

**IN THE HIGH COURT AT CALCUTTA****CIVIL APPELLATE JURISDICTION****(APPELLATE SIDE)****MAT 509 of 2020****With****CAN 4 of 2026****With****MAT 510 of 2020****With****CAN 4 of 2026****(not in file)**

**The Member-Secretary, State Legal Service Authority,
West Bengal & Anr.**

Vs.**Achiya Bibi @ Achiya Sardar & Others**

Before: The Hon'ble Justice Arijit Banerjee

&**The Hon'ble Justice Apurba Sinha Ray**

For the appellants : Mr. Joydeep Kar, Sr. Adv.,
Mr. Shiv Sankar Banerjee, Adv.
Ms. Arijita Ghosh, Adv.
Mr. A. N. Banerjee, Adv.
Mr. Siddhartha Chamaria, Adv.

For the Respondents : Mr. Kaushik Gupta, Sr. Adv.,
Mr. Debayan Sen, Adv.

For Orders on : 07.08.2026

Arijit Banerjee, J. :-

1. These two appeals are directed against a judgment and order dated March 11, 2020, whereby a learned Judge of this Court disposed of two writ



petitions being **WP No. 233 (W) of 2020 (Achiya Bibi alias Achiya Sardar v. The State of West Bengal and Ors.)** and **W.P. No. 19305 (W) of 2019 (Supiya Bibi @ Supia Khatun @ Supia Bibi v. The State of West Bengal & Ors).**

2. The short facts relevant for the present purpose are that in connection with a criminal action, Achiya Bibi was awarded a sum of Rs. 3 lakh as compensation for being a victim of human trafficking in terms of Section 357-A of the Code of Criminal Procedure, *vide* order dated September 6, 2019. Similarly, Supiya Bibi was granted compensation of Rs. 4 lakh (Rs. 3 lakh for having been trafficked and Rs. 1 lakh for being victim of rape).

3. 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, State Legal Services Authority, West Bengal (in short 'the SLSA') directed that 75 percent of the awarded amount was to be deposited by the victim girl with a nationalized bank in a Monthly Income Scheme in the name of the victim for a period of 10 years, with auto renewal option and to submit a compliance report within 40 days from the date of receipt of the victim compensation. Such orders of the SLSA were challenged by Achiya Bibi and Supiya Bibi by filing the aforesaid two writ petitions.

4. On behalf of the writ petitioners who are respondents in the two appeals before us, it was argued before the learned Single Judge as follows:-

- (i) The fetter imposed on them regarding the manner of utilization of the victim compensation was *dehors* 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 357- A of the Code of Criminal Procedure.

(ii) The said direction was apparently issued following Clause 11 of the Model Scheme framed by the National Legal Services Authority (in short, 'the NLSA'). The said Clause contemplates deposit of 75 percent of the compensation amount in a fixed deposit account for a minimum period of 3 years leaving the balance 25 per cent for utilization by the victim/dependent(s). However, in exceptional cases, amounts may be withdrawn for educational or medical purpose or other pressing and urgent needs of the beneficiary at the discretion of the concerned authorities. It was submitted that the Model Scheme is not directly applicable to the State of West Bengal, in view of the special Scheme formulated by the State Government.

(iii) The Model Scheme contemplates a higher amount of compensation compared to the State's Scheme. As such, only partially adopting the restriction in the Model Scheme but reducing the quantum of compensation would be unlawful.

5. On behalf of the appellants who were respondents before the learned Single Judge, the argument advanced before the learned Single Judge as also before us are as follows:-

(i) the compensation awarded to a victim is not 'property' within the meaning of Article 300A of the Constitution of India but falls within the specific ambit of Section 357-A of the Criminal Procedure Code and the Legal Services Authorities Act, 1987 (in short, 'the LSA Act'). Therefore,



no question of depriving the victims of any property arises by issuing the impugned directions.

(ii) It was argued that it is entirely SLSA's discretion as to whether or not the compensation will be disbursed to the victim with some conditions attached. Further, the direction to deposit 75 per cent of the compensation amount in bank was issued for the benefit of the victim herself, to protect her from misuse/abuse of the compensation amount in order to secure her proper rehabilitation.

(iii) Referring to Rule 6 of the National Legal Services Authority Rules, 1995 (n in short the 'NLSA Rules') it was submitted that it is the power and function of the Member-Secretary, 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.

(iv) Referring to Sections 4, 7 and 14 of the LSA Act, it was argued that it is the duty of the State Authorities to give effect to the policy and direction of the Central Authority and therefore, the SLSA is bound to follow the policy framed by the NLSA. In short, it was argued that the SLSA is obliged to follow Clause 11 of the Model Rules for victim compensation, framed by the NLSA.

(v) Relying on an annexure to the affidavit-in-opposition filed by the respondents in the writ petitions, it was argued that in certain instances, in some of the districts of West Bengal, the money disbursed



as compensation was misused by the victim. This necessitated the issuance of the impugned direction, so that the moneys awarded to the victims by way of compensation remain secure in a bank and fetch them a regular, assured income.

(vi) It was finally argued that the SLSA is headed by the Chief Justice of the Calcutta High Court and the senior most puisne Judge of this Court. Since the best legal brains were behind the impugned order, it should be presumed that the order was for the furtherance of justice.

6. Learned Single Judge noticed the provisions of Section 357- A of the Criminal Procedure Code, Sections 4, 7, 14 and 16 of the LSA Act and Rule 6 of the NLSA Rules.

7. The learned Judge held that the orders/directions under challenge in the writ petitions were issued by the Member-Secretary of the SLSA and not by the Chief Justice or the senior most puisne Judge of this Court. Even assuming that the Hon'ble Chief Justice or the Executive Chairman of the SLSA being the senior most puisne Judge issued such direction, the same would be in administrative capacity under the LSA Act and would be amenable to judicial review.

8. Analyzing the West Bengal Victim Compensation Scheme, 2017, and in particular clause 6 thereof, the learned judge opined that sub-clauses (4) and (8) of Clause 6 of the State Scheme are the only two provisions which indicate the mode of disbursal of victim compensation. The role of the authorities ends with the remission of the compensation amount into the bank account declared by the victim / dependents.



9. The learned Judge then noted that the Supreme Court by its order passed in **W.P. (C) No. 565 of 2012 (*Nipun Saxena v. Union of India*)** has accepted the Model Scheme of NLSA for victim compensation and has directed all State Governments/Union Territory Administrations to implement the same. However in the said judgment, the Hon'ble Supreme Court observed that while nothing should be taken away from the Model Scheme, it does not preclude the State Governments/Union Territory Administrations from adding to that Scheme. The learned Judge noted that the West Bengal Scheme of 2017 has not been amended as yet by incorporating the NLSA Model Scheme therefore, as of date, the West Bengal Scheme prevails in the State. Thus, disbursement of compensation to persons who are major, would be governed by Clause 6 (4) of the West Bengal Scheme which does not provide for putting any fetter on the manner of utilization of the compensation amount by the victim. The learned Judge concluded that the directions issued by the Member-Secretary, SLISA, which were impugned in the two writ petitions, are *dehors* the West Bengal Scheme and hence bad in law.

10. The learned Judge finally held that SLISA has no authority to control or monitor the amount of compensation disbursed to a victim who has attained majority. The victim has every right and liberty to decide how to spend the compensation amount for her/his rehabilitation after suffering the trauma of sexual offence.

11. Accordingly, the learned Judge allowed the two writ petitions and set aside the order dated August 9, 2019, in the case of Achiya Bibi and order



dated September 6, 2019, in the case of Supiya Bibi, impugned in the two writ petitions, along with the associated notifications.

12. Being aggrieved, the present appeals were preferred by the SLSA.

13. When the appeals were admitted, a Coordinate Bench by orders dated September 28, 2020, had stayed the operation of the judgment and order of the learned Single Judge. Such order of stay continues till date.

14. The SLSA has now filed two applications in the two appeals praying for the following order:-

“a) An order be passed modifying the interim order dated 28th September, 2020 passed in the present appeal, particularly the direction relating to the manner of disbursement of victim compensation and permit the appellant to disburse victim compensation in accordance with the applicable Victim Compensation Scheme, the guidelines issued by the National Legal Services Authority and/or such other manner as this Hon’ble Court may deem fit and proper, pending disposal of the appeals;”

15. Instead of taking up the applications for consideration, we decided to hear out the appeals, with the consent of the parties.

16. We have carefully considered the rival contentions of the parties. We see no apparent infirmity in the judgment and order under appeal. The learned Single Judge has recorded detailed reasons in support of the conclusion that His Lordship has arrived at. We have noted such reasons hereinabove and we fully endorse such reasons.



17. The West Bengal Victim Compensation Scheme does not authorize anybody to put any fetter on the manner of utilization of the compensation amount disbursed in favour of a victim. The Member-Secretary of SLSA could not have relied upon the NLSA Scheme to direct that 75 percent of the compensation amount be put in a fixed deposit account for 10 years. For issuing the impugned directions, no reliance could be placed on selective clauses of the NLSA Scheme. The maximum amount of compensation payable under the NLSA Scheme is much higher than that under the West Bengal Scheme. Further the minimum period prescribe under the NLSA Scheme for keeping a percentage of the compensation amount in fixed deposit is only 3 years. This is also subject to certain exceptions permitting the victim to utilize the blocked funds for specified purposes.

18. Although the Hon'ble Supreme Court in ***Nipun Saxena v. Union of India, (Supra)***, directed that all State Governments shall implement the Model Scheme of NLSA, in so far as our State is concerned, such Scheme has not been adopted as yet. No amendment has been made to the West Bengal Scheme. Therefore, the learned Judge rightly held that the impugned directions issued by the Member-Secretary, SLSA, are *dehors* the West Bengal Scheme and bad in law.

19. We also agree with the observations of the learned Single Judge that the 'Big Brother' approach of the disbursing authority should be shunned and the victim should be free to spend the compensation money granted to her/him according to her/his decision. The right to commit a mistake inheres in the right to personal liberty and freedom and cannot be allowed to



be curtailed arbitrarily by SLSA merely because it is in charge of the compensation fund.

20. We therefore find no reason to interfere with the judgment and order assailed in the present appeals. The appeals being **MAT 509 of 2020** and **MAT 510 of 2020** stand dismissed. All connected applications stand disposed of. The interim order that is in operation stands vacated. There will be no order as to costs.

21. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

I agree.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)