

(2002) 03 MP CK 0036

In the Madhya Pradesh High Court

Case No : Writ Petition No. 7018 of 2000

M.P. Human Rights Commission through Registrar (Law)

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 11-03-2002

Acts Referred:

Protection of Human Rights Act, 1993 — Section 14, 16, 17

Citation : AIR 2002 MP 239 : (2002) 3 MPHT 502 : (2002) 2 MPJR 308 : (2002) 4 MPLJ 321

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : V.S. Shrotri, Sudha Pandit and Anuradha Pandit, for the Appellant; S.K. Yadav, Government Advocate for Respondent No. 1, Alok Aradhe, for Respondent Nos. 2 and 3, R.K. Gupta and N.S. Ruprah, for the Respondent

Judgement

Dipak Misra, J.

Invoking the extra-ordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India the petitioner, M.P. Human Rights Commission has prayed for issue of a writ of certiorari for quashment of the order dated 13-4-2000, contained in Annexure P-10 and further to command the respondent Nos. 1 and 2 to implement the recommendation of the petitioner-Commission.

The facts as have been uncurtained are that the M.P. Human Rights Commission (for brevity "the Commission") is a statutory autonomous and independent body constituted u/s 21 of the Protection of Human Rights Act, 1993 (hereinafter referred to as "the Act") with a retired Chief Justice of a High Court Judge and District Judge as its members. The Commission has been conferred with the responsibility of promoting and protecting human rights. According to the writ petitioner Smt. Roli Shukla and Smt. Anjana Agrawal Assistant Professors of Government Motilal Vigyan Mahavidyalaya, Bhopal made a joint written complaint to the Commission against Dr. Ashok Maini, the Head of the Department of Chemistry, the respondent No. 3, herein. The petitioner

entertained the complaint and registered the same and proceeded in the matter in accordance with the procedure laid down u/s 17(i) of the Act read with Regulation 8 of the State Human Rights Commission (Procedure) Regulations, 1996 (in short "the Regulation 1996") and called for the comments from the respondent No. 1 within four weeks. No comments were received within the stipulated time and the Commission was compelled to issue reminder but it did not yield any fruitful result. On 9-12-1999 the complainants the respondent Nos. 4 and 5 appeared in person before the Commission and submitted that the instances of harassment and humiliation had been increased and it was becoming impossible on their part to perform their duty. Taking into consideration the grievance of the said respondents, the petitioner issued a reminder to the respondent No. 1 to expedite the comments on the complaint. As no comments were received and inaction and indifferent attitude was exhibited the Commission proceeded with its own enquiry u/s 17(ii) of the Act and sent the same for investigation by its own investigating team as envisaged u/s 14 of the Act. The investigating team carried out its investigation into the allegations after affording reasonable opportunity to all concerned and submitted the report to the Commission. The copy of the report has been brought on record as Annexure P-2. It has also been alleged that the respondent No. 3 is well connected in official circle and is able to influence any decision as his wife is the Joint Director in the Department of Education.

It is put forth in the petition that the investigating team after considering the documentary and oral evidence and circumstances of the case arrived at the conclusion that the respondent No. 3 acted against the principles of ethicality and his behaviour towards the respondent Nos. 4 and 5 was beyond the sense of decency and modesty. The investigating team found the respondent Nos. 4 and 5 were forced to prepare tea for respondent No. 3 and were subjected to indecent remarks. The team found the charges levelled against the respondent No. 3 were proved. The Commission accepted the report and recommended for taking appropriate action. A copy of the investigation report along with the complaint was also forwarded to the respondent No. 1.

The respondent No. 2, the Principal of the Government Motilal Vigyan Mahavidyalaya instead of assuring protection of human rights issued show-cause notice to respondent Nos. 4 and 5 requiring them to explain as to why they approached the Commission directly. The said show-cause notice was replied by the respondent No. 4 and as a consequence thereof an application was filed for withdrawal of her complaint. The Commission at that stage found that the respondent Nos. 1 and 2 are taking advantage of their superior official position and thereby inducing the respondent No. 4 to withdraw her complaint. It is also pleaded that the respondent Nos. 1 and 2 have violated the provisions of the Act and decision rendered in the case of Vishaka and others Vs. State of Rajasthan and Others, . The Commission summoned Dr. Saxena to clarify the position. He was heard in person on 9-3-2000. The explanation offered by him was not found satisfactory and convincing and, therefore, the Commission forwarded its

recommendation to the State of Madhya Pradesh by letter dated 16-3-2000 as per Annexure P-7. The report of the investigating team was also sent as required u/s 18(i) of the Act to take suitable action against the persons who had violated the human rights. The Minister of the concerned Department informed the Commission that the Education Department had been directed to transfer the respondent No. 2 from the College vide Annexure P-9. The respondent No. 1 intimated the Commission that they are not in agreement with the recommendation of the Commission. The Commission was further intimated that the respondent No. 1 had conducted an independent inquiry into the matter and found that the allegations made in the complaint were false. A copy of the letter dated 13-4-2000 has been brought on record as Annexure P-10. Thereafter, the Commission vide letter dated 25-4-2000 apprised the respondent No. 1 that due to negative attitude of the respondent authorities the Commission proceeded with the matter and conducted investigation conducted by the State authorities is not in accordance with law. It is also putforth that in spite of protracted correspondence with the respondent authorities the Commission did not receive any satisfactory reply ensuring the protection of respondent Nos. 4 and 5 from sexual harassment at the work place. Under these circumstances the Commission took the decision to approach this Court u/s 18(ii) of the Act. It is urged in the petition that the respondent No. 1 had utterly failed to discharge its primary duty to protect the human rights of respondent Nos. 4 and 5 at the place of work. It is also highlighted that the attitude of the respondent Nos. 1 and 2 is violative of the resolution adopted by the United Nations General Assembly as well as human rights available for the working woman. It is further putforth that the respondent Nos. 1 and 2 have declined to accept the recommendations on vague grounds. With the aforesaid averments prayers have been made as has been indicated hereinabove.

A return has been filed by the respondent No. 1 contending, inter alia, that the respondent Nos. 3, 4 and 5 have been working together in the same College for more than five years and at no point of time any complaint had been received in regard to the behaviour of the respondent No. 3. The respondent No. 3 is the Head of the Department and having found the working of the respondent No. 4 was not satisfactory certain adverse remarks were made against her and the said adverse remarks had been communicated to her in September, 1999. As an afterthought she made complaint to the Commission on 22-10-1999 but never complained prior to that. It is putforth that two police inspectors deputed by the Commission made unilateral investigation into the matter and picked up 14 persons of their choice and recorded their statements. The respondent No. 3 was not afforded any opportunity to cross-examine the said persons nor was he heard before or after the report was submitted by those inspectors. It is putforth that the inspectors who investigated into the matter are Class-III employees of the State Government where as the respondent No. 3 is a Class-I Gazetted Officer and, therefore, the whole investigation should not be given credence. A reference has been made to the report submitted by investigating agency. It is

putforth that at the Government level after receiving the communication seeking comments from the respondents from the petitioner in order to gather the materials regarding actual facts an enquiry was conducted by the Principal of the Government Gitanjali College and report submitted by her has been brought on record as Annexure R-I. Certain other facts have been brought on record to show that there was anomaly at various points in the complaint and the report. It is also putforth that when the material was being collected at the Government level for making comments the Commission recommended to the Minister of Higher Education by letter dated 17-2-2000 to transfer the respondent No. 3. Pursuant to the said letter the then Minister wrote a letter dated 26-2-2000 as per Annexure P-9 but on a perusal of the said document it is quite clear that only a proposal was sent to the Principal Secretary to transfer the respondent No. 3. The Principal Secretary upon receipt of the communication vide Annexure P-9 forwarded the matter as per rules of business. Thereafter the Government on consideration of other reports came to hold that the respondent No. 3 was not guilty of the charges and the complaint lodged by the respondent Nos. 4 and 5 was false. In view of this background the respondent No. 1 in spite of acting upon the recommendations deferred it and decided that the matter should be re-enquired. It is also putforth that the Commission, waiting for the report, prematurely filed this writ petition. It has also been highlighted that with regard to the genuineness of the matter reference has been made to certain regulations to show that the procedure adopted by the Commission is not correct and there should be deeper probe. Other allegations made in the petition have been categorically disputed. Certain other aspects have also been brought on record which need not be stated in detail.

A reply has been filed by the respondent No. 2 highlighting that the said respondent has joined as Principal in Motilal Vigyan Mahavidyalaya on 14-4-1997. It is putforth that he was on leave for 62 days from 9-11-99 to 9-1-2000 as he was availing treatment for bronchial asthma. It is putforth that he joined on 10-2-2000 and after coming to know about the complaint being head of the institution he after investigation had submitted his comments on 27-1-2000 and forwarded the same to the Commission. It is the stand of the answering respondent that the respondent Nos. 4 and 5 had never made any complaint before him in the matter. Reference has been made to the adverse entries made in the confidential rolls. There has also been mention about the enquiry conducted by the two inspectors. It has also been putforth that the explanation was called from the respondent Nos. 4 and 5 as to why and in what circumstances derogatory remarks were made against the answering respondents as it violates the instructions issued by the General Administration Department of the State Government. It has also been pleaded that the answering respondent had never raised any objection for approaching the Commission by the respondent Nos. 4 and 5 directly. It is pleaded that he had never pressurised the complainant to withdraw the complaint. He was never afforded any opportunity of hearing. It is highlighted that investigation conducted

by the investigating team is bad as in view of the regulation framed under the Act the investigation team is required to be headed by Inspector General of Police whereas the investigation was conducted by only two inspectors. It is also putforth that on a perusal of the Annexure P-10 it becomes quite clear that the respondent No. 2 had not been given opportunity to defend himself properly.

A counter affidavit has been filed by the respondent No. 3 contending, inter alia, that the present writ petition is not maintainable being premature. A reference has been made to Section 13 of the Act which deals with the power relating to enquiry. There has also been a reference to Section 14 of the Act which deals with the investigation. A reference has also been made to the regulations to highlight that no proper enquiry was made and, therefore, the said respondent can not be proceeded against by the State Government and the State Government has rightly not accepted the report of the Commission. It has also been putforth that the petitioner commission has sent its own investigating team though the said exercise was not necessary. Various other facts have been brought on record which are on merits and need not be adverted to.

A return has been filed by the respondent No. 4 wherein it has been stated that she along with the respondent No. 5 submitted a complaint to the Commission in which serious allegations were made against the respondent No. 2. The allegations disclose sexual harassment by the respondent Nos. 2 and 3. On the basis of their complaint cognizance was taken by the Commission which conducted the enquiry and on the enquiry it found the allegations absolutely true. A copy of the complaint submitted to the Commission was also sent to the State Government but unfortunately the State Government is not inclined to punish the respondent Nos. 2 and 3. It is further putforth that the recommendation of the Commission is justified in law and as the respondent Nos. 2 and 3 have erred they are to be appropriately dealt with. It is urged that the justification given by the statement made in the impugned communication is without any substance. It is also pleaded that the Act does not empower the State Government to conduct any further enquiry. The denial of opportunity pleaded by the respondent Nos. 2 and 3 has been controverted.

A return has been filed by the respondent No. 5 putting forth that the Commission after due enquiry gave a soothing touch to the injuries to the honour of the respondent Nos. 4 and 5. It is also putforth that the respondent No. 5 has been transferred to BHEL College, Bhopal and she is happy for being away from the respondent No. 3, Dr. Ashok Maini. It is pleaded therein that initially the State Government had taken a decision to proceed against the delinquent officers but later on for some reason or other took a somersault.

A rejoinder affidavit has been filed to the reply filed by the respondent Nos. 2 and 3 wherein it has been asseverated that the respondent Nos. 2 and 3 have submitted that the complaint made by respondent Nos. 4 and 5 were motivated against them because of the adverse C.Rs. against them but the said C.Rs. have been expunged by the State Government because it found that the same was

without any basis. A copy of the order passed by the State Government has been brought on record as Annexure R-I. It has also been put forth that the respondent Nos. 4 and 5 were victimised for filing the complaint and the respondent No. 2 continued the attempt. It is put forth that the Commission had not filed the present petition to get the respondent Nos. 2 and 3 punished but the petition has been filed for protection and promotion of human rights of the respondent Nos. 4 and 5 under the Act. A reference has been made to international covenant on Civil and Political Rights, 1966 and International Covenant on Economic, Social and Cultural Rights, 1991. A reference has also been made to Section 8(2) of the Act. It has been highlighted that the respondent No. 5 could not tolerate and got herself transferred to a different College and the respondent No. 4 is compelled to suffer the onslaught.

An additional return has been filed on behalf of the respondent No. 3 wherein the facts stated in the rejoinder have been disputed and the action taken by the State Government has been justified. Various other facts have been introduced to show how no human right was violated and no action should be taken against him.

An additional return has been filed on behalf of the respondent No. 2 stating that he has been condemned and hurt by the petitioner-Commission. Certain averments have been made in justification of his action. It is also put forth that there has been flagrant violation of the rules which has resulted in sending the recommendation.

I have heard Mr. V.S. Shrotri, Mrs. Sudha Pandit and Miss Anuradha Pandit, learned Counsel for the petitioner and Mr. S.K. Yadav, learned Government Advocate for the State, Mr. Alok Aradhya, learned Counsel for the respondent Nos. 2 and 3 and Mr. R.K. Gupta, learned Counsel for the respondent No. 4 and Mr. N.S. Ruprah, learned Counsel for the respondent No. 5.

The core question that falls for consideration is whether the recommendation of the Commission should have been accepted by the State Government or the State Government should have conducted an enquiry on its own thereby brushing aside the enquiry conducted by the Commission. The State Government has justified its action by taking the stand that the Commission had conducted the enquiry by the persons who are quite low in rank the enquiry though related to the high intellectuals in the sphere of academics. The Commission on the other hand has taken the plea that it has not accepted the enquiry report solely on the basis of the recommendations of the persons who conducted the enquiry but also appreciated the explanation offered by the persons concerned. Mr. V.S. Shrotri, learned Counsel for the petitioner has emphatically put forth that the recommendation of the Commission can not be lightly brushed off as the matter relates to harassment of women in the working sphere and if the women at this level are treated with such undignified manner then the position of the women in other sphere can be well imagined.

Sounding a contra note, the learned Government Advocate as well as the learned Counsel for the respondent Nos. 2 and 3 assailed the manner in which the enquiry had been conducted and put forth that there had been violation of principles of natural justice and when such a violation is apparent the action can not be given the stamp of approval.

In the present day setting role of women can not be marginalised. The United Nations has been taken a pivotal role in the global sphere for women rights. Equality between the man and woman is given immense emphasis. Number of treaties namely, convention of political rights of women, the convention of the nationality of married women, the convention of recovery of maintenance from abroad, the convention of consent marriage, elimination of discrimination against women and declaration of elimination of violence against the women 1993 and such other treaties have come into existence. There has been advance in the area of de jure equality and steps are being taken to achieve de facto equality. Incessant efforts are being made to achieve and accomplish de facto equality. Steps are being taken to involve women in public life. In many countries of the world sanguine steps are being taken to confer the status of equality on women in all spheres to eradicate any kind of inequality. Our ancient tradition has shown respect for women. Some may refer to certain derogatory remarks by some authors but that is really inconsequential. A girl was called in various names namely, "Kanya", "Duhita", "Kananika", "Kanyala" and "Purtik" and among these terms "Duhita" has a very significance connotation as it meant to elevate both the "Kulas" namely, the Kula of the father and Kula of the husband. Women after marriage are referred to as "Jaya", "Jani", "Bharya" and "Patni". Each of these terms has a different spectrum of meaning depending upon the role performed by the wife. The woman, as the scriptures note had composed hymns for the vedas and they were called "Brahmavadinis", The name of Gargi, Matri and Lopamudra are well known as far as vedic literature is concerned. The woman was regarded as "Sahadharmini", "Sahakarmini" and "Ardhangini". The woman was regarded as Pativrata who could by selfless love could enable the man discover his real potential. The marriage was regarded as a sacrosanct act where "Sharirsanskar" took place. The two grand epics, namely, Ramayana and Mahabharat depict role of great women in detail. In the Shashtras it has been said :--

"A woman is the controller of the family. She is brilliant. She regulates others and observes rules herself She is an asset as she supports the family. We depend on her for food, strength, prosperity and happiness."

And again :

"O woman, you are a pioneer resplendence stable, supporting, nourishing and orderly, cherished like the earth, itself. I cherished you in the family for longevity, brilliance, agricultural prosperity and welfare."

If one peruses the Shashtras and the commentaries of the commentators it is

quite vivid that the country had always revered women and paid them homage by putting them in exalting position. The same is perceptible from the commentaries of Yajnavalkya, Vatsyayana and Narada. One may refer to the saying of Mahatma Gandhi, the father of the nation, who had described the woman as "the maker and silent leader of man". He further said that she is the noblest of God's creatures. While dealing with the protection and honour of the woman the father of the nation preached that there has to be a constant teaching of non-violence and in that atmosphere the woman will not regard herself as dependent. Centuries back it has been said that Kulas where women were tortured and had to undergo suffering and those "Kulas" vanish early. A woman has to be regarded a co-traveller and nobody should forget the saying "Yatra Nariyast Pujyante, Ramante Tatra Devatah".

A human right for woman has to be perceived in the collective spectrum. She must be allowed to exercise her rights as a complete human being and to support the development of others. Sexual harassment and physical assault and harassment can not be permitted. Not for nothing Lamar-tine spoke thus "There is a woman at the beginning of all great things". R.S. Benson did not lag behind when he said "there is no limit to the power of a good woman". Keeping in view the aforesaid position the present factual matrix has to be appreciated. The respondent Nos. 4 and 5 have complained about the indecent behaviour and sexual harassment by the respondent Nos. 2 and 3. The Apex Court in the case of Vishakha (supra) has condemned these kind of behaviour. The protection of human rights was brought into existence to provide for better protection of human life and the matter connected there with and incidental therewith. The statement of object and reasons read as under:--

"Statement of objects and reasons :

India is a party to the International Covenant on Civil and Political and the International Covenant on Economic, Social and Cultural Rights, adopted by the General Assembly of the United Nations on the 16th December, 1966. The human rights embodied in the aforesaid Covenants stand substantially protected by the Constitution.

However, there has been growing concern in the country and abroad about issues relating to human rights. Having regard to this, changing social realities and the emerging trends in the nature of crime and violence, Government has been reviewing the existing laws, procedures and system of administration of justice, with a view to bringing about greater accountability and transparency in them, and devising efficient and effective methods of dealing with the situation.

Wide-ranging discussions were held at various forums such as the Chief Ministers' Conference on Human Rights, seminars organised in various parts of the country and meetings with leaders of various political parties. Taking into account the views expressed in these discussions, the present Bill is brought before the Parliament."

Section 12 deals with the function of the Commission. Section 13 provides the power relating to inquiries. Section 14 deals with investigation. Section 16 lays down the hearing of the persons likely to be prejudicially affected. Section 17 deals with inquiry into complaints and Section 18 provides steps after inquiry.

For the present purpose I may profitably reproduce Sections 16 and 17. They read as under :--

"16. Persons likely to be prejudicially affected to be heard :--

If, at any stage of the inquiry, the Commission--

(a) considers it necessary to inquire into the conduct of any person; or

(b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry,

it shall give to the person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence :

Provided that nothing in this section shall apply where the credit of a witness is being impeached."

"17. Inquiry into complaints.-- The Commission while inquiring into the complaints of violations of human rights may--

(i) call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it:

Provided that--

(a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;

(b) if, no receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;

(ii) without prejudice to anything contained in Clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry."

On a reading of the aforesaid sections it is perceptible that the Commission has the authority to initiate an inquiry. In the instant case as has been asseverated, an inquiry has been made. Submission of Mr. Alok Aradhe, learned Counsel appearing for the respondent Nos. 2 and 3 is that they have not been given proper opportunity of hearing before the steps u/s 18 were taken. Section 16 clearly lays down a postulate that if at any stage of inquiry the Commission is of the opinion that reputation of any person is prejudicially affected by the inquiry, it shall give a reasonable opportunity to the persons in inquiry and to produce

evidence in their defence. If Section 16 is read in proper perspective it is plain as day that a person who is going to be prejudicially affected has to be given necessary opportunity to produce evidence. The allegations may be very sanguine, but the principles of natural justice can not be ostracised. The persons who are involved, are academicians and indubitably their reputation is at a stake. They may or may not have behaved in the manner as has been alleged. They might have crossed the verboten territory and have not kept in view the concept of Zeitgeist. They might not have endeavoured to spend time in en rapport and taken care to maintain De Rigueur, whatever the case may be. They can not be allowed to do something which may tantamount to "dolce far niente", delightful idleness. Those days are gone. But, a pregnant one, everyone has to be dealt with in accordance with law. One should not have nolle prosequi but there should not be pro tempore decision. The decision has to be informed with the logic and reasons by following the due procedure. Upon perusal of the documents it is quite clear that the respondent Nos. 2 and 3 were not afforded adequate opportunity as contained u/s 16 of the Act and hence, I think it apposite that the Commission should afford them adequate opportunity for their defence and if they desire, permit them to adduce evidence and thereafter send the recommendation to the State Government. I may hasten to add here that the Commission shall conduct the inquiry by certain senior responsible officer or may conduct the inquiry itself at the place of its sitting and do the needful as is necessitus in law. I may further add that the inquiry conducted so far by the Commission as well as the State stands nullified. The matter shall proceed de novo. I feel obliged to state here that the State Government shall not marginalise the report and conceive the idea that it can always ersatz its own view. The State Government should be guided by the old saying "Vox Populi, Vox Dei".

Accordingly, the writ petition stands disposed of without any order as to costs.