

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition (MS) No. 26 of 2019

Gulnaaz Khan.

.....Petitioner.

Through: Ms. Snigdha Tiwari, learned counsel for
the petitioner.

-Versus-

State of Uttarakhand
and others.

.....Respondents.

Through: Shri Ajay Singh Bisht, learned Addl. CSC
for the State of Uttarakhand.

Date of Hearing & Order : 16.12.2022

Shri Sanjaya Kumar Mishra, J.

1. By filing this writ petition, the petitioner, an acid attack victim, has prayed for compensation of Rs. 50,00,000/- for losses, she suffered due to acid attack on her. She has also prayed for issuance of a writ Mandamus for making comprehensive rehabilitation scheme and to pay directly to the Hospitals for future expenses to be incurred by her in medical procedures that might be taken. She has also certain other ancillary prayers in the writ petition.

2. The facts are not disputed at this stage. Petitioner was attacked with acid on 29.11.2014 in which petitioner received third degree burn injuries on her face and chest. She sustained 60% burn injuries on her upper body and knee and she has lost her right ear. The accused, who attacked the petitioner with acid, was convicted and sentenced to undergo 10 years rigorous imprisonment along with a fine of Rs. 20,000/- under Section 326-A IPC by the learned Sessions Judge, Udham Singh Nagar and while convicting the accused for the aforesaid offences, the learned Session Judge, Udham Singh Nagar referred the matter to

District Legal Services Authority for payment of compensation. A sum of Rs. 1,60,000/- was given by District Programme Officer, Udham Singh Nagar in compliance of order passed by Criminal Injury Compensation Board under the Uttarakhand Victim from Crime Assistance Scheme, 2013. By virtue of interim order dated 24.09.2019 passed by Coordinate Bench of this Court, an additional compensation of Rs. 1,50,000/- was granted to her.

3. Learned Addl. CSC for the State would submit that since the petitioner had already paid the compensation by the District Legal Service Authority, as per the Scheme and still if petitioner has any grievance, then she should have filed an appeal before the Uttarakhand State Legal Service Authority (hereinafter referred to as "UKSLSA" for brevity), the writ petition is not maintainable, in view of availability of efficacious alternative remedy to her. In support of his contention, he has placed reliance upon the judgement of Hon'ble Supreme Court in the case of **Titaghur Paper Mills Vs. State of Orissa, (1983) 2 SCC 433**.

4. However, this Court has taken recourse of judgment of Hon'ble Supreme Court in the case of **Whirlpool Corporation Vs. Registrar of Trade Marks, (1998) 8 SCC 1**, wherein the Hon'ble Supreme Court has held that *under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least four contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or*

proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this pointxxxx."

5. No statute book provides for such a bar for entertaining the writ petition by the High Court. The powers of High Court for issuing writs under Article 226 of the Constitution of India is very wide. The Hon'ble Supreme Court in the aforesaid case has held that a writ petition is maintainable without relegating the poor litigant to avail alternative efficacious remedy available to him. Even if, efficacious alternative remedy is available, if there is breach of fundamental right; or if there is violation of principle of natural justice and if order or proceedings are wholly without jurisdiction or the vires of an Act is challenged, the High Court has power to entertain the writ petition.

6. In this case, the Court takes into consideration that there is a breach of fundamental right of the victim petitioner, who is acid attack survivor. The right to live life with dignity has been breached in this case. The preamble of the Constitution of India provides that India is constituted into a sovereign, socialist, secular, democratic republic and shall provide to its citizen justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; promoting among them all fraternity assuring the dignity of the individual and unity and integrity of the Nation. Dignity of individuals and unity and integrity of the Nation is kept in the same high pedestal.

7. Thus, it is clear that the Constitution itself envisages that dignity of the individual, who is residing in this country, cannot be breached. The Article 21 of the Constitution provides that no person shall be deprived of his life or personal liberty except according to procedure established by law.

8. By interpreting Article 21 of the Constitution of India, the Hon'ble Supreme Court of India held that right to lead a life with dignity springs from Article 21. In the case of **Nipun Saxena Vs. Union of India (2019) 2 SCC 703**, the Hon'ble Supreme Court has further held that right to education is a fundamental right. By extending the same principle to this case, this Court is of the firm opinion that since the petitioner, being an acid attack victim, whose right to live with dignity protected by the Constitution of India has definitely been infringed. Hence, the writ petition is maintainable.

9. By virtue of order dated 10.01.2020, the Member Secretary, UKSLSA has submitted that a proposal for compensation as well as for social and economic rehabilitation. Learned State Counsel would submit that petitioner should be given compensation under the Old Scheme and not under the New Scheme which is implemented from 2018. However, the report submitted by the Member Secretary, UKSLSA would suggest that the Scheme is beneficiary scheme and if cause of action survives on the date of implementation scheme i.e. on 02.10.2018, then benefit of the scheme should go to the victim. The incident took place on 29.11.2014 much before 2018. But the process of determination of compensation still continues and the effects of acid is still live as the victim had to undergo so many reconstructive surgeries of face, reconstruction of right ear and other medical procedures and treatment. Thus, for all purposes the cause of action continues even on 02.10.2018, the enforceability date of scheme in compliance of the order passed by Hon'ble Supreme Court passed in the case of Nipun Saxena's case. Considering this fact, learned Member Secretary, UKSLSA has also suggested that a sum of Rs. 23,00,000/- be paid to the petitioner. He has also suggested that in the light of Section 19 of the Rights of Persons

with Disabilities Act, 2016, the Government may provide some vocational training programme to the acid attack victims and may motivate with all possible logistic support to start a business by the victim, as self employment. We are in the agreement with the opinion of the learned Member Secretary, SLSA, as regard the applicability of the new Scheme.

10. Learned counsel for the petitioner would submit that amount so suggested by Member Secretary, UKSLSA, is for medical intervention for the injuries sustained by her but he does take into consideration the trauma and agony she suffered.

11. Keeping in view all the aspects, this Court comes to the conclusion that a sum of Rs. 35,00,000/- would be just, proper and adequate compensation to the petitioner in addition to the amount already paid to her. Petitioner should also be given some vocational training if she is willing to undertake, as it is brought to the notice of this Court that in the meantime, the petitioner has completed her Post Graduation and Diploma in Mass Communication and now doing a job with Flipkart. In addition to the aforesaid amount of compensation and vocational training, the State Government shall also provide free medical treatment to the petitioner, as it is also brought to our notice that petitioner has to undergo further surgeries, which require skin grafting. In case, hospitals situated and operating in the State of Uttarakhand, do not have proper technology, equipments or doctors to carry out the surgeries that is require to be meted out to her, then the State of Uttarakhand shall be under an obligation to get her treated in any hospital at New Delhi or in PGI, Chandigarh. The entire expenses of petitioner for operation, travelling and stay shall be borne by the State of Uttarakhand. Travelling and stay expenses of an attendant of petitioner shall also be borne by the

State of Uttarakhand. The Member Secretary, UKSLSA is directed to release and transfer a sum of Rs. 35,00,000/- (Rupees Thirty Five Lakh only) in the name of petitioner through RTGS / NEFT after expiry of the limitation for filling the intra court appeal. With the aforesaid observations, the writ petition is allowed.

(Sanjaya Kumar Mishra, J.)

(Grant urgent certified copy of this judgment, as per Rules)

SKS