petitioner forthwith. The Deputy Commissioner, Gurgaon is also directed to ensure Financial Assistance to the petitioner's family to the tune of ₹ 1 lac in terms of clause 9 of the aforesaid scheme. The State of Haryana is also directed to provide 100% free Government treatment to the petitioner including his plastic surgery/reconstructive surgery at PGI, Rohtak and would also arrange the free medicine, food for the child and his attendant. The Legal Services Authority is also directed to pay ₹ 1lac as interim compensation to the petitioner and in this regard a direction is issued to the members secretary of the Legal Services Authority, Haryana to make the payment to the petitioner.

With these observations, the present petition is hereby disposed of.

सत्यमेव जयते (RAKESH KUMAR JAIN)
JUDGE

August 09, 2017
sunita

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No