

(2016) 01 GUJ CK 0045

In the Gujarat High Court

Case No : Special Civil Application No. 16752 of 2015.

Patel Rajendrakumar Natavarla

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Citation : (2016) 149 FLR 835 : (2016) 3 LLN 114

Hon'ble Judges : Sonia Gokani, J.

Bench : Single Bench

Advocate : Anvesh V. Vyas, Advocate, for the Appellant; Government Pleader, Amit N. Chaudhary, Advocate and V.H. Desai, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Sonia Gokani, J. (Oral) - Shri Anvesh Vyas, learned counsel appearing for the petitioner, has in support of his submissions relied upon the decision of Apex Court in the case of Vishaka v. State of Rajasthan and others, reported in (1997) 6 SCC 241, which has been followed in a decision of the Apex Court in the case of Medha Kotwal Lele v. Union of India and others, reported in AIR 2013 SC 93 as well as a decision of the Apex Court in the case of Seema Lepcha v. State of Sikkim and others, reported in (2013) 11 SCC 641, to urge that the guidelines and directions issued by the Apex Court in these decisions as well as the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as "the Act") have not been complied with by the respondent-authority in the case of the petitioner. The Apex Court has been categorical in the decision of Medha Kotwal Lele (supra) that the State functionaries, private and public undertakings/institutions shall provide for sufficient mechanism to comply with the directions issued by the Apex Court in the decision of Vishaka (supra). It would be profitable to reproduce relevant paragraphs from the decision in the case of Seema Lepcha (supra), which read as under:

"44. In what we have discussed above, we are of the considered view that

guidelines in Vishaka should not remain symbolic and the following further directions are necessary until legislative enactment on the subject is in place:

44.1 The States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Services Conduct Rules (By whatever name these Rules are called) shall do so within two months from today by providing that the report of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, the disciplinary authority shall treat the report/findings etc. of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. The findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent.

44.2 The States and Union Territories which have not carried out amendments in the Industrial Employment (Standing Orders) Rules shall now carry out amendments on the same lines, as noted above in clause (i) within two months.

44.3 The States and Union Territories shall form adequate number of Complaints Committees so as to ensure that they function at taluka level, district level and State level. Those States and/or Union Territories which have formed only one Committee for the entire State shall now form adequate number of Complaints Committees within two months from today. Each of such Complaints Committees shall be headed by a woman and as far as possible in such Committees an independent member shall be associated.

44.4 The State functionaries and private and public sector undertakings/organisations/bodies/institutions etc. shall put in place sufficient mechanism to ensure full implementation of the Vishaka guidelines and further provide that if the alleged harasser is found guilty, the complainant - victim is not forced to work with/under such harasser and where appropriate and possible the alleged harasser should be transferred. Further provision should be made that harassment and intimidation of witnesses and the complainants shall be met with severe disciplinary action.

44.5 The Bar Council of India shall ensure that all bar associations in the country and persons registered with the State Bar Councils follow the Vishaka guidelines. Similarly, Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and other statutory Institutes shall ensure that the organisations, bodies, associations, institutions and persons registered/affiliated with them follow the guidelines laid down by Vishaka. To achieve this, necessary instructions/circulars shall be issued by all the statutory bodies such as Bar Council of India, Medical Council of India, Council of Architecture, Institute of Company Secretaries within two months from today. On receipt of any complaint of sexual harassment at any of the places referred to above the same shall be dealt with by the statutory bodies in accordance with

the Vishaka guidelines and the guidelines in the present order.

45. We are of the view that if there is any non-compliance or non-adherence to the Vishaka guidelines, orders of this Court following Vishaka and the above directions, it will be open to the aggrieved persons to approach the respective High Courts. The High Court of such State would be in a better position to effectively consider the grievances raised in that regard."

2. Having heard both the sides for a while and having also taken note of the Women Complaints Redressal Committee formed at the level of the District Education Officer, the respondent-State shall place on record by way of an affidavit-inreply to be filed by an officer not below the rank of the Joint Secretary, as to in what manner the decision in the case of Vishaka (supra), which has been followed in a decision of the Apex Court in the case of Medha Kotwal Lele (supra) as well as a decision of the Apex Court in the case of Seema Lepcha (supra), have been complied with.

3. Let the matter appear on January 13, 2016.