

**High Court of Judicature at Allahabad  
(Lucknow)**

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**A.F.R.  
Reserved**

**Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 16150 of 2020**

**Petitioner :-** Suo-Moto Inre Right To Decent And Dignified Last Rites/Cremation

**Respondent :-** State Of U.P. Thru Additional Chief Secretary Home And Ors.

**Counsel for Petitioner :-** Abhinav Bhattacharya,Ajit Singh,Anjani Kumar Mishra,Ashish Kumar Agarwal,Atul K. Singh,Atul Kumar Singh,Digvijay Singh Yadav,Jaideep Narain Mathur (Ac,Nadeem Murtaza,Onkar Singh,Pradeep Kumar Singh,Seema Kushwaha,Sharad Bhatnagar

**Counsel for Respondent :-** C.S.C.,A. S, G.,Anurag Kumar Singh,Ashok Shukla,Dr. Ravi Kumar Mishra,Manjusha,Pranjal Krishna,Satyaveer Singh

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**Hon'ble Rajan Roy,J.**

**Hon'ble Jaspreet Singh,J.**

***(Per: Rajan Roy, J.)***

1. Heard.
2. These proceedings were ordered to be registered *suo moto* under Article 226 of the Constitution of India taking cognizance of certain incidents which took place on 14.09.2020 in District Hathras involving the alleged rape and murder of a girl belonging to a Scheduled Caste of 19 years followed by her cremation in wee hours of the night intervening 29/30.09.2020 which appeared to be against the wishes of her family members thereby raising important questions pertaining to fundamental

right to a decent burial and role of State authorities in this regard.

3. As regards criminal case pertaining to the alleged rape and murder, monitoring of investigation/trial is also being undertaken by this Court under Article 226 of the Constitution of India. In this regard, certain orders have been passed by Hon'ble the Supreme Court on 27.10.2020 in *Writ Petition (Criminal) No. 296 of 2020; Satyama Dubey and others vs. Union of India and others* and other connected petitions. The trial is still pending.

4. In these very proceedings the victim's family has claimed employment for one of its members i.e. the elder brother in view of Item 46 of Schedule Annexure-I which is referable to Rule 12(4) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (hereinafter referred to as 'Rules 1995') and Section 15A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred as 'Act 1989'), and the assurance given to it on 30.09.2020 by the Head of the State which has been recorded in a document of the same date. The family has also claimed

relocation as per the provisions of the Act 1989 considering the inimical condition in its village.

5. The victim's family which belongs to a Scheduled Caste filed an affidavit dated 23.10.2020 *inter alia* seeking relocation/rehabilitation outside the State of Uttar Pradesh as also Government employment to one member of the family. Subsequently, additional affidavit dated 06.01.2021 was filed on behalf of the victim's family seeking *inter alia* employment to one of the brothers of the victim on a Group 'C' post in the Government and also seeking the benefits prescribed at Item 46 of the Schedule Annexure-I to the Rules, 1995.

6. Response to these affidavits have been filed by the State which are on record.

**Submissions on Behalf of the Victim's Family:**

7. In nutshell, the contention of Ms. Seema Kushwaha, learned counsel for the victim's family was that on 30.09.2020 the Head of the State had given certain assurances with regard to employment, etc. to the victim's family. The monetary benefit as promised has been extended but the employment part has not been complied. The assurances were reduced in writing and were signed by the District Magistrate and various other Public

Authorities, therefore, the State is under an obligation to provide the benefits assured therein which are referable to statutory provisions.

8. The submission of learned counsel for the victim's family was that after the unfortunate incident which took place on 14.09.2020 followed by the illegal cremation in the night of 29/30.09.2020, an atmosphere of fear and insecurity has gripped the family members who are nine in number including three girls aged 7, 3 and 1 year old respectively. The demography of Village Boolgadhi is such that there were only four Scheduled Castes families in the village, rest being upper castes and after the above incident, two of the four families have migrated elsewhere leaving only two families of which one is the victim's family. The atmosphere is very hostile. The victim's family has been subjected to economic and social boycott. Round the clock security by the CRPF personnel has also thrown the family's life haywire as movement has become restricted. The father is no longer employed after the incident. Likewise, the elder brother who was employed in Ghaziabad is also unemployed. The younger brother is also unemployed. The family has agricultural holding of only four bighas of land and a house in the village comprising two rooms, verandah, etc. Considering the

atmosphere prevailing in the village, in spite of the CRPF personnel being posted therein, it is not possible for the family to lead a normal life as such they need to be relocated/rehabilitated elsewhere so that they may feel socially, and economically secure.

9. Her contention was that the family has relatives in Noida and Delhi, therefore, if they are relocated/rehabilitated in Noida it would give them a proper atmosphere for living a normal life far away from the place of incident. The entire family wants to live together and they would be secure in such an environment at Noida having the support of their peer group and relatives. The accused belong to the upper caste which is the dominant caste in Village Boolgadhi, therefore, normal life for the victim's family which belongs to the Schedules Caste is not possible.

The offer of Sri Raju, learned Senior Counsel appearing for the State of U.P., *albeit* after some persuasion by the Court, for providing a house constructed by the District Urban Development Agency within the municipal limits of Hathras was turned down by the victim's family on the ground that living at Hathras is not an option considering the aforesaid scenario. The contention was that the State could not prevent the crime being

committed and on account of the negligence of the said authorities, life and liberty of the victim's family has been compromised. The family feels highly insecure, socially, economically, mentally and psychologically. Children are unable to go to school as the mother is afraid to send them for studies in the vicinity of the village or even nearby.

10. Learned counsel also referred to a Mahapanchayat having been called by Karni Sena an organization of upper caste people in favour of the accused which has further aggravated the situation and has added to the fear of the victim's family which belongs to the downtrodden class.

11. Learned counsel also referred to another incident involving death of Vinay Tiwari and Manish Gupta and that their spouses were given employment in a Public Undertaking, that too Class II job, apart from Rs. 40.00 lakhs given to them, in comparison to which, the victim's family had only been provided Rs. 25.00 lakhs, moreover, no employment has been provided in spite of an assurance having been given. She contended that the said families were well-off economically and socially yet they were given said benefits whereas a downtrodden family in spite of there being statutory backing under the Act 1989 and the Rules

1995 made thereunder, has not been extended the benefits prescribed in law and as were assured by the Government itself on 30.09.2020. She alleges discrimination and arbitrariness in this regard which according to her was painful for the family and displayed an unnecessary adversarial attitude on the part of the State against the poorest of the poor.

**Submissions on Behalf of the State:**

12. Sri S.V. Raju, learned Senior Counsel assisted by Mr. Pranjal Krishna, learned counsel appearing for the State of U.P. submitted that the benefits prescribed under Item 46 of the Schedule Annexure-I to the Rules 1995 are not mandatory as is evident from the use of word 'may' in Column 3 of Item 46. It is a relief additional to the other reliefs mentioned at Items No. 1 to 45. He raised important issues pertaining to the scope of Item 46 of the said Schedule Annexure-I to the Rules 1995 and the meaning and purport of the term 'family', 'atrocities' and use of the word 'may' therein in the light of the Act 1989 and Rules 1995 in support of his argument. According to him employment referred in Item 46 of Schedule Annexure-I to the Rules 1995 was only with respect to 'dependents' of the victim or widow which the family members were not. The word 'and' used in

Clause (i) of Column 3 of Item 46 is conjunctive, not disjunctive. He submitted that only needy persons could be given the additional relief envisaged in Item 46 and it cannot be claimed as a matter of right. It is not supposed to be a bounty. He also raised an issue as to whether the brothers and sisters of the victim would fall within the meaning of legal heir under the provisions of the Hindu Succession Act, 1956 and whether such a wide definition of 'family' should be given so as to include them also in the said definition for the purpose of Item 46. What if the married brother does not look after the family after being provided employment. The Act 1989 and the Rules 1995 framed thereunder do not speak of a Government job. He also submitted that negative parity/equality cannot be claimed by the victim's family with Vinay Tiwari and Manish Gupta' family.

13. The assurances recorded in the minutes dated 30.09.2020 are contrary to the provisions of Rules 1995 and are not enforceable in a Court of law. He submitted that provision of such employment to the victim's family would not only violate the statutory provisions but would also be completely violative of public policy and hit by Article 14 and 16 of the Constitution of India. He also submitted that an amount of Rs. 25.00 lakhs given to the victim's family was much more than what was



envisaged in Schedule Annexure-I to the Rules 1995 at Items No. 1 to 45, therefore, the State Government had been more than fair to the victim's family.

14. The victim's family did not have any indefeasible and enforceable right with regard to employment. However, in the same vein, he suggested that the State Government could arrange private employment to one of the members of the family, however, on surprise being expressed by the Court as to how the State will arrange private employment, the learned counsel at the fag end of the hearing on this issue submitted that after conclusion of trial the State is agreeable to consider the grant of employment to one member of the family. This, of course, he submitted was without prejudice to the legal issues which he had raised as regards the provision of the Act 1989 and the Rules 1995 and Schedule Annexure-I thereto.

15. He also submitted that it is not as if the father and brother who were in employment prior to the incident had been removed from employment but a case where they had voluntarily stopped going for the job. The children could be provided best education in a nearby school. As regards the house, as already recorded, he submitted that a house built by DUDA within the municipal limits of District Hathras can also

be provided. However, he was against the provision of a house, etc. to the victim's family at Noida or outside Hathras. He also submitted that the house of the victim's family was a large one having three rooms, verandah, etc. and the same was not being shared by the uncle as alleged by the counsel for the victim's family.

16. He also submitted that the said reliefs could only be given after atrocities mentioned therein had been proved in trial meaning thereby such benefits could only be given after conclusion of trial and not before.

17. Furthermore, he submitted that these proceedings, being in public interest, cannot be used by the victim's family for redressal of their individual grievance. Complicated factual issues are involved which cannot be seen under Article 226 of the Constitution of India, especially as it would entail an inquiry regarding the quantum of relief, if any, to be given.

18. In addition to it, he submitted that the jurisdiction, if at all in this regard, is with the Special Court under Section 15A (6) of the Act 1989, therefore, this Court should not consider this issue.

19. In support of his contention, Sri Raju, learned Senior Counsel relied upon the following decisions:

- "1. Ram Pravesh Singh vs. State of Bihar; (2006) 8 SCC 381***
- 2. State of Bihar vs. Sachindra Narayan; (2019) 3 SCC 803***
- 3. State of Haryana vs. Mahabir Vegetable Oils (P) Ltd.; (2011) SCC OnLine SC 374***
- 4. Excise Commr. vs. Issac Peter; (1994) 4 SCC 104***
- 5. Bannari Amman Sugars Ltd. vs. CTO; (2005) 1 SCC 625***
- 6. South-Eastern Coalfields Ltd. vs. Prem Kumar Sharma; (2007) 14 SCC 508***
- 7. V Sivamurthy vs. State of A.P.; (2008) 13 SCC 730***
- 8. SBI vs. Jaspal Kaur; (2007) 9 SCC 571***
- 9. State of Jharkhand vs. Shiv Karampal Sahu; (2009) 11 SCC 453***
- 10. Auditor General of India vs. G. Ananta Rajeswara Rao; (1994) 1 SCC 192"***

**Submissions on behalf of the Amicus Curiae:**

20. Learned Amicus, Sri J.N. Mathur, learned Senior Counsel assisted by Mr. Abhinav Bhattacharya invited the attention of the Court to the wordings and language used in various provisions of the Act 1989 and the Rules 1995. He submitted that the term 'victim' includes the dependent and non-dependent. The submission was that the victim's family is covered by the provision contained in Item 46 of the Schedule Annexure-I to the Rules 1995 and the grant of employment, etc. is not

restricted only to the dependents. There is no reason to give a restrictive meaning to the term family used therein. He submitted that the assurance given on 30.09.2020 was within the purview of the Act 1989 and the Rules made thereunder. The assurance/letter of the District Magistrate, etc. is enforceable in law. It is hardest of the cases, therefore, whatever benefit/relief can be given, should be given by the Court. Alternative remedy is not an absolute bar in this regard.

He further submitted that these proceedings are *suo moto* proceedings under Article 226 of the Constitution of India in public interest considering the fact that the victim and her family belong to downtrodden Schedule Castes and are the poorest of the poor. It is not a case where the proceedings are transcribed and prescribed on written pleadings and reliefs filed by the petitioner. It is also not the case that the relief being sought by the victim's family is alien to the subject matter in issue. In fact, it is an offshoot of an incident which led to cognizance being taken by this Court *suo moto* and, as there is statutory backing to the said reliefs, therefore, it can very well be considered in these very proceedings and there is no reason as to why the victim's family which already does not have sufficient means to sustain itself should be made to initiate

separate proceedings in a Court of law, especially considering their social, educational and economic status. This issue should not be treated as an adversarial issue by the State.

21. According to him, the additional reliefs envisaged at Item 46 of the Schedule are for victims of atrocities as mentioned in column. The family members are victims within the meaning of Section 2(ec) of the Act 1989, therefore, they are entitled to employment and also for relocation. The word 'and' used in Clause (i) of Column 3 of Item 46 if read as conjunctive it will defeat the intent of the provision. As regards Schedule Annexure-I, he submitted that it refers to the minimum amount payable under various heads from Items No. 1 to 45, therefore, Rs. 25.00 lakhs given by the State Government is not more than what is envisaged in the said provision and it was permissible for the State Government to give the said amount and even more and the submission of Sri Raju to the contrary is incorrect.

22. In support of his contention Sri Mathur relies upon the following decisions:

**"1. Indore Development Authority (LAPSE-5J.) vs. Manoharlal; (2020) 8 SCC 129**

**2. Ishwar Singh vs. State of U.P.; AIR 1968 SC 1450**

**3. Samee Khan vs. Bindu Khan; (1998) 7 SCC 59**

4. *Mobilox Innovations (P) Ltd vs. Kirusa Software (P) Ltd.; (2018) 1 SCC 353*
5. *Gujrat Urja Vikash Nigam Ltd. vs. Essar Power Ltd.; (2008) 4 SCC 755*
6. *Joint Director of Mines Safety vs. Tandur and Nayandgi Stone quarries (P) Ltd.; (1997) 3 SCC 208*
7. *Maharshi Mahesh Yogi Vedic Vishwavidyalaya vs. State of M.P. and Ors.; (2013) 15 SCC 677*
8. *Sanjay Dutt vs. State; (1994) 5 SCC 410*
9. *Jindal Stainless Ltd. & Ors. vs. State of Haryana and Ors; (2017) 12 SCC 1*
10. *Sukhnandan vs. Suraj Bali and Ors.; AIR 1541 All 119*
11. *The Food Inspector, Trichur Municipality, Trichur vs. O.D. Paul and Ors; AIR 1965 Ker 96*
12. *Reg. vs. Oakes; (1959) 2 Q.B. 350"*

**Discussions and Analysis:**

23. Before delving into the merits of the issues involved we deem it proper to decide the preliminary objections raised on behalf of the State.

24. As regards the objection of Sri Raju that these proceedings being in public interest, therefore, the victim's family cannot raise individual grievances herein for seeking employment, etc. under the Act 1989 and that they should raise these grievances separately, the same is not acceptable for the reason the victim's family belongs to downtrodden class of society. They belong to the Scheduled Caste. The very reason this Court took cognizance

of the matter involving alleged rape, murder and thereafter cremation of the victim in the mid of the night in the circumstances already dealt with in the earlier orders of this Court was on account of the fact that the victim and her family belong to downtrodden class of the society i.e. they were from the socially and economically weaker section of the society, poorest of the poor, who have been given certain protections by the Constitution and also statutorily by the Act 1989 and such persons are often not in a position to raise their grievance or assert their rights for various reasons including their unawareness and their social, educational and economic status.

In this case Ms. Seema Kushwaha has come forward to represent them *pro bono* as was specifically stated by her on a query being put by the Court. We have also appointed an *Amicus* for our assistance and also to protect the interest of the victim's family as per law.

Moreover, it is not as if the relief being claimed herein during pendency of these proceedings and the trial pertaining to the alleged criminal offence before the Court below is alien to the subject matter in issue involved herein. It is an offshoot of the crime committed. In fact, the Act 1989 has been

promulgated by the Parliament of India to prevent the commission of offence of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts and exclusive Special Courts for the trial of such offences **and for the relief and rehabilitation of the victim of such persons and for matters connected therewith and incidental thereto.** The relief of employment and rehabilitation, etc. being claimed by the victim's family are in terms of the the Act 1989 and the Rules 1995. These reliefs are consequential to the incident which took place involving the alleged rape and murder of the victim followed by her cremation in the mid of the night, therefore, it is not a matter unconnected with the proceedings which are pending before us. We are also monitoring the trial being conducted in this regard by the Court below.

Considering the subject matter it cannot be said that this is purely an individual grievance as the relief sought is one which is claimed by the victim's family as being permissible and which the State is obliged to provide to them under the Act 1989 and the Rules made thereunder. They are seeking constitutional and statutory protections and reliefs as perceived by them, therefore, we do not see any reason as to why a downtrodden family which does not have any member in employment, as of now, a



fact which is not in dispute, and which has lost a member and is in distress, should be made to run from pillar to post or for that matter should be compelled to initiate separate legal proceedings involving unnecessary expenses and the mental stress which goes with such litigation. We do not see as to why in these very proceedings we should not consider such relief as claimed, whether they are permissible under the Constitution and the Act 1989 and the Rules made thereunder, etc. Rights of the downtrodden class especially Scheduled Castes who are victims under the Act 1989, can and should be enforced and protected in these proceedings.

25. It is also necessary to point out that these proceedings have not been drawn on a petition filed with specific pleadings, grounds and reliefs; rather *suo moto* cognizance has been taken by this Court as already referred in our earlier orders in public interest, considering the social, educational and economic status of the victim and her family and the incident, therefore, this is not a matter which is circumscribed by pleadings and reliefs claimed in a written and drafted petition, which is not to say that we can consider any or every issue unrelated to the incident. In fact, as already stated hereinabove, this is an issue which is an offshoot of the issues already involved in the

proceedings. We accordingly reject the contention of Sri Raju to the contrary.

26. As regards other objection of Sri Raju that this issue should be raised by the victim's family before the Special Court which is trying the criminal offence relating to the victim, we are of the opinion that no doubt as per Section 15A (6) of the Act 1989, Special Court or the Exclusive Special Court trying a case under this Act is required to provide to victim, his dependent, informant or witnesses, complete protection to secure the ends of justice; the travelling and maintenance expenses during investigation, inquiry and trial; the social-economic rehabilitation during investigation, inquiry and trial; and relocation, but, we cannot be unmindful of the fact that considering the importance of the issues, cognizance of which has been taken by this Court and *suo moto* proceedings have been registered, we have already granted protection to the victim's family instead of making them run from pillar to post and even Hon'ble the Supreme Court has vide its order dated 27.10.2020 observed/directed that we may monitor the criminal trial also.

Moreover, considering the objections which have been raised by Sri Raju some of which are of a legal nature touching upon the object and scope of the Act 1989, especially the scope of various provisions contained therein such as Section 15A and Item 46 of the Schedule Annexure-I to the Rules 1995 their purport and meaning, we are of the opinion that these legal issues involve interpretation of statutory provisions, therefore, this Court under Article 226 of the Constitution of India is best suited to consider these aspects of the matter, and which the Special Court may not be suited for.

Sri Raju has touched upon various aspects such as the meaning to be given to the term 'family' used in Item 46 of Schedule Annexure-I to the Rules 1995, the meaning of the term 'may' 'atrocities' used therein, the meaning of the term 'dependent' contained in Section 2 (bb), meaning of the word 'victim' in Section 2(ec), scope of Item 46 Schedule Annexure-I to the Rules 1995, etc. to contend that, in fact, the brothers and sisters would not fall within the definition of victim nor within the meaning of the term family and they are not entitled to the benefits envisaged in Item 46 of the Schedule Annexure-I referred hereinabove.

Furthermore, he has contended that the said provision is not enforceable in law in the sense that it is not mandatory, therefore, the meaning, purport and scope of all these provisions have to be considered by this Court, and the Special Court, in our opinion, would not be in a position to do so, therefore, it is our constitutional obligation to consider and, if necessary, interpret the provisions referred hereinabove.

Moreover, the relief claimed herein by the victim's family is based on an assurance dated 30.09.2020 which has been reduced in writing and signed by various authorities including Public Authorities and in this context also Sri Raju contends that the said assurance has no force in law and, in fact, it is contrary to the Act 1989 and the Rules 1995 and is not enforceable, therefore, this is an aspect which has to be considered by the High Court and the Special Court would not be suited to do so considering the magnitude and importance of the issue involved. How far we can interfere in the matter is a separate issue which we will consider hereinafter. Subject to this, we reject this contention of Sri Raju.

27. The next objection raised by Sri Raju was that the plea raised herein involves complicated and disputed questions of fact

which may involve a roving inquiry, especially as to the extent of relief to be given to the victim's family, therefore, the High Court under Article 226 of the Constitution of India is not suited for such an exercise and should desist from considering these pleas.

From the records, there are certain undisputed facts which are as under:

- (i) The CBI has filed a charge-sheet against the accused under Sections 302, 376, 376A, 376D IPC and under Section 3(2)(v) of the Act 1989 before the Trial Court relating to the incident of rape, etc. of the victim.
- (ii) As on date none of the family members are employed. In fact, they have not been in employment for quite sometime after the incident.
- (iii) They have only about four bighas of land and a house in their village which according to them is jointly owned by victim's family and the uncles, though as per the State the uncles are not residing therein.
- (iv) There are nine members in the victim's family three of whom are girl children aged about 7, 3 and 1 year and the child who is seven years old is unable to go to school.
- (v) There is an assurance on record dated 30.09.2020 under which certain benefits and facilities were to be provided to the victim's family consequent to a meeting held between them and the *de facto* Head of the State. The minutes of the meeting and the assurances have been recorded in a document on record and signed by various authorities including the District Magistrate, etc. Whether this is enforceable or not is another matter which shall be considered hereinafter, but the fact that there is a document which had been prepared, is not in dispute.
- (vi) It is also a fact that under the provisions of the Act 1989 and the Rules 1995 certain reliefs and rehabilitation

including employment measures have been envisaged for being provided to the victim, his or her dependent, informant, witnesses and family members.

28. In view of the aforesaid, as of now, we do not see any such intricate and complex factual issues involved in considering the plea of the victim's family for employment, etc., however, if at any stage, we do find that complicated factual questions are involved, then we can certainly consider this aspect of the matter as to how far we are required to exercise our jurisdiction under Article 226 of the Constitution of India, but we do not find any reason to throw out the plea at the threshold without any consideration of the issues involved, especially in view of the legal issues involved herein as already mentioned above.

**Analysis of Relevant Provisions of Act 1989**

29. Before we proceed any further to consider the legal issues raised by Sri Raju, learned Senior counsel for the State, it will be apposite to take a glance at the scheme and relevant provisions of the Act 1989 and the Rules 1995.

30. As per the statement of Objects and Reasons of the Act 1989 noticing an increase in the disturbing trend of commission of certain atrocities including rape etc. of a woman belonging to the Scheduled Castes and Scheduled Tribes, as, the existing laws

like the Protection of Civil Rights Act, 1955 and the normal provisions of the Indian Penal Code were found to be inadequate to check these crimes a special legislation to check and deter crimes/atrocities against them committed by non-Scheduled Castes and non-Scheduled Tribes was found to be necessary. It is also mentioned that despite various measures to improve social-economic conditions of the Scheduled Caste and Scheduled Tribes, they remain vulnerable. They were denied number of civil rights and were subjected to various offences, indignities, humiliations and harassment and increase in the disturbance. It was also proposed to enjoin upon the States and Union Territories to take specific preventive and punitive measures to protect the Scheduled Castes and Schedule Tribes from being victimized and where atrocities were committed, to provide adequate relief and assistance to rehabilitate them. The Act 1989 seeks to achieve the above Objects.

31. According to long title of the Act 1989 it is an Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts and Exclusive Special Courts for the trial of such offences and **for the relief and rehabilitation of the**

victims of such offences and for matters connected therewith or incidental thereto.

32. The term '**atroc**ity' which had not been defined earlier, has been defined in the Act 1989 in **Section 2(a)** to mean an offence punishable under Section 3. **Section 3** mentions punishment for offences of atrocities. The offences involved in this case are covered within the meaning of the term 'atrocity' as defined in the Act 1989. Trial in respect thereof is in progress before the Special Court at Hathras.

33. **Section 8** refers to certain presumptions as to offences, as mentioned therein.

34. **Chapter IV-A of the Act 1989** deals with the Rights of Victims and Witnesses which reads as under:-

*"Chapter IV- A*  
*RIGHTS OF VICTIMS AND WITNESSES*

**15-A. Rights of victims and witnesses.**--(1) *It shall be the duty and responsibility of the State to make arrangements for the protection of victims, their dependents, and witnesses against any kind of intimidation or coercion or inducement or violence or threats of violence.*

(2) *A victim shall be treated with fairness, respect and dignity and with due regard to any special need that arises because of the victim's age or gender or educational disadvantage or poverty.*



*(3) A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.*

*(4) A victim or his dependent shall have the right to apply to the Special Court or the Exclusive Special Court, as the case may be, to summon parties for production of any documents or material, witnesses or examine the persons present.*

*(5) A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.*

*(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Special Court or the Exclusive Special Court trying a case under this Act shall provide to a victim, his dependent, informant or witnesses--*

*(a) the complete protection to secure the ends of justice;*

*(b) the travelling and maintenance expenses during investigation, inquiry and trial; and*

*(c) the social-economic rehabilitation during investigation, inquiry and trial;*

*(d) relocation.*

*(7) The State shall inform the concerned Special Court or the Exclusive Special Court about the protection provided to any victim or his dependent, informant or witnesses and such Court shall periodically review the protection being offered and pass appropriate orders.*

*(8) Without prejudice to the generality of the provisions of sub-section (6), the concerned Special Court or the Exclusive Special Court may, on an application*

*made by a victim or his dependent, informant or witness in any proceedings before it or by the Special Public Prosecutor in relation to such victim, informant or witness or on its own motion, take such measures including--*

*(a) concealing the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to the public;*

*(b) issuing directions for non-disclosure of the identity and addresses of the witnesses;*

*(c) take immediate action in respect of any complaint relating to harassment of a victim, informant or witness and on the same day, if necessary, pass appropriate orders for protection:*

*Provided that inquiry or investigation into the complaint received under clause (c) shall be tried separately from the main case by such Court and concluded within a period of two months from the date of receipt of the complaint:*

*Provided further that where the complaint under clause (c) is against any public servant, the Court shall restrain such public servant from interfering with the victim, informant or witness, as the case may be, in any matter related or unrelated to the pending case, except with the permission of the Court.*

*(9) It shall be the duty of the Investigating Officer and the Station House Officer to record the complaint of victim, informant or witnesses against any kind of intimidation, coercion or inducement or violence or threats of violence, whether given orally or in writing, and a photocopy of the First Information Report shall be immediately given to them at free of cost.*

*(10) All proceedings relating to offences under this Act shall be video recorded.*

*(11) It shall be the duty of the concerned State to specify an appropriate scheme to ensure implementation of the following rights and entitlements of victims and witnesses in accessing justice so as--*

*(a) to provide a copy of the recorded First Information Report at free of cost;*

*(b) to provide immediate relief in cash or in kind to atrocity victims or their dependents;*

*(c) to provide necessary protection to the atrocity victims or their dependents, and witnesses;*

*(d) to provide relief in respect of death or injury or damage to property;*

*(e) to arrange food or water or clothing or shelter or medical aid or transport facilities or daily allowances to victims;*

*(f) to provide the maintenance expenses to the atrocity victims and their dependents;*

*(g) to provide the information about the rights of atrocity victims at the time of making complaints and "registering the First Information Report;*

*(h) to provide the protection to atrocity victims or their dependents and witnesses from intimidation and harassment;*

*(i) to provide the information to atrocity victims or their dependents or associated organisations or individuals, on the status of investigation and charge sheet and to provide copy of the charge sheet at free of cost;*

*(j) to take necessary precautions at the time of medical examination;*

*(k) to provide information to atrocity victims or their dependents or associated organisations or individuals, regarding the relief amount;*

*(l) to provide information to atrocity victims or their dependents or associated organisations or individuals, in advance about the dates and place of investigation and trial;*

*(m) to give adequate briefing on the case and preparation for trial to atrocity victims or their dependents or associated organisations or individuals and to provide the legal aid for the said purpose;*

*(n) to execute the rights of atrocity victims or their dependents or associated organisations or individuals at every stage of the proceedings under this Act and to provide the necessary assistance for the execution of the rights.*

*(12) It shall be the right of the atrocity victims or their dependents, to take assistance from the Non-Government Organisations, social workers or advocates."*

35. Thus, apart from the constitutional obligation in this regard, statutory duties have also been imposed upon the State and its authorities to protect the rights of the members of Scheduled Castes/Scheduled Tribes.

36. The Act 1989 not only encompasses the trial of non-SC/ST accused for atrocities against SC/ST but also takes care of relief and rehabilitation of the victims.

37. **Sub-section 6 of Section 15-A** provides that notwithstanding anything contained in the Code of Criminal

Procedure, 1973 (2 of 1974), the Special Court or the Exclusive Special Court trying a case under this Act shall provide to a victim, his dependent, informant or witnesses - **(a)** the complete protection to secure the ends of justice; **(b)** the travelling and maintenance expenses during investigation, inquiry and trial; **(c)** the social-economic rehabilitation during investigation, inquiry and trial; and **(d)** relocation.

Thus, four categories of persons are eligible/entitled to the aforesaid benefits which can be provided by the Special Court or the Exclusive Special Court which is trying a case under the said Act. These four categories are victim, dependent, informant and witnesses.

38. The term '**victim**' has been defined in **Section 2(ec)** to mean any individual who falls within the definition of the Scheduled Castes and Scheduled Tribes under clause (c) of sub-section (1) of Section 2, and who has suffered or experienced physical, mental, psychological, emotional or monetary harm or harm to his property as a result of the commission of any offence under this Act and includes his relatives, legal guardian and legal heirs. The term 'relatives' has not been defined in the Act 1989.

39. Sri Raju, learned Senior Counsel appearing for the State contended that the family members of the victim i.e. the brothers and sisters do not fall within the meaning of the term 'legal guardian and legal heirs'. He further submitted that the word 'relatives' herein would also not include these relations. In this regard he submitted that what if the married brother does not take care of the family.

We are of the opinion that the word 'legal guardian' used in Section 2(ec) would cover guardians declared as such by any Act and also guardians appointed by Courts in the case of minors or lunatics. The term 'legal heirs' would obviously get its meaning from the law governing the right/inheritance to succeed the estate of the victim. However, the term 'relatives' used therein though it has not been defined, it has been used to give a wide meaning to the word 'victim' so as to advance and achieve the Object of the Act, which is to provide relief and rehabilitation to the victims which includes the family members of the deceased victim.

A narrow view as to the meaning of the term 'relatives' would defeat the purpose of the Act. The term '**relative**' has not been defined in the act 1989, therefore, it has to be understood

as is commonly understood. Ordinarily it includes father, mother, husband or wife, son, daughter, brother, sister, nephew or niece, grandson or granddaughter of an individual. The word 'relative' has been defined in P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edition Reprint 2007, at Page 4036 as under:

*"Relative. "Relative" includes any person related by blood, marriage or adoption. (Lunacy Act (4 of 1912), S. 3(11))*

*The expression "RELATIVE" means a husband, wife, ancestor, lineal descendant, brother or sister. [Estate Duty Act (34 of 1953), S. 17(4)(iii), Expln. (a)]*

*"Relative" means in relation to the deceased,*

*(a) the wife or husband of the deceased,*

*(b) the father, mother, children, uncles and aunts of the deceased, and*

*(c) any issue of any person falling within either of the preceding sub-clauses and the other party to a marriage with any such person or issue. [Estate Duty Act (34 of 1953), S. 27(7)(i)]*

*A person shall be deemed to be a RELATIVE of another if, and only if,--*

*(a) they are members of a Hindu undivided family; or*

*(b) they are husband and wife; or*

*(c) the one is related to the other in the manner indicated in Schedule I-A. [Companies Act (1 of 1956), S. 6]*

*"RELATIVE" in relation to an individual, means the husband, wife, brother or sister or any lineal ascendant or descendant of that individual. [Income tax Act (43 of 1961), S. 2(41) and FEM (Acquisition & Transfer of*

*Immovable Property Outside India) Regulations, 2000, R. 5, Expln.]*

*"RELATIVE" in relation to an individual means--*

*(a) the mother, father, husband or wife of the individual, or*

*(b) a son, daughter, brother, sister, nephew or niece of the individual, or*

*(c) a grandson or grand-daughter of the individual, or*

*(d) the spouse of any person referred to in sub clause (b). [Income-tax Act (43 of 1961), S. 80 B(8), omitted by Act 4 of 1988 w.e.f. 1.4.1989]*

*"RELATIVE" means--*

*(1) spouse of the person;*

*(2) brother or sister of the person;*

*(3) brother or sister of the spouse of the person;*

*(4) any lineal ascendant or descendant of the person;*

*(5) any lineal ascendant or descendant of the spouse of the person;*

*(6) spouse of a person referred to in sub-clause (2), sub-clause (3), sub-clause (4) or sub-clause (5)*

*(7) any lineal descendant of a person referred to in sub-clause (2) or sub-clause (3). [Narcotic Drugs and Psychotropic Substances Act (61 of 1985) S. 68B(i)]"*

In **Black's Law Dictionary**, Eighth Edition at Page 1315, the word relative is defined as under:

*"Relative, n. A person connected with another by blood or affinity; a person who is kin with another. Also termed relation; kinsman. Cf. NEXT OF KIN (1).*



**blood relative.** *One who shares an ancestor with another.*

**collateral relative.** *A relative who is not in the direct line of descent, such as a cousin. [Cases: Descent and Distribution 32-41. C.J.S. Descent and Distribution. §§ 29, 38-49.]*

**relative by affinity.** *A person who is related not by marriage or by blood or by adoption, but solely as the result of a marriage. A person is a relative by affinity (1) to any blood or adopted relative of his Actor her spouse, and (2) to any spouse of his or her Is blood and adopted relatives. Based on the theory that marriage makes two people one, the relatives of each spouse become the other spouse's relatives by affinity. See AFFINITY.*

**relative of the half blood.** *A collateral relative who shares one common ancestor. A half brother, for example, is a relative of the half blood. See half blood under BLOOD."*

40. Considering the meaning as noticed above of the term relatives and applying it to the scheme of the Act at hand, it would include the brothers and sisters apart from the father and mother and we see no reason why we should hold that the relatives would not includes these relations as there is nothing in the Act 1989 to exclude them from the said term. May be that in the facts of a given case where the brothers and sisters had severed their relationship with the victim and other family members and were living separately without any subsisting emotional or family relationship with them, in the facts of such a case, the Court may decline relief to them, but, this can not

be the basis for holding as a matter of general proposition of law that brothers and sisters *per se*, even if they are married, would not fall within the meaning of the term 'relatives'. Applying such an understanding and meaning universally and interpreting the provisions of Section 2(ec) of the Act 1989 accordingly, would be against the spirit of the Act and would defeat its objective.

The legislature has consciously used the words 'relatives', 'legal guardians' and 'legal heirs' so as to provide maximum assistance and relief to the victims who suffer atrocities which includes family members. There is no reason why we should give a restrictive meaning to the term 'relatives' so as to oust brothers and sisters from its purview and that of Section 2(ec). The father, brothers, sisters in this case are covered within the meaning of victim defined in Section 2(ec) as the deceased victim was unmarried, especially as they are living together with ties intact. The family members of the victim have been paid Rs. 25 lacs as monetary relief immediately after the incident which took place on 23.09.2020, therefore, obviously even as per the State Authorities, the family members in this case

qualify as victims but now a different stand is being taken before us.

41. The word '**witnesses**' will have the meaning as per Section **2(ed) of the Act 1989** wherein the word 'witness' has been defined to mean any person who is acquainted with the facts and circumstances, or is in possession of any information or has knowledge necessary for the purpose of investigation, inquiry or trial of any crime involving an offence under this Act, and who is or may be required to give information or make a statement or produce any document during investigation, inquiry or trial of such case and includes a victim of such offence. The family members herein the father, mother, brothers and sisters are witnesses in terms of the aforesaid provision in the criminal trial which is pending before the Special Court, therefore, they fall within the meaning of the said term in Section 2(ed).

42. The term '**dependent**' is defined in **Section 2(bb)** to mean the spouse, children, parents, brother and sister of the victim, who are dependent wholly or mainly on such victim for his support and maintenance. Thus, if a person even though he or she may be the spouse, children, parents, brother or sister of the victim, if they were not dependent wholly or mainly on

such victim for their support and maintenance, then, they would not be covered in the aforesaid definition of dependent.

43. The term '**informant**' had not been defined in the Act 1989, therefore, it will have to be understood as per meaning assigned to it under the Code of Criminal Procedure in view of Section 2 (f) of the Act 1989. In the Code of Criminal Procedure, the word 'informant' would mean the person who gives an information relating to the commission of cognizable offence as is mentioned in Section 154 Cr.P.C.

44. In exercise of power under **Section 23(1)** of the Act 1989 the Centre has formulated the Rules known as the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995. The word 'dependent' as defined in **Rule 2(b)** of the said Rules 1995 has the same meaning as per the definition contained in the Act 1989. The family members of the victim, who was a girl child, were obviously not dependents wholly or mainly on her, therefore, they do not qualify within the meaning of the said term, but, they certainly qualify as 'victims' within the meaning of Section 2(ec) as already discussed and also as 'witnesses' under Section 2(ed).

**Analysis of the Rules 1995:**

45. In the Rules 1995, **Rule 12** is relevant which reads as under:-

*"12. Measures to be taken by the District Administration.— (1) The District Magistrate and the Superintendent of Police shall visit the place or area where the atrocity has been committed to assess the loss of life and damage to the property and draw a list of victims, their family members and dependents entitled for relief.*

*(2) Superintendent of Police shall ensure that the First Information Report is registered in the book of the concerned police station and effective measure for apprehending the accused are taken.*

*(3) The Superintendent of Police, after spot inspection, shall immediately appoint an investigation officer and deploy such police force in the area and take such other preventive measures as he may deem proper and necessary.*

*(4) The District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate shall make necessary administrative and other arrangements and provide relief in cash or in kind or both within seven days to the victims of atrocity, their family members and dependents according to the scale as provided in Annexure -I read with Annexure -II of the Schedule annexed to these rules and such immediate relief shall also include food, water, clothing, shelter, medical aid, transport facilities and other essential items.*

*(4-A) For immediate withdrawal of money from the treasury so as to timely provide the relief amount as specified in sub-rule (4), the concerned State Government or Union Territory Administration may provide necessary*

*authorisation and powers to the District Magistrate.*

*(4-B) The Special Court or the Exclusive Special Court may also order socioeconomic rehabilitation during investigation, inquiry and trial, as provided in clause (c) of sub-section (6) of Section 15-A of the Act.*

*(5) The relief provided to the victim of the atrocity or his/her dependent under sub-rule (4) in respect of death, or injury or rape, or gang rape, or unnatural offences, or voluntarily causing grievous hurt by use of acid, or voluntarily throwing or attempting to throw acid etc. or damage to property shall be in addition to any other right to claim compensation in respect thereof under any other law for the time being in force.*

*(6) The relief and rehabilitation facilities mentioned in sub-rule (4) above shall be provided by the District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate in accordance with the scales provided in the Schedule annexed to these rules.*

*(7) A report of the relief and rehabilitation facilities provided to the victims shall also be forwarded to the Special Court or Exclusive Special Court by the District Magistrate or the Sub-Divisional Magistrate or the Executive Magistrate or Superintendent of Police. In case the Special Court or Exclusive Special Court is satisfied that the payment of relief was not made to the victim or his/her dependent in time or the amount of relief or compensation was not sufficient or only a part of payment of relief or compensation was made, it may order for making in full or part the payment of relief or any other kind of assistance."*

46. Rule 12 of the Rules, 1995 has to be read conjointly with Section 15-A of the Act 1989. Sub-rule (1) of Rule 12 of the Rules 1995. Sub-rule (4) of Rule 12 is relevant. It enjoins upon the District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate to make necessary administrative and other arrangements and provide relief in cash or in kind or both within seven days to the victims of atrocity, their family members and dependents according to the scale as provided in Annexure-I read with Annexure-II of the Schedule annexed to these rules and such immediate relief shall also include food, water, clothing, shelter, medical aid, transport facilities and other essential items. Thus, this Rule is in furtherance of the object of the Act to provide relief and rehabilitation to the victim of an atrocity under the Act, 1989.

47. In this Rule word 'victim of atrocity', 'family members' and 'dependents' have been used for the purpose of provision of relief as per Annexure-I read with Annexure-II. The family members of the victim in this case are also 'victims of atrocity' as already discussed. They are, however, not dependents of the victim.

48. **Sub-rule (4-B) of Rule 12** provides that the Special Court or the Exclusive Special Court may also order socio-economic rehabilitation during investigation, inquiry and trial, as has been provided in clause (c) of sub-section (6) of Section 15-A of the Act. The words 'socio-economic rehabilitation' have not been defined in the Act 1989 or the Rules 1995. Social rehabilitation would, thus, mean social integration of the victims in society, social security and restoration of dignified status in society. Economic rehabilitation would imply provision for economic security, availability of adequate means to sustenance for a dignified life.

49. Sub-rule (6) of Rule 12 provides that the relief and rehabilitation facilities mentioned in sub-rule (4) above shall be provided by the District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate in accordance with the scales provided in the Schedule annexed to these Rules. Sub-rule (7) of Rule 12 enjoins upon the District Magistrate or the Sub-Divisional Magistrate or the Executive Magistrate or Superintendent of Police to forward a report of the relief and rehabilitation facilities provided to the victims to the Special Court or Exclusive Special Court.



50. The State has not brought on record any such report which may have been forwarded to the Special Court in this case, therefore, the inference is that no such report has been forwarded.

51. Furthermore, **Rule 15 of the Rules 1995** reads as under:-

***"15. Contingency Plan by the State Government.-***

*(1) The State Government shall frame an implement a plan to effectively implement the provisions of the Act and notify the same in the Official Gazette of the State Government. It should specify the role and responsibility of various departments and their officers at different levels, the role and responsibility of Rural/ Urban Local Bodies and Non-Government Organizations. Inter alia this plan shall contain a package of relief measures including the following:*

*(a) scheme to provide immediate relief in cash or in kind or both;*

*(aa) an appropriate scheme for the rights and entitlements of victims and witnesses in accessing justice, as specified in sub-section (11) of Section 15-A of Chapter IV- A of the Act;*

*(b) allotment of agricultural land and house-sites;*

*(c) the rehabilitation packages;*

*(d) scheme for employment in Government or Government undertaking to the dependent or one of the family members of the victim;*

*(e) pension scheme for widows, dependent children of the deceased, handicapped or old age victims of atrocity;*

*(f) mandatory compensation for the victims;*

*(g) scheme for strengthening the socioeconomic condition of the victim;*

*(h) provisions for providing brick/stone masonry house to the victims;*

*(i) such other elements as health care, supply of essential commodities, electrification, adequate drinking water facility, rural cremation ground and link roads to the Scheduled Castes and the Scheduled Tribes habitats.*

*(2) The State Government shall forward a copy of the contingency plan or a summary thereof and a copy of the scheme, as soon as may be, to the Central Government in the Department of Social Justice and Empowerment, Ministry of Social Justice and Empowerment and to all the District Magistrates, Sub-Divisional Magistrates, Inspectors-General of Police and Superintendents of Police."*

52. We may, at this stage, take note of the affidavit dated 28.03.2022 wherein, in response to our orders, it has been stated in para 4 that the Under Secretary of the Department of Social Welfare, Government of U.P. has apprised the Home Department, Government of U.P. that the proceedings for finalizing the contingency plan envisaged in Rule 15 of the Rules 1995 are under process. What this means is that in spite of the fact that almost 28 years having lapsed since formulation of the Rules 1995, till date the State Government has not prepared the contingency plan as is envisaged in Rule 15

thereof. Successive Governments have been sleeping over such an important matter which touches upon the rights of the Scheduled Castes/Scheduled Tribes. There has to be some soul searching on the part of all those who were involved in Governance ever since 1995 as to what they had been doing for all these years. One only needs to look at Rule 15 of the Rules 1995 to understand the importance of the said provision and the contingency plan envisaged therein and the deprivation as a result of absence of such scheme.

53. Most important, the contingency plan envisaged in Rule 15 is required to contain a package of relief measures including *inter alia* an appropriate scheme for the rights and entitlements of victims and witnesses in accessing justice, as specified in sub-Section(11) of Section 15-A of Chapter IV-A of the Act; **allotment of agricultural land and house sites; the rehabilitation packages; scheme for employment in Government or Government undertaking to the dependent or one of the family members of the victim.** This clause in Rule 15 itself answers the submission of Sri Raju that there is no provision in the Act or the Rules made thereunder for providing Government employment or employment under a Government undertaking. The Act 1989

envisages provision of employment in Government or Government undertaking. Furthermore, the plan has to include measures relating to mandatory compensation for the victims, scheme for strengthening the socioeconomic condition of the victim etc. As mentioned in the affidavit of the State dated 28.03.2022 no such plan is in existence though it is in process of being framed.

54. We may now refer to **Schedule Annexure-I** which is referable to Rule 12(4) of the Rules 1995 which in turn is referable to the benefits mentioned in sub-Section (6) of Section 15-A and Section 21(2)(iii) of the Act 1989 which enjoys upon the State to undertake measures for provision of economic and social rehabilitation of the victims of atrocities. We are primarily concerned with the purport and scope of this Schedule.

55. The heading of said Schedule Annexure- I is - **Norms For Relief Amount**. Column 2 thereof mentions the name of the offence and Column 3 mentions - '**Minimum amount of relief**.' Thus, the amount mentioned therein against the corresponding offence is the '**minimum amount**' payable meaning thereby the State Government can pay more than the minimum amount. This is relevant, as, the contention of Sri Raju, learned Senior

Counsel appearing for the State at one stage was that much more than what had been envisaged with respect to the offences alleged against the victim herein has been paid monetarily to the victim's family. We have no hesitation in saying that what has been paid, could be paid under the relevant Items from 1 to 45 and, therefore, it is not as if that the State had paid more than what is envisaged in the Act and Rules. The contention is, therefore, misconceived.

**Analysis of Item 46 of Schedule Annexure-I to the Rules 1995:**

56. There is not much of a dispute with regard to the monetary relief provided to the victim under the relevant items mentioned at Serial No. 1 to 45, as may be applicable. The dispute is with regard to the meaning and purport of Item 46 of the said Schedule **Annexure-I Item 46** reads as under:

46.	<b>Additional relief to victims of murder, death, massacre, rape, gang rape, permanent incapacitation and dacoity.</b>	In addition to relief amounts paid under above items, relief <b>may</b> be arranged within three months of date of atrocity as follows:-  (i) Basic Pension to the widow or other dependents of deceased persons belonging to a Scheduled Caste or a Scheduled Tribe amounting to five thousand rupees per month, as applicable to a Government servant of the concerned State Government or Union territory Administration, with
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		<p>admissible dearness allowance <b>and employment to one member of the family of the deceased</b>, and provision of agricultural land, an house, if necessary by outright purchase;</p> <p>(ii) Full cost of the education up to graduation level and maintenance of the children of the victims. Children may be admitted to Ashram schools or residential schools, fully funded by the Government;</p> <p>(iii) Provision of utensils, rice, wheat, dals, pulses, etc., for a period of three months.</p>
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57. In Column No. 2 corresponding to the said Item 46 the sub-heading is - **Additional relief to victims of murder, death, massacre, rape, gang rape, permanent incapacitation and dacoity**. Column 2, as is evident from nature of the provision and language contained therein, gives us an idea that the reliefs referred in Item 46 are additional to the reliefs referred in Items 1 to 45 and also that they are available to '**victims**'.

'Victims' have been defined in Section 2(ec). In the context of Item 46 victim can mean the actual victim in case of rape, gangrape, incapacitation and dacoity but in other cases such as of death, massacre it will mean relatives, legal guardians and legal heirs as mentioned in Section 2(ec). The meaning of the word has already been discussed earlier. In this case, originally

the FIR was lodged under Section 307 IPC read with Section 3(va) of the Act, 1989, however, subsequently the offences alleged to have been committed under Section 376-B and 302 IPC have been added, therefore, Item 46 is applicable to the case at hand. The additional relief envisaged therein is available to 'victim' as is mentioned in Column 2. In our discussion in the earlier part of our judgment, we have already said that remaining family members i.e. mother, father, brothers and sisters all fall within the definition of victim under Section 2(ec) of the Act 1989, therefore, the provision (Item 46) is applicable in this case.

58. The difficulty has arisen on account of entries contained in Column 3 of Item 46. The contention of Sri Raju, learned Senior Counsel in this regard was that the word 'may' used in Column 3 of Item 46 is proof of the fact that the provision is not mandatory. It is not enforceable in law and that it gives discretion to the State Government to provide such additional relief, only in cases where the said provision applies and where there is a need. He further says that the benefits mentioned therein can only be given to dependents and not to others. The victims herein not being dependents are not entitled to the

benefits mentioned therein. Secondly, such benefits can only be given where there is a need for the same. It has to be need based. It can not be as a matter of indefeasible right nor a means of source of enrichment or a bounty.

59. On a perusal of the provisions contained in Column 3, we are of the opinion that the word 'may' used therein is indicative of the fact that the benefits mentioned therein would be available only where the provision applies and also where there is a need for the same. To this extent we agree with Sri Raju. To illustrate further, what if the victim though he/she belongs to the Scheduled Caste is well-off say in the case of a PCS or IAS Officer who already has other surviving family members in employment and/or owns a house sufficient to meet the needs of the remaining family members or for that matter a case where after the death of the victim, other family members are already educated and employed and in a position to take care of the family having a suitable home. Whether even in such a case employment is necessarily to be provided to one member of the family of the deceased? Our answer has to be in the negative.

We are conscious of the legal position that backwardness of Scheduled Castes and Scheduled Tribes is constitutionally



recognized, which requires no further proof but as far as Item 46 is concerned the object is to provide measures of socio-economic rehabilitation to a victim as defined in Section 2(ec) of an atrocity under the Act 1989 in cases where they are in need of such rehabilitation. We have to keep the object behind the provision in mind so that it is not implemented to enrich those who are not in need of it. The provision can not be given meaning nor can it be implemented in a manner so as to violate the rights of others including those victims belonging to SC/ST who are more in need or whose need is greater, considering the fact that resources of State are limited. The provision is supposed to give additional relief in cases where on account of the atrocity the family has been put in dire straits with no or inadequate means of sustenance and/or where they are rendered shelterless. Cases of relocation of course are different requiring consideration of factors relevant to the same.

60. In Clause (i) of Column 3 of Item 46 there are three parts. First part of Clause (i) which provides for basic pension to widow, other dependents of deceased persons belonging to a Scheduled Caste or a Scheduled Tribe is applicable only in the case of a widow or dependents and not to others. The need of a

dependent or a widow is self evident. The word 'dependent' is defined in Section 2 (bb) of the Act 1989. As already stated, the family members in this case are not dependents of the 'victim' nor widow, as they were neither wholly nor mainly dependent on her for their support and maintenance. They are, therefore, not entitled to the said benefit.

61. The second part of Clause (i) of Column 3 Item 46 is regarding employment to **'one member of the family of the deceased'**. The contention of Sri Raju, learned Senior Counsel was that the use of the word 'and' to join the first part and the second part is indicative of the fact that employment is also to be given only to dependents. We are unable to accept this argument for the reason that if we hold it to be so on the ground that the word 'and' here is conjunctive and not disjunctive, then, it will lead to incongruous and absurd results as, the word **'employment'** is followed by the words **'to one member of the family of the deceased'**. If the intention of the rule making authority was to provide employment only to 'dependents', then, it could have very well stopped after using the word 'and employment to the dependent', instead, it has cautiously used the word 'employment to one member of the

family of the deceased' and has deliberately not used the word 'dependents'. The object is to give a wider scope so as to ensure sustenance and economic rehabilitation of the family members, what if the dependents are not qualified or eligible for employment? One of the family members can be given employment to achieve the object.

The *sine qua non* is that whichever family member is provided employment has to sustain the family and if he does not do so then he can be deprived of such employment and some other family member can be provided the same. Such conditions are often provided statutorily in cases of compassionate appointment such as in the U.P. Recruitment of Government Servant (Dying-in-Harness) Rules, 1975. This takes care of the apprehension of Sri Raju as to what if the brother does not support the family. No doubt, if there are family member or family members of the victim already in employment that too gainful employment which is sufficient to sustain the family, then, employment can not be claimed as a matter of right, but, in a case where the family members are unemployed or on account of the atrocity they are unable to gain

employment for various reasons, then, this provision will certainly apply.

In the case at hand the father was employed at Ayush Pharmacy, however, after the atrocity a sense of fear having gripped the family, the family does not feel secure and he is no longer in employment. Likewise, the brother, who was employed at Ghaziabad, is also unemployed. The other unmarried brother is also unemployed. We will consider more of it on facts of this case, later.

62. The term '**family**' has not been defined in the Act 1989 and the Rules 1995, therefore, we have to give it meaning as is commonly understood but, of course, keeping the object of the provision in mind. The **Black's Law Dictionary**, Eighth Edition, page 637, the word 'family' is defined as under:

*"family, n. 1. A group of persons connected by blood, by affinity, or by law, esp. within two or three generations. 2. A group consisting of parents and their children. 3. A group of persons who live together and have a shared commitment to a domestic relationship. See RELATIVE.-familial, adj.*

*blended family. The combined families of persons with children from earlier marriages or relation ships.*

*extended family. 1. The immediate family together with the collateral relatives who make up a clan; GENS. 2. The*

*immediate family together with collateral relatives and close family friends.*

***immediate family.*** 1. A person's parents, spouse, children, and siblings. 2. A person's parents, spouse, children, and siblings, as well as those of the person's spouse. Stepchildren and adopted children are usu. immediate family members. For some purposes, such as taxes, a person's immediate family may also include the spouses of children and siblings.

***intact family.*** A family in which both parents live together with their children."

63. In this case employment is being claimed for one of the two brothers, therefore, we are for the moment not concerned with other relationships. Suffice it to say that both the brothers are members of the family of deceased-victim who is alleged to have been murdered. The fact that the elder brother is married makes no difference as he lives with the family. If any member of the family goes away for employment it does not mean he ceases to be member of the family unless it can be demonstrated that he had severed all relations with the family as mentioned earlier. In this case there is sufficient material on record to show that all family members including the brothers are living together. Family members are covered within the definition of victim in Section 2(ec) as they are relatives of the victim. Words have to be given meaning and applied so as to

advance and achieve the object of the provisions of the Act and not to defeat it.

64. Clause (i) in Column 3 contains a third part, for providing agricultural land, a house, if necessary by outright purchase. This again has to be implemented on the basis of need and Sri Raju, learned Senior Counsel is right in saying that it can not be a source of enrichment. It can not be that if a person is already having agricultural land and a house sufficient for sustenance and suitable for living of the family members, even then, he can claim land or a house, as, any such understanding of the provision and its implementation would be hit by Article 14 of the Constitution of India, unless of course it is a case of relocation which is a different matter involving separate parameters and modalities depending upon the fact of a case.

65. According to the us, the three parts of Clause (i) of Column 3 have to be read, understood and applied disjunctively, meaning thereby, the first part applies to the widow or other dependents who are entitled to basic pension etc. mentioned therein whose need is self evident, the second part applies to one member of the family of the deceased who is to be given employment where it is required to be given and not where

there are family members already in employment capable of taking care of the family unless there are exceptional reasons in the sense that the employment is not adequate or sufficient to sustain the family members, who may be large in numbers etc. The third part speaks of provision of agricultural land and house, if necessary by outright purchase. This third part does not mention as to whom it is to be provided, however, in view of our discussion hereinabove we are of the opinion that this would be provided where there is a need for providing such agricultural land and house, meaning thereby, such cases in which the victim or the family members of the victim are very poor, landless, shelterless or land held by them is inadequate for their sustenance and the house or shelter which they own or are in possession of is inadequate in any manner. If we give a conjunctive meaning to the provision by providing that all the three benefits would be available only in cases of widow or dependents as suggested by Sri Raju, learned Senior Counsel, then, it would create a hardship in a case where the family members are not dependents, but, nevertheless they are 'victims' and in need of additional relief by virtue of being rendered unemployed or shelterless consequent to the atrocity.

We may in this context refer to *Stroud's Judicial Dictionary, 3rd Edn.* it is stated at page 135 that "and" has generally a cumulative sense, requiring the fulfillment of all the conditions that it joins together, and herein it is the antithesis of or. Sometimes, however, even in such a connection, it is, by force of a contexts, read as "or". Similarly in *Maxwell on Interpretation of Statutes, 11th Edn.* it has been accepted that "to carry out the intention of the legislature it is occasionally found necessary to read the conjunctions 'or' and 'and' one for the other" or else it will defeat the object. These authorities support and reinforce our opinion in the matter

66. Entries in Column No. 3 at Item 46 are to be governed by remarks in Column no. 2 which says that additional reliefs (as mentioned in Column 2) in cases mentioned therein are meant for '**victims**'. Column No. 3 can not be interpreted so as to contradict Column No. 2. Column No. 3 is applicable to 'victims' as defined in Section 2(ec). Amongst the victims, first part of Clause (i) in Column 3 applies to widows or dependents, second part of Clause (i) applies to a victim who is a family member, who need not necessarily be a dependent, the third part of Clause (i) applies to victims as defined in Section 2(ec) as a



whole, who are in need of such benefits. We may also refer to Clause (ii) which speaks of 'children' of victims.

In the event of ambiguity an interpretation which advances the object of the Act and provision should be preferred and not one which defeats the object of the provisions.

67. As we have held that the additional reliefs mentioned in Item 46 have to be considered and given based on need and circumstances of the victims we are in agreement with Sri Raju, learned Senior Counsel to this extent that it does not create any indefeasible right in favour of such persons who may not be in need of the said benefits, however, in cases where the victims are in need of the said benefits, the State would be obliged to provide the same to them and the word 'may' used in Column 3 can not be read and understood to give a discretion to the State to deny the benefits come what may merely because it does not want to extend the benefits to them.

68. The consideration has to be meaningful, keeping in mind the object of the Act, the provisions contained therein and the object of Item 46, with due and proper application of mind to the relevant aspects and it has to be implemented accordingly in the interest of the victims. The endeavour shall be to provide

such benefit where it is due and not that because there is a discretion, therefore, we will not provide it. The use of the word 'may' in Column 3 corresponding to Item 46 does not give the State or its authorities any such unbridled and uncanalised power to reject a claim to additional reliefs whimsically or for extraneous reasons, unreasonably and arbitrarily.

69. There is no dispute with regard to the applicability of Clause (ii) and (iii) of Item 46 in the facts of the present case, therefore, we need not enter into that aspect. State shall fulfill the educational needs of children of victim accordingly. Provision of food items, etc. has been taken care of as informed by the State but if the family has any grievance in this regard it can be raised before the District Magistrate who shall do the needful.

70. It is necessary to consider another argument of Sri Raju, learned Senior Counsel that the aforesaid additional relief such as employment has to be provided after the trial is over and not prior to it. We are unable to accept the aforesaid contention for the simple reason that this would defeat the object sought to be achieved. The Object is to provide additional relief at the earliest that is why a period of three months from the date of

atrocities have been mentioned. No doubt, as per proviso to Section 14(3) of the Act 1989 when the trial relates to an offence under this Act, the trial shall, as far as possible, be completed within a period of two months from the date of filing of the charge sheet, but, this requirement is qualified by the word 'as far as possible' which is an acknowledgment of the harsh and painful reality regarding delay in trials which could be for various reasons. Secondly, most of the trials especially contentious one such as the case at hand would take much more than two months. In this case the trial has remained pending for two years for various reasons such as the Covid-19 pandemic and the constraints accompanying it, the number of witnesses to be examined etc., therefore, if we hold that the benefit would be available only after the trial is over the same would amount to compromising the object sought to be achieved by the provision contained at Item 46 of Schedule Annexure-I referable to Rule 12(4) of the Rules 1995 and Section 15A, 21 of the Act 1989. Even in criminal matters appeals are considered to be a continuation of the trial, therefore, if Sri Raju's suggestion is accepted, then, it would mean that till the appeal is decided before the High Court and thereafter before the Supreme Court, which may take decades or at least few years, the benefits

envisaged in the Act 1989 would not be available. Even if this aspect is ignored, the trial itself could take long. If this is accepted, the widow or other dependents covered by first part of Column 3 of Item 46 will not get the basic pension and dearness allowance till conclusion of trial. This is certainly not the objective of the provision.

71. Furthermore, the argument advanced by Sri Raju, learned Senior Counsel that the words 'within the three months of atrocities' mentioned in Column 3 of Item 46 means 'atrocities which is proved'. We are unable to read the word 'proved' after the 'atrocities'. If the intention of the rule making authority was that the additional relief mentioned therein should be given after the atrocity has been proved, then, it would have been mentioned specifically and categorically. Atrocities has to be given the meaning as defined in Section 2(a) which means '**an offence punishable under Section 3**'. The words used are '**an offence punishable under Section 3**' and not 'an offence under Section 3 which has to be proved'. Therefore, this argument is also rejected.

72. Having said so we must hasten to add, if ultimately the incident of atrocity is found to be false in the sense that the

incident itself did not occur or the informant or victim's family belonging to SC/ST are themselves held to be the perpetrators of atrocity, then, all reliefs given under the Act 1989 are liable to be recovered with such other action as may be permissible in law. This is necessary to discourage frivolous cases/claims under the Act 1989.

The decisions relied upon by Sri Raju have been read by us but they do not persuade us to take any other view in the matter.

**Claim of Employment to One Member of the Family:**

73. Now, we may consider the facts of the this case in the light of what has been discussed hereinabove.

74. First and foremost we need to reproduce the assurances given by the State on 30.09.2020 to the victim's family members, which has been signed by the District Magistrate and various district and public authorities. The said document reads as under:-

*"ग्राम बूलगढ़ी थाना चन्दपा जनपद हाथरस से सम्बन्धित प्रकरण में पीडित बेटी परिवारजनों द्वारा जो मांगे रखी गई, उन पर मा० मुख्यमंत्री जी द्वारा आज दिनांक 30.09.2020 को अपनी सहमति प्रदान करते हुए पूरा करने का आश्वासन दिया गया। परिवारजनों द्वारा रखी गई मांगों का विवरण निम्नवत है:-*

1. परिवार को कुल 25 लाख रुपये की आर्थिक सहायता प्रदान की जाए, जिसमें से 10 लाख रुपये जिला प्रशासन द्वारा पीड़ित के पिता के खाता में हस्तांतरित किये जा चुके हैं। शेष धनराशि शीघ्र प्रदान कर दी जाएगी।
2. पीड़िता के एक भाई को ग्रुप-सी की सरकारी नौकरी।
3. प्रकरण से सम्बन्धित वाद की सुनवाई फास्ट ट्रैक में कराकर आरोपियों को कड़ी से कड़ी सजा दिलवाई जाए।
4. पीड़ित परिवार को शहर हाथरस स्थित डूडा विभाग द्वारा निर्मित 01 आवास का आवंटन।
5. एस.आई.टी. का गठन कर प्रकरण की निष्पक्ष जाँच कराई जाए।

उपरोक्त के क्रम में मा० मुख्यमंत्री जी द्वारा पीड़िता के पिता से विडियो कॉल के माध्यम से वार्ता की गई एवं अवगत कराया गया कि प्रकरण की जांच निष्पक्ष रूप से कराए जाने हेतु एस०आई०टी० का गठन कर दिया गया है। प्रकरण में जो भी दोषी होगा उसको सख्त से सख्त सजा दी जाएगी। मा. मुख्यमंत्री जी द्वारा पीड़ित बेटी के परिवार से अपनी संवेदनाएँ व्यक्त की गई एवं आश्वस्त किया गया कि पीड़ित परिवार को हर सम्भव मदद मुहैया कराई जाएगी।

तत्काल में पीड़ित बेटी के परिवार द्वारा मा. मुख्यमंत्री जी के आश्वासन से संतुष्ट होकर अपना आभार व्यक्त किया गया एवं प्रकरण में कथित समूहों एवं व्यक्तियों द्वारा किए जा रहे धरना प्रदर्शन आदि को समाप्त कर शांति की अपील की गई।

मा० मुख्यमंत्री जी एवं पीड़ित परिवार के मध्य हुई वार्ता मा० पंचायतीराज मंत्री श्री भूपेन्द्र सिंह चौधरी की उपस्थिति में हुई एवं वार्ता के समय निम्नांकित जनप्रतिनिधि एवं अधिकारीगण उपस्थित थे :-

1. श्री राजवीर सिंह दिलेर, मा० सांसद हाथरस।
2. श्री हरीशंकर माहौर, मा० विधायक हाथरस।
3. श्री वीरेन्द्र सिंह राणा, मा० विधायक सिकन्दाराऊ।
4. श्री गौरव आर्य, मा० जिलाध्यक्ष भा०ज०पा० हाथरस।
5. श्री आशीष शर्मा, अध्यक्ष नगर पालिका परिषद हाथरस।
6. श्री XXXXXX निवासी बूलगढी, थाना चन्दपा।
7. श्री राजकुमार निवासी अलीगढ़।

xxxxxx - The name at serial no. 6 has not been mentioned in view of the law requiring non disclosure of the name of the victim and her family members.

75. The aforesaid assurance was given by the Head of the State and public authorities who have signed it as witness of the aforesaid fact. The document is not denied, rather admitted.

76. Sri Raju, learned Senior Counsel, however, contended that the aforesaid assurance is contrary to the law i.e. the law contained in Item 46 of Schedule Annexure-I read with Rule

12(4) of the Rules 1995. This argument obviously was based on his understanding of Clause 1 of Column 3 corresponding to Item 46 of Schedule Annexure-I, which according to him, was applicable only in the case of widow or dependents and the family members of the victim herein being neither the widow nor dependents of the victim, according to him, were not entitled for the same. We have already rejected this contention and have held that the family members are covered in the definition of victim under Section 2(ec), therefore, they are also covered by Item 46 referred above.

77. The only question to be considered is of their need in the context of employment referable to Clause (i) of Column 3 of Item 46.

78. In the affidavit dated 06.01.2021 the victim's family has *inter alia* prayed for employment, etc. in terms of Item 46 of Schedule Annexure-I to the Rules 1995 and the assurance given on 30.09.2020 by the Head of the State. In para 9 of the said affidavit, it has been averred that the elder brother of the deceased was working in Sector 64 Noida with MCM Mobile Company prior to the incident but at present he is residing in the house in Village Boolgadhi. Likewise, younger brother was

employed at Dr. Lal Pathlab, Vasundhara, Plot No. 20, Sector IAC, Ghaziabad but he is also residing at his house at Village Boolgadhi. The reason for the same is mentioned as security of the family. It has been averred that considering the economic condition of the family and its need for sustenance the assurance given by the Chief Minister on 30.09.2020 regarding provision of employment to one member of the family should be honoured. In the affidavit date 23.10.2020 filed on behalf of the victim's family also there is a prayer for providing employment in terms of the assurance given by the Head of the State through Video Conferencing on 30.09.2020.

79. Furthermore, another affidavit dated 12.11.2021 has been filed on behalf of the victim's family. In the said affidavit, the family has mentioned its economic condition and also expenses it had to bear after the commencement of the trial. It has raised a grievance about non-payment of travelling allowance, etc. for going to the Court and coming back to their house. It has been mentioned that none of the male members are employed and, therefore, the family does not have any source of income. The money provided as compensation by the State Government is being utilized for sustenance and meeting the needs of the



family. It has also been mentioned that as a consequence of the incident involving the criminal offence against the girl, on the one hand, none of the family members have been able to get an employment and on the other hand the State Government is not fulfilling its promise for providing such employment.

80. It has also been stated that while the victim's family, which belongs to the downtrodden class i.e. Scheduled Caste, is being treated in such a manner, on the other hand, two of the family members of Vinay Tiwari and Manish Gupta had not only been provided Rs. 40.00 lakhs as compensation consequent to the incident involving the death of Vinay Tiwari and Manish Gupta but they have also been provided Class II jobs in Public Undertakings, therefore, discrimination and arbitrariness have been alleged in this regard.

81. In this affidavit it has been stated that the father of the deceased was earlier working as Sweeper in Ayush Pharmacy prior to the incident but is now unemployed and none of the Organizations nearby are willing to employ him. Likewise, the non-employment of two brothers has been mentioned. The promise by the Head of the State to provide Government service to one of the members of the family has not been honoured. It

has also been averred that on account of security reasons the family is compelled to live within the four-walls of their house and also that it somehow survives without employment on account of which the economic condition of the family is bound to deteriorate in future. The morale of the family is also ebbing. In this situation, non-providing of employment as was promised adds to the misery of the victim's family which comprises of nine members of which three are girls aged about 7, 2 and half and 1 year. It has also been mentioned that the family has only 0.402 hectare agriculture land being part of Gata No. 146 in Village Boolgadhi, Tehsil and District Hathras, which comes to one and half bigha, therefore, it does not have adequate means of sustenance and is somehow surviving on the basis of compensation given by the State Government.

82. At this point, we may refer to certain documents filed by the State Government along with their affidavits. One of them is a report/letter of District Magistrate, Hathras dated 29.03.2022 along with the report of Sub Divisional Magistrate, Hathras and Tehsildar, Sadar, District Hathras dated 28.03.2022 in which as far as employment is concerned, it is clearly mentioned that neither the father nor the two brothers are employed and all of

them are living at their house. It has been stated by the family members that on account of the incident leading to these proceedings the brothers had to come to their village and are staying at their house. It has already been noticed earlier that the family wants to live together and feels insecure on account of nature of the incident which is alleged to have taken place leading to the death of a family member and also the demography of the village, etc.

83. The affidavit of the State dated 29.03.2022 clearly mentions in para 4 that one of the brothers was earlier working in Ghaziabad in 2019, however, after the incident he has come back to his village and since then he is staying at his house and at present he is also unemployed. With regard to other brother also it has been mentioned that he was working as a Helper in a Mobile Company in Noida, however, in March, 2021, due to Covid-19, he came back to his village. After the incident, due to security reasons, CRPF has been deployed at their home and he is unable to go outside, thus he is staying at his house and at present he is unemployed. This affidavit is by the Special Secretary, Home, Government of U.P., Lucknow. This affidavit corroborates the version of the victim's family about the male

members being unemployed who are unable to go outside for security reasons etc.

84. Furthermore, there is another affidavit on behalf of the State Government along with which there is a letter dated 01.11.2020 written by the Commandant, 239 Battalion, CRPF, Hathras addressed to the District Magistrate, Hathras wherein details of the members of the victim's family have been given. As against the father, it is mentioned that he is involved in agriculture. We have already noticed that the family has only one and half bigha of land which apparently, for a family consisting of nine members with three children, is not adequate for sustenance. With regard to the two brothers, it is clearly mentioned in the said letter also that at present they are living in their house and are unemployed. The rest of the family members are house wives/females.

85. The State has filed another affidavit dated 23.09.2021 here-again the claim of the victim's family for employment and other benefits has been opposed and the issues raised therein have already been considered as far as the legal interpretation of the Act 1989 and the Rules 1995 involved is concerned, in the earlier part of the judgment.

86. On facts, it has not been denied in any of these affidavits that none of the male members are employed, as of now.

87. In the affidavit dated 07.12.2021, in response to the query of the Court as to the employment provided to the members of the family late Vinay Tiwari and late Manish Gupta, the State has annexed documents showing creation of two posts of Officer on Special Duty in Pay Matrix Level 10 Pay Scale 56100-177500/- by His Excellency the Governor of Uttar Pradesh and appointment letters of the wives of the deceased, appointing them on the said post and pay scale. This is relevant in the context of the assertion of the victim's family that though there is statutory backing for providing employment to a Scheduled Caste/Scheduled Tribe victim and its family members who are covered under the definition of 'victim', the said benefit has not been extended to the victim's family in spite of an assurance having been given by the Head of the State whereas, as contended by Ms. Kushwaha, in spite of the fact that there is no statutory backing for such appointment to other categories the same has been extended, that too, on a Class-II post and the amount of compensation paid is also much more than what has been paid to the victim's family. In this regard, the contention

of Sri Raju and as also been stated on affidavit that the case of Vinay Tiwari and Manish Gupta involves police atrocity and the case of the victim's family, the same has to be considered in the light of the statutory provisions whereas there was no statutory provision for appointment of family members of Vinay Tiwari and Manish Gupta, therefore, the two cannot be compared and there is no discrimination, appears to have been made only to be rejected.

We fail to understand the rationale behind such a stand by the State. In the case of the victim's family, the contention of the victim's family is that the State which is responsible to protect the life, liberty and property of a citizen, especially those belonging to the Scheduled Caste/Scheduled Tribe failed to fulfill this obligation and was negligent on account of which the incident occurred which led to the death of the victim and then to her illegal cremation in the dead of the night.

In these circumstances, the distinctions sought to be drawn on the ground that in other cases the police was involved in committing atrocities does not appear to be reasonable non-acceptable. These are only two facets of deprivation of life and liberty. In both the situations, the contention is that the police

failed to perform its obligation. Moreover, in the other cases also, the trial is still pending, therefore, it is not as if that the guilt of the police has been proved. In this case also the CBI has filed a charge-sheet under Sections 302, 376, 376A, 376D IPC and under Section 3(2)(v) of the Act 1989, therefore, at least, the CBI is *prima facie* satisfied that an offence has been committed including the Offence under the Act 1989. Moreover, to say that the case at hand is governed by statute and its Rules whereas the provision of employment in the case of Vinay Tiwari and Manish Gupta was not in terms of any statute is hardly a ground for an intelligible differentia, in fact, the victim's family herein is better placed as they have statutory backing to their claim for employment. This is not to say that persons other than SC/ST cannot be provided such appointment, but only to say that the distinction sought to be made by the State is unacceptable. Even without the parity being claimed or discrimination being alleged by the victim's family viz-a-viz, the other two families referred hereinabove, the victim's family has a legal basis for its claim in view of the provisions of the Act 1989 and the Rules made thereunder which have already been discussed.

88. We have already held that the family members of the deceased are 'victims', therefore, one of the family members is entitled to employment and it is on account of this that the Head of the State assured employment to one of the family members on a Group 'C' post as is recorded in the document dated 30.09.2020 which we have quoted hereinabove. This document is signed by the District Magistrate and various other public authorities. The father of the deceased has also signed it. We have already held that the said assurance and the document dated 30.09.2020 is not contrary to the provision of the Act 1989 and Rules 1995, especially Item 46 of Schedule Annexure-I to the Rules 1995, because such an act has statutory backing and there is a rationale behind it i.e to provide relief and rehabilitation to the family of the victim which belongs to SC/ST which is in furtherance of the object of the Act 1989, therefore, the contention of Sri Raju that the provision of employment in such a case would violate the Article 14 and 16 is without any constitutional and legal basis, it is accordingly rejected. Even without the assurance dated 30.09.2020 one of the family members is entitled to be considered for employment under Item 46.



89. Having held as above, on facts we have already seen that it is the undisputed factual position that none of the male members of the victim's family is employed as of now. This is as a consequence of the atrocity committed. The only other source of income available is one and half bigha land in their possession, therefore, clearly a family which comprises of nine members with three children who in the days to come will go to school, does not have adequate means of sustenance. Clearly the family is in need of employment and that is why the same was promised by the Head of the State. The promise is not based on any whims or fancy, but it is referable to statutory provisions and the Rules made thereunder as already discussed, therefore, it is enforceable in these proceedings. This is especially as the Act 1989 is itself a legislative measure to protect the rights and the interest of the poorest of poor, the downtrodden, who belong to Scheduled Caste/Scheduled Tribe.

90. As regards the contention of Sri Raju that the State can arrange for a private job and that the Act 1989 nowhere mentions about a Government job, we have, in this regard, already referred to Rule 15 of the Rules 1995 which we have quoted above. We may refer specifically to sub-Rule (1) Clause

(d) of Rule 15 which speaks of scheme for employment in Government or Government Undertaking to the dependent or one member of the family. If the intent of the legislature or the Rule making authority was that a private job be provided, it would have been mentioned therein, therefore, this offer of a private job is something which is not expected from the State Government and absolutely uncalled for. The assurance dated 30.09.2020 also mentions about appointment on a Class 'C' post. We are not saying that the Government should necessarily provide a job in any service under the Government, but, this can be done in a Government Undertaking also. In the case of Vinay Tiwari and Manish Gupta no such offer of a private job was made, then, why such an offer in this case which is backed by statutory provisions. Ex-cadre posts have been created in the cases referred above. Without extending parity, the question which we put to ourselves is – why this cannot be done in this case, especially in view of the statutory backing to such an exercise. We have to say that there is no reason why it should not be done in this case, if required, otherwise, appointment can be offered against an existing vacancy. We also take note of the fact that both the brothers are Intermediate pass which is the minimum qualification for appointment on a Class – III

(Group 'c') post in the Government and probably in Government Undertakings also. A job suitable to their qualification can certainly be provided to one of them. The family wants a job for the elder brother.

91. We accordingly direct the State Government to consider employment of one of the family member in the light of the what has been discussed hereinabove under the Government or Government Undertaking commensurate with the qualification possessed by them keeping in mind the document dated 30.09.2020 and the assurance contained therein. This shall be done within three months from the date of receipt of this order.

**Relocation of the Family:**

92. So far as the claim for relocation of the family members is concerned, the provision for it exists in **Section 15-A (6)(d)** and **Rule 15 (aa),(b) and (c)**. The family members have prayed for relocation in their affidavit dated 06.01.2021. In Para 9 of the said affidavit, it has been stated that the behaviour of the nearby residents in the village concerned is not humane rather it is objectionable to the family members. In Para 11 it has been stated that after filing of the charge sheet against the accused a special group i.e. 'Karni Sena', which is an organization

belonging to a particular caste, called for a Mahapanchayat against the victim's family members whereupon the Police even apprehended some of the trouble makers, a fact which has not been denied by the State. Furthermore, in the earlier affidavit dated 23.10.2020 also the family members of the victim have sought their relocation outside the State. Even orally this was prayed for but we did not accept the said prayer for relocation outside the State for reasons which are quite obvious, as, relocation by the State, if at all, can be made within the state itself.

We may also refer to the affidavit dated 12.11.2021 in this regard wherein, in the context of demography of the village it has been stated that there were only four families belonging to the Scheduled Castes in the said village, out of which, two had migrated after the incident. Details in this regard have been given in Para 6 of the said affidavit meaning thereby only two families of Scheduled Castes are left in the village, one of which is the victim's family. Majority of the population in the village belongs to the upper castes and it is stated that the family is always targeted by other villagers. Even after being under the security of CRPF whenever the family members go out, they are

subjected to abuse and objectionable comments in the village. It has been stated that the family has become socially isolated in the village after the incident. As already noticed earlier it has also been stated that the economic condition is also very poor. All this makes living of the family in village Boolgadhi cumbersome and impossible. Out of the three children, one of them, who is about 7 years of age, is unable to go to school on account of insecurity of the family, therefore, living in the said village any further is also not conducive to the educational need of the children. The family fears reprisal and repetition of the criminal acts against them. Apart from one and half bighas of agriculture land which the family owns as bhumidhars with transferable rights, the family has a house comprising of one kitchen, one 'kachcha' room and another 'pakka', one toilet and bathroom in a compound covering about 200 square yards.

According to the said affidavit, the said house was constructed at time of Kuwar Sen, an ancestor of the family, who had three sons, who are named therein and the father of the deceased is the son of one of such ancestors. It is said that all the descendants of the sons of Hazari Lal have a share in the said house. The State says that other alleged co-sharers are not

occupying the house. As regards the allegation of encroachment on land forming part of Gata No. 94 and 95, it has been stated that the said Gata is used by the villagers and a small construction has been made by the deceased's father for keeping the cattle. The rights under the revenue laws have been asserted with regard to the SC and ST in this regard.

93. As regards the provision of a house in Hathras itself the family has declined the same on the fear of repetition of such acts and that living in the same district where the incident had occurred is not an option for the family. The State Government had offered a house to the victims within the municipal limits at Hathras, but the same has been declined. The family wants relocation outside Hathras preferably in Noida or near Delhi for the reason that it has relatives living in these areas and would be socially and economically more comfortable, as, on the one hand it will have support of peer groups and members of their social strata and relatives and on the other had they will also have an economic opportunity so that the father can also engage himself in employment, apart from the employment to be offered to one of the members by the State.

94. Considering the social and economic condition of the victim's family as also the mental state in which the family members claim to be, which is not improbable in view of the social strata to which they belong and the demography of the village, we are of the opinion that the State should consider their relocation to any other place within the State outside Hathras keeping in mind their social and economic rehabilitation and also the educational needs of the children. It is not too much for the family to ask for relocation outside Hathras in the circumstances in which they find themselves wherein their movements are highly restricted on account of their security by the CRPF and also on account of the alleged hostile behaviour/attitude of the other villagers who belong to the upper caste. After the incident considering the limelight it hogged in newspapers and social media etc., one can very well imagine that it would not be easy for the family to live in village Boolgadhi.

How and in what manner relocation is to take place is something which the State and its Authorities are required to consider. What will happen to the land and house at present owned by the family? whether they will have to surrender it to the Government so that Government may provide them suitable

house and land elsewhere, if so, what would be the mode of doing it, are issues, which will have to be considered by the State Government with cooperation of the family members. This Court would not enter into the nitty gritty of this aspect, as, it may involve assessment of various factual issues. It would have been better and easier if there had been a contingency plan in place as is envisaged in Rule 15, but, as it is not so, therefore, the State should consider this aspect of the matter. Almost four months have passed since filing of the affidavit dated 28.03.2022, when it was said that preparation of such plan is in process, the state should prepare it, unless already prepared, within next three months.

95. The reason we are directing the State to consider this relocation instead of directing the family members to approach the Special Court under Section 15-A(6)(d) is that first and foremost it is the State and its authorities who have to consider such claim/request of the victims and only thereafter, if the victims are aggrieved they would approach the Special Court. There is no reason as to why we should make the family members, who belong to downtrodden class, run to the Court and engage themselves in proceedings before it when the State has not yet considered their request for relocation. As already



stated the nitty gritty in this regard can be sorted out by the State in an objective, fair and reasonable manner keeping in mind the object of the Act 1989, the Rules made thereunder and the plight of the family members and a report in this regard can be submitted by the State and its Authorities through the District Magistrate, Hathras before the Special Court where the trial is pending. If the family members have any further grievance they can raise it before the said Court, but there is no reason as to why we should direct the family members to approach the Special Court without even the State Government having considered their request.

96. We are not tying the hands of the State Government with any conditions in this regard for reasons already stated hereinabove except that any such consideration for relocation has to be in furtherance of the object sought to be achieved and also in keeping with the social, economic and educational rehabilitation of the members of the family. The area of relocation has to be socially conducive to the family members apart from being conducive to their economic and educational rehabilitation. This would take sometime, therefore, we direct the State Government to consider this aspect of the matter in the light of the observations made hereinabove and take a

decision within six months. After taking such a decision a report shall be submitted to the Special Court where the trial is pending through the District Magistrate, Hathras and as already stated hereinabove the family members, if they are aggrieved thereafter, may raise a grievance before the said Court unless there are exceptional reasons for approaching the High Court.

97. From the scheme of the Act 1989 and Rules made thereunder, we also find that in Section 21(2)(ii) one of the measures which the State Government is required to take for the effective implementation of the Act is the provision for travelling and maintenance expenses to witnesses, including the victims of atrocities, during investigation and trial of offences under this Act. There are pleadings by the family members to the effect that these expenses are not being paid to them. We also find that Rule 11 of the Rules 1995 also deals with travelling allowance, daily allowance, maintenance expenses and transport facilities to the victim of atrocity, his or her dependents and witnesses.

We, therefore, direct the District Magistrate, Hathras to look into the request by the family members on a representation being submitted by them in this regard, if they raise any claim as regards to the expenses referred in the Act 1989 and the

Rules 1995, he shall verify the same and the do the needful as per law, but, with expedition. Section 21(2)(ii) read with Rule 11 of the Rules 1995 enjoins upon the State and its Authorities specifically the District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate to make necessary arrangements for providing transport facilities or reimbursement of full payment thereof to the victims of atrocity etc., therefore, first and foremost the State and its authorities have to comply their statutory obligations in this regard and thereafter, if the family members are still aggrieved, they can approach the Court concerned under Section 15-A(6)(b) of the Act, 1989.

Ordered accordingly.

**[Jaspreet Singh, J.] [Rajan Roy, J.]**

**Order Date :- 26.07.2022**

**Santosh/R.K.P.**