

SUPREME COURT OF INDIA

State of Rajasthan & Ors.

Vs.

Sanyam Lodha

C.A.No.7333 of 2011

(R.V.Raveendran and A.K.Patnaik,JJ.,)

25.08.2011

JUDGMENT

R.V. Raveendran,J.,

SLP (Civil) No.12721/2009

1. Delay condoned. Leave granted.

2. This appeal arises from a decision of the Rajasthan High Court in a public interest litigation filed by a Legislator and social activist complaining of arbitrary and discriminatory disbursement of relief under the Chief Minister's Relief Fund (for short `Relief fund') under the Rajasthan Chief Minister's Relief Fund Rules, 1999 (for short, `the Relief Fund Rules'). The respondent alleged that during the period January 2004 to August, 2005, challans / chargesheets were filed in 392 cases relating to rape of minor girls; that out of them, 377 minor girls, did not get any relief or assistance from the Relief Fund, 13 were granted relief ranging from Rs.10,000 to 50,000, one victim (minor `K') was given Rs.3,95,000 on 11.8.2004 and another victim (minor `S') was given Rs.5,00,000 on 25.6.2005.

3. The appellant submitted that minor girls, that too victims of rape, belong to a weak and vulnerable group who are seldom in a position to seek relief personally; and that if the Chief Minister was of the view that monetary relief should be granted to such victims of heinous and depraved crimes, all similar victims of rape should be given monetary relief. According to him if there were 392 victims of rape, they should all be similarly treated and if some are given relief, others also should be given similar relief. It is contended that when discretion vested in the Chief Minister in respect of the Relief Fund is exercised in a manner that 377 victims are ignored and 13 are paid amounts varying from Rs.10,000 to 50,000 and two victims alone are paid Rs.3,95,000 and Rs.5,00,000, it leads to inferences of arbitrariness and discrimination.

4. The appellant does not have any grievance about payment of Rs.5,00,000 or Rs.3,95,000 to two of the victims. It is also not his complaint that the said two victims were undeserving.

His grievance is the other way around. According to him if two of the victims were paid relief amounts in the range of Rs.3,95,000 and Rs.5,00,000, there was no justification for not paying any amount to 377 victims, or for paying amounts which were comparatively very small (that is Rs.10,000 to 50,000) in the case of thirteen victims. He contended that like other governmental resources or funds, the distribution or monetary relief under the Relief Fund should be equitable, non-discriminatory and non-arbitrary. He submitted that paying very high amounts in only one or two cases merely because of media focus on those cases or because the case had become caste-sensitive or because it was politically expedient, while ignoring other similar cases, was neither warranted nor justified. He also contended that disbursement of monetary relief to the victims cannot be in the absolute discretion or according to the whims and fancies of the Chief Minister and grant of monetary relief under the Relief Fund should not become distribution of government largesse to a favoured few. The respondent therefore filed a writ petition (impleading the appellants, namely the State of Rajasthan, Home Ministry of the State and Secretary to the Chief Minister, as the respondents), seeking the following reliefs :

“(i) a direction to the appellants to give to all rape victims, who had not been granted any monetary relief or who had been granted a negligibly small relief, monetary relief of Rs.5 lakhs as in the case of `minor K';

(ii) for a declaration that failure to give monetary relief, or failure to give a uniform monetary help, to all victims of rape from the Relief Fund is illegal, arbitrary and unconstitutional; and

(iii) for deprecation of the misuse or discriminatory utilization of the Chief Minister's Relief Fund with a direction to the Chief Minister to adopt a fair and non discriminatory policy in regard to disbursement of amounts from the Relief Fund to similarly situated persons, in particular minor victims of rape.”

5. The appellants resisted the writ petition contending that disbursement of funds from the Chief Minister's Relief Fund is in implementation of the policy of the state government to place at the disposal of the Chief Minister of the State, some funds for granting relief to the needy and deserving, including victims of calamities, disasters and traumatic incidents. It was submitted that the discretion has been vested with the Chief Minister who is the highest executive functionary in the State, to ensure proper utilization of the fund, that vesting of such discretion to grant some relief to victims of disasters, accidents and gruesome incidents, could not be subjected to any rigid guidelines, and that the discretion and power to grant relief from the said fund is exercised by the Chief Minister in appropriate and deserving cases in public interest. It is contended that exercise of discretion in granting monetary benefit under such a Relief Fund by a high functionary cannot be subjected to principles of equality and non discrimination.

6. The High Court allowed the writ petition by order dated 18.12.2007. It was of the view that all minor victims of rape required to be treated equally for the purpose of grant of relief

by the Chief Minister under the Relief Fund. Consequently, the Division Bench directed that Rule 5 of the Relief Fund Rules 1999 should be read (prospectively) as under :

"This fund shall be under Hon'ble the Chief Minister so that he/she may utilize the fund equally and without discrimination for grant of financial help."

The said order is challenged by the appellants in this appeal by special leave.

On the contentions urged in this appeal, the following questions arise for consideration :

(i) Whether the High Court could have substituted Rule 5 of the Relief Fund Rules?

(ii) Whether the court was justified in holding that all victims should be "treated equally" while granting relief under the Chief Minister's Relief Fund.

(iii) Whether a rule could be interfered merely on the ground it vests unguided discretion?

The Rules relating to Chief Minister's Relief Fund”

7. The Chief Minister's Relief Fund was originally constituted in October 1968. Subsequently the fund was governed by the Rajasthan Chief Minister's Famine and Relief Fund Rules 1979 (for short 'Relief Fund Rules'). Subsequently by merging six different funds, namely Chief Minister's Famine & Flood Relief Fund, Hospital Development Fund, General Assistance Fund, Security Service Welfare Fund, Child Welfare Fund and Development Fund, the Governor constituted a single fund known as 'Rajasthan Chief Minister's Relief Fund' governed by the Rajasthan Chief Minister's Relief Fund Rules, 1999.

“7.1) Rule 4 provides that the annual income (by way of interest) from the said fund should be spent for the following purposes: (i) Famine, flood and accident relief (ii) hospital development and medical assistance; (iii) general assistance; (iv) security services welfare assistance, (v) child welfare relief and (vi) development of the state, in the proportion of 50%, 25%, 10%, 5%, 5% and 5% respectively.

7.2) Rule 5 of the Relief Fund Rules reads thus: "This fund would be under the control of Hon'ble Chief Minister and he would be able to sanction financial assistance upto any limit in any manner from this fund." This rules has been substituted by a differently worded rule, by the High Court (extracted above).

7.3) Rule 4 and the note under Rule 5 provide that the provisions of Rules 4 and 5 were only norms and shall not be considered as barriers for exercise of discretion by the Chief Minister and reiterate that only the interest earned on the fund should be spent every year.

7.4) Rule 7 provides that the Secretary to the Chief Minister would be authorized, under the overall control and superintendence of the Chief Secretary, for the functioning, capital investment and for drawing money from accounts of the fund. Rule 8 provides that the accounts of the fund will be maintained in the Chief Minister's office and audited by the Auditor, Local Fund Audit Department. Rule 10 provides that the Chief Minister would have the right to relax the current provisions of the fund and sanction assistance. Rule 11 provides that the rules could be amended by the consent of the Chief Minister if so required.

Re: Question (i)

8. The appellants contend that Rule 5 of the Relief Fund Rules were not under challenge in the writ petition and the High Court was not called upon to consider the validity of the said Rule; and that therefore the High Court was not justified in substituting Rule (5) with a new rule, by virtually exercising legislative functions.

9. Rule (5) which has been modified by the High Court in its final order, as noticed above is a part of Rajasthan Chief Minister Relief Fund Rules, 1999. The Relief Fund Rules is not a delegated legislation. Though described as 'Rules', the Relief Fund Rules are norms/guidelines issued in exercise of the executive power of the State under Article 162 of the Constitution of India. The Relief Fund rules were not under challenge in the writ petition. In fact there was not even a reference to the Relief Fund Rules in the writ petition. All that the PIL petitioner (respondent herein) wanted was that all victims of a particular category should be treated equally and that if some monetary relief was granted from Chief Minister's Relief Fund, to some victims belonging to a particular category, similar relief should be granted to all victims in that category. As there was no challenge to the Relief Fund Rules, the State was not called upon to satisfy the High Court about the validity of the Relief Fund Rules. Similar Rules are in force in almost all the States in India.

10. The learned counsel for the respondent submitted that the High Court has not declared Rule (5) to be invalid, but has merely read it down, to save it from being declared as unconstitutional and such reading down is permissible in law. It is true that any provision of an enactment can be read down so as to erase the obnoxious or unconstitutional element in it or to bring it in conformity with the object of such enactment. Similarly a rule forming part of executive instructions can also be read down to save it from invalidity or to bring it in conformity with the avowed policy of the government. When courts find a rule to be defective or violative of the constitutional or statutory provision, they tend to save the rule, wherever possible and practical, by reading it down by a benevolent interpretation, rather than declare it as unconstitutional or invalid. But such an occasion did not arise in this case as there was no challenge to the validity of Rule 5 and the parties were not at issue on the validity of the said rule.

11. We are therefore of the view that in the absence of any challenge to the Relief Fund Rules and an opportunity to the state government to defend the validity of Rule 5, the High Court ought not to have modified or read down the said Rule.

Re : Question No. (ii)

12. We may next consider whether there was any justification for the decision of the High Court amending Rule 5. The High Court held that out of 392 cases of rape where challans were filed between January 2004 to 25th July, 2005 relief had been given to only 15 victims and other 377 were not given any relief. Even among the 15 who were given relief, 13 were given relief in the range of Rs.10,000 to Rs.50,000 and in two cases disproportionately high amounts, that is Rs.5 lakhs in one case and Rs.3.95 lakhs in the other, were awarded. According to the High Court, all victims under twelve years of age are to be treated equally. The High Court held that section 376(2)(f) of the Indian Penal Code ('Code' for short) provided for the same punishment in regard to all rapes where the victim is under twelve years of age, irrespective of the age of the victim. It therefore held that when the Penal Code did not make any distinction in regard to victims of rape under twelve years, there can be no discrimination in granting monetary relief to such victims. Consequently, it directed the monetary relief from the Chief Minister's Relief Fund to be utilized equally to benefit the victims of rape, without any discrimination. The illustrative comparison with reference to section 376(2)(5) of the Code, by the High Court, to hold that all victims of rape should be treated equally and identically in granting monetary relief, is inappropriate and made on an assumption which has no basis, by adopting a logic which is defective.

13. The provisions relating to punishment for offences under criminal law have no bearing upon grant of ex-gratia monetary benefit to some of the victims. Secondly, the assumption that all cases of rape involving victims under twelve years are liable to be punished identically under the Code, is not correct. Section 376(2)(f) no doubt refers to rape of girl/child under the age of twelve years as one category, for award of a more severe punishment, but does not provide for a fixed quantum of punishment. The said section provides that a person who commits rape on a woman when she is under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable for fine. The term of ten years imprisonment mentioned in section 376(2) is the minimum punishment in regard to cases falling under section 376(2)(f). The gravity and perversity of the crime, the need to keep the perpetrator out of circulation, the social impact, chances of correcting the offender, among other facts and circumstances, will have a bearing upon the sentence. The sentence may vary for any period between life and ten years. The amount of fine may also vary depending upon the aforesaid circumstances and in addition, the financial position of the victim and the offender. Section 376 gives discretion to the Court in regard to imposition of sentence, depending upon the facts of each case, so long as the limits prescribed are not breached. Therefore the assumption that no distinction is made in regard to either punishment under the Code where the victim is under twelve years of age, and therefore, all such victims should get an equal amount as monetary relief, is erroneous.

14. Section 357 of the Code of Criminal Procedure ('Cr.P.C.' for short) provides for a direction to pay compensation to the victim, from out of the fine. It does not provide that the compensation awarded should be a uniform fixed amount. Section 357A of Cr.P.C.

(introduced with effect from 31.12.2009) requires every state government in co-ordination with the central government, to prepare a scheme for providing funds for the purpose of payment of compensation to the victims who require rehabilitation (or who have suffered loss or injury as a result of the crime). This section also does not provide that the compensation should be an identical amount. The victim may also sue the offender for compensation in a civil proceedings. There also the quantum may depend upon the facts of each case. Therefore the inference that the monetary relief awarded under the Relief Fund should be identical for all victims of rape under the age of twelve years, is illogical and cannot be accepted.

15. Having regard to the scheme of the Relief Fund Rules, grant and disbursal of relief amount under the said Relief Fund Rules is purely *ex gratia*, at the discretion of the Chief Minister. The Relief Fund Rules do not create any right in any victim to demand or claim monetary relief under the fund. Nor do the Rules provide any scheme for grant of compensation to victims of rape or other unfortunate circumstances. Having regard to the nature and scheme of the Relief Fund and the purposes for which the Relief Fund is intended, it may not be possible to provide relief from the Relief Fund, for all the affected persons of a particular category. Monetary relief under the Relief Fund Rules may be granted or restricted in exceptional cases where the victims of offences, have been subjected to shocking trauma and cruelty. Naturally any public outcry or media focus may lead to identifying or choosing the victim, for the purpose of grant of relief. Other victims who are not chosen will have to take recourse to the ordinary remedies available in law. It is not possible to hold that if one victim of a particular category is given a particular monetary relief under the Relief Fund Rules, every victim in that category should be granted relief or that all victims should be granted identical relief.

16. The need to treat equally and the need to avoid discrimination arise where the claimants/beneficiaries have a legal right to claim relief and the government or authority has a corresponding legal obligation. But that is also subject to the principles relating to reasonable classification. But where the payment is *ex-gratia*, by way of discretionary relief, grant of relief may depend upon several circumstances. The authority vested with the discretion may take note of any of the several relevant factors, including the age of the victim, the shocking or gruesome nature of the incident or accident or calamity, the serious nature of the injury or resultant trauma, the need for immediate relief, the precarious financial condition of the family, the expenditure for any treatment and rehabilitation, for the purpose of extension of monetary relief. The availability of sufficient funds, the need to allocate the fund for other purposes may also play a relevant role. The authority at his discretion, may or may not grant any relief at all under Relief Fund Rules, depending upon the facts and circumstance of the case.

Re : Question No.(iii)

17. The Chief Minister is the head of the State Government, though the executive power of the State is vested in the Governor. He is in-charge of the day to day functioning of the State Government. He virtually controls the State executive and legislature. When calamities,

disasters, heinous and dastardly crimes occur, and there is need to immediately respond by providing relief, regular governmental machinery may be found to slow and wanting, as they are bound down by rules, regulations and procedures. Special circumstances may warrant emergent financial assistance. It is also possible that the existing laws may not provide for grant of relief in some circumstances to needy victims. It is in such circumstances, the Chief Minister's Relief Fund is necessary and useful. Where power is vested in holders of high office like the Chief Minister to give monetary relief from such a Relief Fund, it is no doubt a power coupled with duty. Nevertheless, the authority will have the discretion to decide, where the Relief Fund Rules do not contain any specific guidelines, to whom relief should be extended, in what circumstances it should be extended and what amount should be granted by way of relief.

18. All functionaries of the State are expected to act in accordance with law, eschewing unreasonableness, arbitrariness or discrimination. They cannot act on whims and fancies. In a democracy governed by the rule of law, no government or authority has the right to do what it pleases. Where the rule of law prevails there is nothing like unfettered discretion or unaccountable action. But this does not mean that no discretion can be vested in an authority or functionary of high standing. Nor does it mean that certain funds cannot be placed at the disposal of a high functionary for disbursement at his discretion in unforeseen circumstances. For example, we may refer to the extreme case of secret funds placed at the disposal of intelligence organizations and security organizations (to be operated by very senior officers) intended to be used in national interest and national security or crime detection relating to serious offences, either to buy information or to mount clandestine operations. Such funds should not be confused with slush funds kept for dishonest purposes. The expenditure/disbursements from such secret funds are not subjected to normal audits nor required to be accounted for in the traditional manner. Another example is the Relief Funds placed at the disposal of the holders of high office like Prime Minister or Chief Ministers of States to provide timely assistance to victims of natural calamities, disasters, and traumatic experiences, or to provide medical or financial aid to persons in distress and needy, among other purposes. These Relief Funds are different from secret funds. The inflow into the Relief Fund and the disbursements therefrom are fully accounted. The Relief Funds are regularly audited. The purposes for which such Relief Funds could be utilized are clearly laid down, subject to the residuary discretion vested in the Prime Minister/Chief Minister to grant relief in unforeseen circumstances. The Prime Minister/ Chief Minister is given the discretion to choose the recipient of the relief, the quantum of the relief, and the timing of grant of such relief. Unless such discretion is given, in extraordinary circumstances not contemplated in the guidelines, the Relief Fund in the hands of the Chief Minister may be useless and meaningless. When discretion is vested in a high public functionary, it is assumed that the power will be exercised by applying reasonable standards to achieve the purpose for which the discretion is vested.

19. A Constitution Bench of this Court in *B.P. Singhal v. Union of India*¹ while explaining the nature of judicial review of discretionary functions of persons holding high offices held that such authority entrusted with the discretion need not disclose or inform the cause for exercise of the discretion, but it is imperative that some cause must exist,

as otherwise the authority entrusted with the discretion may act arbitrarily, whimsically or mala fide. Elucidating the said principle this Court observed:

"The extent and depth of judicial review will depend upon and vary with reference to the matter under review. As observed by Lord Steyn in *Ex parte Daly* [2001 (3) All ER 433], in law, context is everything, and intensity of review will depend on the subject-matter of review. For example, judicial review is permissible in regard to administrative action, legislations and constitutional amendments. But the extent or scope of judicial review for one will be different from the scope of judicial review for other. Mala fides may be a ground for judicial review of administrative action but is not a ground for judicial review of legislations or constitutional amendments."

20. Whenever the discretion is exercised for making a payment from out of the Relief Fund, the Court will assume that it was done in public interest and for public good, for just and proper reasons. Consequently where anyone challenges the exercise of the discretion, he should establish prima facie that the exercise of discretion was arbitrary, mala fide or by way of nepotism to favour undeserving candidates with ulterior motives. Where such a prima facie case is made out, the Court may require the authority to produce material to satisfy itself that the discretion has been used for good and valid reasons, depending upon the facts and circumstances of the case. But in general, the discretion will not be open to question.

21. The Relief Fund Rules does not confer absolute unguided discretion on the Chief Minister. Rule 4 as noticed above, enumerates the six major heads of purpose for which the relief amount from the fund could be sanctioned, namely, (i) persons affected by natural calamities and disasters like famine, flood and accidents, (ii) hospital development and medical assistance, (iii) general assistance (social unity, education, sports, youth creativity, etc.), (iv) benefits to ex-servicemen, (v) child welfare, and (vi) development of Rajasthan. Each of the six purposes is further divided into detailed sub-heads. There are thus detailed guidelines as to the purposes for which the Relief Fund is to be used. There are checks and balances in regard to the expenditure/withdrawals from the said fund as the fund is subject to audit by the auditor of the local fund audit department. In addition to the above, Rule 5 vests a residuary discretionary power upon the Chief Minister to sanction financial assistance from the Relief Fund, upto any limit in any matter to anyone. This is because it is not possible to foresee every possible situation or contingency where relief should be or could be given. The discretion under Rule 5 is intended to be exercised in rare and extraordinary circumstances.

Conclusion

22. As the Relief Fund is expected to be utilized for various purposes, it may not be proper or advisable to grant huge amounts in one or two cases, thereby denying the benefit of the Fund to other needy persons who are also the victims of catastrophes. The amount granted should therefore be reasonable, to meet the immediate need of coming out of the trauma/catastrophe. When there are no guidelines or when it is difficult to limit the discretion in a high functionary by guidelines, the authority should be careful in exercising discretionary power, so to ensure that it does not give room for nepotism, favoritism or discrimination. Obviously

the relief amount from the Fund cannot be given to persons who are not the victims of any disaster or catastrophe or adverse circumstances or who do not fall under any of the categories specified in the Relief Fund Rules. Relief amount cannot be granted, merely because the recipient happens to be the friend, supporter of the Chief Minister or belongs to his political party. The disbursement or payment to undeserving cases can be questioned. But the mere fact that in two cases of rape involving extreme viciousness and depravity, high compensation has been granted having regard to the gravity of the offence and the surrounding circumstances, is by itself not sufficient to interfere with the discretion of the Chief Minister.

23. In this case the grievance of the respondent is that in the case of one rape victim a sum of Rs.5 lakhs was awarded from the Chief Minister's Fund, for another victim Rs.3.95 lakhs was awarded whereas in several other cases hardly Rs.10,000 to Rs.15,000 were awarded and in several other cases nothing was awarded. The Chief Minister's Relief Fund is not a scheme for the benefit of victims of rape. There are other schemes and other provisions for granting of compensation to such victims. As noticed above, the Chief Minister's Relief Fund is intended to provide relief to victims of various calamities/disasters/accidents/incidents and serve other specified purposes. The appellants have pointed out that Rs.5 lakhs was awarded in a shocking case where victim was only a few months old. In the other case where Rs.3.95 lakhs was awarded as the victim required rehabilitation and the family of the victim was in dire circumstances. These two payments from the Relief Fund, cannot form the basis for issuing a direction to pay similar amounts to other victims of rape. Nor is it possible to hold that failure to give uniform ex-gratia relief is arbitrary or unconstitutional.

24. We may however note that the six specified purposes and their sub-heads enumerated in the Relief Fund Rules for grant of relief do not specifically include victims of ghastly/heinous crimes. It may be appropriate to include a sub-category relating to such victims under category (i) or (iii) of Rule (4) of the Relief Fund Rules. Be that as it may.

25. We therefore allow this appeal, set aside the impugned order of the High Court and dismiss the PIL filed by the respondent in the High Court, subject to the above observations.

Judgment Referred.

¹(2010) 6 SCC 0331