

(2015) 04 GUJ CK 0116

In the Gujarat High Court

Case No : Special Civil Application No. 5446 of 2015

Shardaben Murlibhai Gurjar

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 16-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal)
Act, 2013 — Section 4

Citation : (2015) 147 FLR 94 : (2015) 2 GLR 1620 : (2015) LabIC 3100 : (2015) LLR 1095 : (2015) 4 RCR(Civil) 433 : (2015) 4 RCR(Criminal) 714

Hon'ble Judges : Sonia Gokani, J

Bench : Single Bench

Advocate : Dipak R. Dave, for the Appellant; Manisha Lavkumar, Govt. Pleader and Niraj Ashar, A.G.P., Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Sonia Gokani, J—Rule. The formal service of notice of Rule is waived by Shri Niraj Ashar, learned Assistant Government Pleader, on behalf of the respondents. The Rule is fixed forthwith on consent. By way of present petition preferred under Art. 226 of the Constitution of India, the petitioner seeks to challenge the alleged illegal act of the respondents in the following factual background:

2.1. The petitioner is a widow appointed on August 8, 2001 by the respondent No. 3 on compassionate ground on the death of her husband, who was serving as a Machine Attendant. The petitioner joined the service as a Hamal/Porter (Class-IV) with the office of the respondent No. 3. It is the say of the petitioner that a Senior Clerk appointed with the respondent No. 3 at M.C.A. Government Technical College, Maninagar, Ahmedabad, used to harass the female staff members working with the respondent No. 3. It is the say of the petitioner that at present she is working with the respondent No. 3 at Ghee Kanta and the said Senior Clerk, who is otherwise working at Maninagar College, frequently visits

the office of the respondent No. 3 at Ghee Kanta and harasses the female staff members. She herself is one of the victims. She had also made various representations to different authorities and dignitaries, but of no avail. It is her say that on account of her voicing the grievance against this person, she has been transferred to M.C.A. Technical College at Maninagar. The persons who support her are also being victimised. It is alleged that the concerned person is a headstrong person and his behavior is much resented by many and yet he is being protected for the reasons best known to those in the administration. The petitioner has mainly prayed for the following relief"s in the present petition:

"(A) This Hon"ble Court may be pleased to issue an appropriate writ, order or direction:

(i) To direct respondents to take immediate action on the representation dated 16-2-2015 of the petitioner and be pleased to direct respondents to provide all legal and constitutional protection to the petitioner including filing of criminal complaint by the office of respondent Nos. 2 and 3 against culprits who may be found responsible in the matter;

(ii) To direct respondents to immediately constitute a Committee as held by the Hon"ble Supreme Court in case of Vishaka and others Vs. State of Rajasthan and Others, AIR 1997 SC 3011 : (1997) 3 Crimes 188 : (1997) 7 JT 384 : (1997) 5 SCALE 453 : (1997) 5 SCALE 451 : (1997) 6 SCC 241 : (1997) 3 SCR 404 Supp : (1997) AIRSCW 3043 : (1997) 7 Supreme 323 for inquiring and investigating into the complaint of sexual harassment;

(iii) To direct respondents to immediately inquire into the representation dated 16-2-2015 of the petitioner and submit action report on the said complaint before this Hon"ble Court;"

2. On the earlier occasion, Shri Niraj Ashar, learned Assistant Government Pleader, had sought for time to file affidavit-in-reply in the matter, on waiving the service of formal notice on behalf of the respondents. When this matter came up for admission hearing on April 6, 2015, this Court passed the following order:

"1. Shri Niraj Ashar, learned Assistant Government Pleader, seeks time to place on record the affidavit-in-reply.

2. The respondents shall also place on record before this Court (i) the directions of the State Government pursuant to the statutory requirement of constituting the Internal Complaint Committee under Sec. 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, as also (ii) the constitution of the Committee for the Government Technical High School, Ghee Kanta, Ahmedabad, and (iii) the preliminary report, if any, made by such Committee subsequent to the request made by the petitioner herein.

Let the matter appear on April 13, 2015. To be listed on the top of the Board."

3. An affidavit-in-reply has been filed today by the Joint Director of the Technical

Education inter alia contending therein that the office of the respondent by virtue of decision of the Apex Court in the case of Vishaka and others Vs. State of Rajasthan and Others, AIR 1997 SC 3011 : (1997) 3 Crimes 188 : (1997) 7 JT 384 : (1997) 5 SCALE 453 : (1997) 5 SCALE 451 : (1997) 6 SCC 241 : (1997) 3 SCR 404 Supp : (1997) AIRSCW 3043 : (1997) 7 Supreme 323 , had issued a Circular dated February 15, 2010, to constitute a Committee for prevention and redressal of those complaints made by the women against the sexual harassment at the workplace. It is his say that the office of the respondent No. 3 had already communicated the constitution of such Committee and after coming into force of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as "the Act"), a circular was issued on March 11, 2014, which directed all the offices falling under the respondent No. 2 to form the Committee under Sec. 4 of the said Act. It is further urged that the issue has been taken up with utmost sincerity and seriously. It is their say that first time the grievance was raised by the petitioner on January 12, 2015, when the petitioner was transferred from the respondent No. 3-School to M.C.A. Technical College at Maninagar. The Senior Clerk against whom the complaint is made, had been transferred to the respondent No. 3-School on June 5, 2002, and thereafter, came to be transferred to the M.C.A. College, Maninagar, Ahmedabad, on December 16, 2013. The respondent No. 3 had already been directed to inquire into the matter and submit his report within a period of three days. A report was already submitted recording the statement of two lady employees and one male employee working in the office of the respondent No. 3. Two lady employees have chosen not to support the version of the petitioner about the harassment by the Senior Clerk. The responsible officer from the Government Polytechnic, Gandhinagar, was also assigned the task of inquiring into the matter and to submit his report within a fortnight.

4. A fortiori, Shri Dipak Dave, learned Counsel appearing for the petitioner, urged that in clear violation of the guidelines issued at the relevant point of time by the Apex Court in the decision in the case of Vishaka and others Vs. State of Rajasthan and Others, AIR 1997 SC 3011 : (1997) 3 Crimes 188 : (1997) 7 JT 384 : (1997) 5 SCALE 453 : (1997) 5 SCALE 451 : (1997) 6 SCC 241 : (1997) 3 SCR 404 Supp : (1997) AIRSCW 3043 : (1997) 7 Supreme 323 , the Committee was constituted by the respondent No. 3 subsequent to the statutory Act in the year 2013. He has urged that it is not necessary that other employees may support the cause of the petitioner. The Committee, which is formed, is in no manner empowered to decide the grievances of the petitioner. The petitioner, however, has no difficulty if, as stated by the learned Government Pleader, the Committee is formed in strict compliance of the provisions of the said Act and if such Committee considers the grievances of the petitioner with all its seriousness. He has urged that the person against whom the complaint is made, has acted very high-handedly all throughout and nobody dares to point the finger at him.

5. Ms. Manisha Lavkumar, learned Government Pleader appearing with Shri Niraj

Ashar, learned Assistant Government Pleader for the respondents, has made a statement at Bar to ensure that the circular issued by the respondent No. 2 pursuant to the said Act on March 11, 2014, is duly complied with. She has further submitted that it will also be ensured that the Committee is constituted within a period of 10 days from the date of receipt of a copy of this order, which shall with all seriousness and sincerity look into the complaint of the petitioner. She also further made a request to direct the petitioner to co-operate.

6. Upon thus hearing both the sides and also having considered the material on record, it could be noticed that the Act aims at redressing the violation of women's right to equality, life and liberty. Sexual harassment creates an insecure and hostile work environment, which discourages women's participation in work, thereby adversely affecting their social and economic empowerment and the goal of inclusive growth. Noticing Article 11 of the Convention on Elimination of All Forms of Discrimination (C.E.D.A.W.), to which India is a party, requires State parties to take all appropriate measures to eliminate discrimination against women in the field of employment. In its General Recommendation No. 19 (1992), the United Nations Committee on C.E.D.A.W. further clarified that equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment at the workplace. Statement of object and reasons of said Act speaks unequivocally of India's commitment to protection and promotion of women's Constitutional rights as well as respect for its obligations under various international treaties. These laudable objects have been enshrined in the decision of the Apex Court rendered in the case of Vishaka and others Vs. State of Rajasthan and Others, AIR 1997 SC 3011 : (1997) 3 Crimes 188 : (1997) 7 JT 384 : (1997) 5 SCALE 453 : (1997) 5 SCALE 451 : (1997) 6 SCC 241 : (1997) 3 SCR 404 Supp : (1997) AIRSCW 3043 : (1997) 7 Supreme 323 , wherein the Court not only reaffirmed that sexual harassment is a form of discrimination against women and violates the Constitutional right to equality; and provided detailed guidelines to redress the said issue pending the enactment of a suitable legislation. Those guidelines were to be accepted as law, which is rarely being done by the Apex Court. Considering the extraordinary urgency, the Apex Court did not wait for the legislature to accomplish the task for providing a full-fledged legislation on this vital issue and instead those guidelines of the Apex Court for number of years continued to hold the field.

7. In the year 2013, a comprehensive legislation has come into being, where Sec. 4 of the Act mandates constitution of Internal Complaints Committee by every employer at a workplace and such Committee is to be known as the Internal Complaints Committee. The constitution of such Committee is detailed, where a Presiding Officer shall be a woman employed at a Senior Level at workplace from amongst the employees. In the event of the Senior Level woman employee not being available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace. Even in case the other offices or administrative units of the workplace do not have a Senior Level woman employee, the Presiding Officer shall be nominated from any other

workplace of the same employer or other department or organisation. Two members from amongst the employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge, are to be a part of such Committee. One member from amongst non-Governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, is to be nominated. At least, one-half of the total members so nominated are required to be women. Three years' life is expected by the statute of such Committee from the date of its nomination. The detailed guidelines also have been provided as to in which manner the Committee is required to conduct under the provisions of Sec. 4 of the Act.

8. In the present case, as could be noticed from the affidavit-in-reply and the submissions made by the learned Government Pleader, pursuant to the decision of the Apex Court in the case of Vishaka and others Vs. State of Rajasthan and Others, AIR 1997 SC 3011 : (1997) 3 Crimes 188 : (1997) 7 JT 384 : (1997) 5 SCALE 453 : (1997) 5 SCALE 451 : (1997) 6 SCC 241 : (1997) 3 SCR 404 Supp : (1997) AIRSCW 3043 : (1997) 7 Supreme 323 , the office of the respondent No. 2 directed every office working under him vide communication dated February 15, 2010, to constitute a Committee for protection of women from sexual harassment. It appears that the office of the respondent No. 3 also vide its communication dated April 13, 2010, communicated the constitution of such Committee. It also further appears that after the said Act was enacted, a circular was once again issued by the respondent No. 2 on March 11, 2014, directing all the offices to form a Committee as contemplated under Sec. 4 of the Act. The respondent No. 3 also has ingeminated its obligation and commitment to take up all issues of sexual harassment to women at workplace with requisite concern. It has, however, defended the action of the respondent No. 3 by saying that earlier in the Committee constituted of three members, two members were women and the report of such Committee formulated specifically for the said purpose does not favour the petitioner. It is specifically stated that the person against whom such complaint has been made does not work at the respondent No. 3-School. He, in fact, has been transferred to M.C.A. Technical College, Maninagar, Ahmedabad, since December 16, 2013. Another line of defence raised by the respondents in this affidavit-in-reply is of such complaint having been made at the time of transfer of the petitioner from the respondent No. 3-School. It is, however, denied that the Senior Clerk against whom such complaint is made is allowed to have been made powerful on account of some protection accorded to him by the authority.

Be that as it may, the very constitution of the Committee being defective, the need arose for this Court to interfere. The purpose for having a Senior Level woman officer to head the Committee also has a specific purpose to serve. The other members otherwise should not come in the awe of the Presiding Officer who would obviously be a senior. The Committee originally constituted thus served no purpose. Although, the State machinery timely directed all offices

under it to constitute the Internal Committee, but what was required, was to get the feed-back and periodical verification/checking as to whether the said direction had been implemented in accordance with the provisions of law. On behalf of the respondents, as the learned Government Pleader has responded in consonance with the spirit of the object of the law, and hence, further adjudication would not be warranted.

For the foregoing reasons, the present petition succeeds and the same is, accordingly, partly allowed. As the learned Government Pleader has ensured reconstitution of the Committee by the respondent No. 3 in strict compliance of the Act, scrapping the earlier Committee which does not fulfill the requirements provided under Sec. 4 of the Act, all actions taken by the earlier Committee shall need to be disregarded. The report given by such Committee, which is not authorised or even if authorised, its constitution is contrary to the statutory provision, also need not be looked into and the same is, accordingly, set aside.

8.1. The respondent No. 2 shall ensure formulation of the Committee by the respondent No. 3 in accordance with the provisions of law. Once, such Committee is constituted in strict compliance of the provisions of the Act, the Committee shall undertake the task of examining the complaint made by the petitioner with regard to the sexual harassment at the workplace at the end of the Senior Clerk named in the petition by following the internal mechanism as provided under the rules/regulations, as also keeping broadly in mind the provisions of the said Act. It shall complete such inquiry within a period of four months from the date of receipt of a copy of this order. The report of such Committee shall also be made available to the petitioner for her to take any other and/or further steps, if she so desires.

8.2. As a parting note, the statement made by the learned Government Pleader requires a reference where she has ensured that a communication shall be addressed to the respondent No. 2 for having a re-look at the actions of all those offices under his administration to verify as to whether the Committees so constituted pursuant to the direction issued on March 11, 2014, are in accordance with the provisions of the Act, and if not, the constitution of such Committee shall be directed as early as possible, preferably within a period of three months from the date of receipt of a copy of this order.

A copy of this order be given to the learned Government Pleader for follow-up action.

Rule is made absolute accordingly.