

(1999) 04 DEL CK 0017

In the Delhi High Court

Case No : CMs.1805, 2380/99 in CW.1238/99

R.K. Shivdasani

APPELLANT

Vs

Export Inspection Agency (Delhi) and Another

RESPONDENT

Date of Decision : 20-04-1999

Acts Referred:

Citation : (1999) 3 AD 450 : (1999) 79 DLT 640 : (1999) 82 FLR 942

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

**Advocate : Mr. A.K. Sikri, Advocate and Mr. P. Sharma, for the Appellant;
Ms.Pinki Anand, for the Respondent**

Judgement

K. Ramamoorthy, J.—The petitioner has prayed for the following reliefs in the writ petition:-

"In the facts and circumstances explained herein above and in the interest of justice this Hon"ble Court may graciously be pleased to:

(i) issue a writ of certiorari and/or any other appropriate writ, order or direction thereby quashing the orders dated 16.2.99 and 17.2.99 issued by the respondent No.2, whereby the petitioner has been arbitrarily transferred/relieved from Delhi to Indore;

(ii) issue a writ of mandamus and any other appropriate writ, order or direction thereby directing the respondents to allow the petitioner to continue to work at Delhi."

2. In CM.1805/99, the petitioner has prayed for the following reliefs:-

"In the facts and circumstances explained herein above and in the interest of justice this Hon"ble Court may graciously be pleased to:

(i) stay the operation of the impugned orders dated 16.2.99 and 17.2.99 issued by the respondent No.2, whereby the petitioner has been arbitrarily transferred/

relieved from Delhi to Indore during the pendency of the main petition."

3. The first respondent had filed CM.2380/99 for vacating the stay. It is stated that Smt. Bimla Sharma, the complainant, lodged a complaint on 3.2.1999 complaining sexual harassment by the petitioner. A preliminary inquiry was conducted and on the basis of the result of the preliminary inquiry, the petitioner was, by order dated 16.02.1999, was transferred to Indore.

4. Referring to the judgment of the Supreme Court in Vishaka and others Vs. State of Rajasthan and Others, , the first respondent stated that the guidelines in the Judgment of the Supreme Court would apply to this case and, Therefore, the order of transfer had been passed. According to the first respondent the petitioner is not, in any way, prejudiced by the order of transfer. It is asserted in paragraph 11 of the CM.2380/99:

"That this Hon"ble High Court as well as the Hon"ble Supreme Court have held in a catena of Judgments that transfer is an incident of service and this Court would be chary of granting any stay of transfer as the same would be vocative of maintaining discipline in public service."

5. The respondents have also referred to the following judgments:-

1. Gopal Bhagat Vs. Municipal Corporation of Delhi and Others,

2. "N. K. Singh Vs. Union of India & Others", 1994 (5) SLR 153

3. Amitabh Kumar and another Vs. Director of Estates and another, .

6. The English translation of the complaint of Bimla Sharma dated 3.2.1999 reads as under:-

"I beg to submit that on 2/2/99 at 3.30 p.m., I went to Deputy Director Shri R. K. Shivdasani's cabin to make a phone call. Then he said "Bimla, you are looking very beautiful today". Where is your programme to go? I have sufficient currency notes today. You may come to any hotel wherever you like. These type of words he has said so many times. The other obscene words which he uttered, I cannot write. On that time, Sh. N.K .Premi was sitting in his cabin who told him that there are orders of the Supreme Court. You cannot say such words to any lady, but he (R. K. Shivdasani) did not stop any continued to speak too much. At that time, I came out. I will request you to take necessary action in the matter and kindly provide me security."

7. On the 4th of February, 1999, Additional Director, Export Inspection Agency, Delhi, wrote to the Director (Insp. & Q/C), Export Inspection Council, in the following terms:-

"Kindly find enclosed a copy of complaint letter dated 3 February 1999 from Smt. Bimla Sharma, Stenographer Gr.I, Export Inspection Agency-Delhi against Shri R. K. Shivdasani, Deputy Director addressed to you and copy to the undersigned and others. Further, also find enclosed a copy of the letter No.DREIEA/DEL/P/99

dated 3 February, 1999 from Shri R. N. Prasad, President, Delhi Region Export Inspection Employees' Association along with a copy of the aforesaid letter of Smt. Bimla Sharma addressed to the undersigned for your kind perusal.

As the matter is serious and Shri R. K. Shivdasani, Deputy Director is also in-charge of Vigilance Section of EIA-Delhi, it is requested that the matter may be got investigated by the Vigilance Section of Export Inspection Council."

8. On the 3rd of February, 1999, The President, Delhi Region Export Inspection Employees' Association, wrote to the Director (Insp. & Q/C), Export Inspection Council, New Delhi in the following terms:-

"Smt. Bimla Sharma, Steno, Gr.I, EIA-Delhi has sent a letter dated 3.2.1999 addressed to you with copy to Additional Director, EIA-Delhi and to the undersigned on the above issue.

It is unfortunate that a Deputy Director who is looking after Vigilance division of EIA-Delhi has indulged in sexual exploitation of the female employee. Such act of the officer is against all the civilised norms and directive of the Hon'ble Court and Government of India.

You are, Therefore, requested to kindly ensure that the above named officer is immediately posted outside Delhi region or suspended before he uses his influence in official circle to suppress the issue and to harass further the respected said female employee.

You are also requested to initiate Departmental action against him after his suspension/posting outside Delhi region forthwith."

9. How did the President, Delhi Region Export Inspection Employees' Association, come to know about the correctness of the incident, which happened at 3.30 p.m. on the 2nd of February, 1999 in the cabin of the petitioner, is not explained.

10. On the 12th of February, 1999, the President, Delhi Region Export Inspection Employees' Association, wrote to the Joint Secretary, Ministry of Commerce, Government of India, New Delhi, in the following terms:-

"On behalf of the Association, I extend sincere thanks to you for sparing your valuable time on 5.2.1999 to give us a patient hearing regarding the complaint made by Smt. Bimla Sharma, Stenographer, Gr.I, Export Inspection Agency-Delhi in connection with her sexual harassment by Shri R. K. Shivdasani, Deputy Director, Export Inspection Agency-Delhi.

In the above meeting, you have assured that enquiry would be completed within three days and action would be taken against Shri Shivdasani. In this connection, I regret to inform you that till date no such action has been initiated against Shri Shivdasani by the Additional Director Incharge, Export Inspection Agency-Delhi. As a result, staff members, particularly women employees are agitated.

Keeping full faith in you, I trust that immediate action would be taken in this regard by you to extend timely justice to the complainant."

11. A reading of the complaint would itself show that there are inherent infirmities. It is not explained by the complainant as why she went to the cabin of the petitioner at 3.30 p.m. on the 2nd of February, 1999. No details about the facilities available in the office of the first respondent for making phone calls by the employees are given. The name of a person, N. K. Premi, who is stated to be present in the cabin of the petitioner at the time of incident, is also referred to by the complainant. There is no indication whether any affidavit was taken from Mr. N.K. Premi and whether he was examined and what was the reason for the person, N. K. Premi, to be present in the cabin of the petitioner. The complainant would state:

"These type of words he has said so many times."

Nothing is mentioned about the occasions when such statements were made. If that is so, why did not complainant make complaint to the authority concerned.

12. What is significant to be noticed is that on the 27th March, 1996, the petitioner had made a complaint. On the 6th of March, 1996, the petitioner had noted that the complainant, Bimla Sharma, refused to attend the work, and on the note made by the petitioner, on the the 22nd of March, 1996 Smt. Madhu Gulati was asked to take the dictation to be given by the petitioner. On the 27th of March, 1996, the petitioner had made a complaint against the complainant, Bimla Sharma. These things had been referred to by the petitioner in his reply to the CM.2380/99. No doubt the guidelines issued by the Supreme Court in Vishakha's case have to be followed, but before an order of transfer is passed, the employer concerned should be satisfied that there is prima facie case against the employee concerned.

13. The respondents have not filed any counter to the writ petition. Various allegations made in the writ petition remained unanswered. The first respondent has come forward only with the case that the transfer was justified on the strength of the complaint made by Smt. Bimla Sharma. In the light of the facts, I am not able to persuade myself to hold that the first respondent has brought the case within the parameters laid down by the Supreme Court in Vishakha's case. The order of transfer had been issued on extraneous considerations. Therefore, ad interim order passed on the 1st of March, 1999 is made absolute.

14. The CM.1805 stands allowed and the CM.2380/99 stands dismissed.

15. Post the writ petition on the 18th of August, 1999 for final disposal.

16. Respondents shall file the counter to the writ petition within four weeks.

17. The date of 25th May, 1999, already fixed, is cancelled.