

(2012) 02 SC CK 0033

In the Supreme Court Of India

Case No : C.A. No. 1632 of 2012 (Arising from SLP (C) No. 34153 of 2010)

Seema Lepcha

APPELLANT

Vs

State of Sikkim and Others

RESPONDENT

Date of Decision : 03-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Protection of Human Rights Act, 1993 — Section 2

Citation : (2012) 2 SCALE 635

Hon'ble Judges : Sudhansu Jyoti Mukhopadhaya, J;G.S. Singhvi, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Leave granted.

2. The Appellant, who became a victim of sexual harassment but could not succeed in getting the wrongdoer punished filed Writ Petition No. 15 of 2010 under Article 226 of the Constitution for issue of a mandamus to the official Respondents to implement the guidelines framed by this Court in Vishaka and others Vs. State of Rajasthan and Others, . By the impugned order, the Division Bench of the Sikkim High Court disposed of the writ petition by simply relying upon the statement made by the learned Additional Advocate General of Sikkim that the State Government is prepared to bring a proper legislation in terms of the guidelines framed in Vishaka's Case.

3. Notice of the SLP was issued on 21.1.2011. After some adjournments, this Court passed order dated 2.1.2012, which reads as under:

Heard Learned Counsel for the parties.

Learned senior counsel appearing for the State of Sikkim is directed to instruct the concerned officer to file a comprehensive list of all public and private establishments operating within the State. The needful be done within a period of four weeks.

The Chief Secretary. State of Sikkim should file an affidavit and give details of the steps taken by the State Government for implementation of the guidelines framed by this Court in Vishaka and others Vs. State of Rajasthan and Others, as also order dated 26.04.2004 passed in W.P. (CrI.) Nos. 173-177 of 1999 -Medha Kotwal Lele and Ors. v. Union of India and others. The needful be done within a period of four weeks.

List in the first week of February, 2012.

4. In compliance of the afore-mentioned order, Shri Karma Gyasto, Chief Secretary of Sikkim filed affidavit dated 30.1.2012 detailing the steps taken by the State Government for implementation of the guidelines framed in Vishaka's case and the directions contained in the orders passed by this Court in W.P.(CrL) Nos. 173-177 of 1999 Medha Kotwal Lele and Ors. v. Union of India and others. These include the amendment of the Sikkim Government Servants Conduct Rules, 1981 vide Notification dated 4.1.2012 and sending of communications to the private establishments to take steps for constitution of complaint committees etc. Shri J.K. Rai, Joint Secretary, Department of Social Justice, Empowerment and Welfare Department (Women and Child Development Division), Sikkim, has also filed affidavit dated 30.1.2012 along with copies of letters dated 6.9.2010 and 16.9.2010 issued by the Social Justice Empowerment and Welfare Department, copy of letter dated 13.1.2012 issued by the Department of Commerce and Industries and two other documents showing the steps taken for constituting the Complaint Committees.

5. Shri Colin Gonsalves, learned senior counsel for the Petitioner fairly stated that in furtherance of the direction given by the Court on 2.1.2012, the State Government and Ors. have taken steps for implementation of the guidelines framed in Vishaka's case and the directions given in Medha Kotwal's case. He then submitted that the State Government may be directed to give wide publicity to the notifications and orders issued by it.

6. Shri A.K. Ganguly, learned senior counsel appearing for the State of Sikkim submitted that his client is prepared to take all steps necessary for full compliance of the guidelines framed in Vishaka's case and the directions given in Medha Kotwal's case.

7. In Vishaka's case, this Court had issued the following guidelines and norms:

17. The GUIDELINES and NORMS prescribed herein are as under:

HAVING REGARD to the definition of "human rights" in Section 2(d) of the Protection of Human Rights Act, 1993,

TAKING NOTE of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in workplaces and that enactment of such legislation will take considerable time,

It is necessary and expedient for employers in workplaces as well as other

responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:

1. Duty of the employer or other responsible persons in workplaces and other institutions:

It shall be the duty of the employer or other responsible persons in workplaces or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. Definition:

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- (a) physical contact and advances;
- (b) a demand or request for sexual favours;
- (c) sexually-coloured remarks;
- (d) showing pornography;
- (e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

3. Preventive steps:

All employers or persons in charge of workplace whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

- (a) Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in appropriate ways.
- (b) The rules/Regulations of government and public sector bodies relating to conduct and discipline should include rules/Regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
- (c) As regards private employers steps should be taken to include the aforesaid

prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

(d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplaces and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. Criminal proceedings:

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

5. Disciplinary action:

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. Complaint mechanism:

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time-bound treatment of complaints

7. Complaints Committee:

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government Department concerned of the complaints and action taken by them.

The employers and person-in-charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government Department.

8. Workers' initiative:

Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in employer-employee meetings.

9. Awareness:

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

10. Third-party harassment:

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person-in-charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in private sector.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

8. In Medha Kotwal's case, the Court directed that the Complaints Committees shall be deemed to be the Inquiry Authority for the purpose of Central Civil Services (Conduct) Rules, 1964 and that the report of the Complaints Committees will be deemed to be the Inquiry Report under the Rules.

9. Having gone through the affidavits filed by the Chief Secretary of the State and Shri J.K. Rai, we are satisfied that the State Government has taken the steps necessary for implementing the guidelines and norms laid down by this Court in Vishaka's case and the directions given in Medha Kotwal's case. Therefore, the appeal is disposed of with the following directions:

(i) The State Government shall give comprehensive publicity to the notifications and orders issued by it in compliance of the guidelines framed by this Court in Vishaka's case and the directions given in Medha Kotwal's case by getting the same published in the newspapers having maximum circulation in the State after every two months.

(ii) Wide publicity be given every month on Doordarshan Station, Sikkim about various steps taken by the State Government for implementation of the guidelines framed in Vishaka's case and the directions given in Medha Kotwal's case.

(iii) Social Welfare Department and the Legal Service Authority of the State of Sikkim shall also give wide publicity to the notifications and orders issued by the State Government not only for the Government departments of the State and its

agencies/ instrumentalities but also for the private companies.