

(2008) 07 PAT CK 0039
In the Patna High Court
Case No : CWJC No. 14051 of 2006

Shruti Singh Advocate

APPELLANT

Vs

Press Council of India and Others

RESPONDENT

Date of Decision : 30-07-2008

Acts Referred:

Protection of Women From Domestic Violence Act, 2005 — Section 10, 11, 20, 8, 9

Citation : (2008) 3 PLJR 683 : (2009) 5 RCR(Civil) 395 : (2009) 5 RCR(Criminal) 65

Hon'ble Judges : R.M. Lodha, C.J.; Kishore K. Mandal, J

Bench : Division Bench

Advocate : Bhupendra Kumar, Ebrahim Kabir and Mrs. Shruti Singh, for the Appellant; Sanjay Kumar for the Union of India, M/s P.K. Verma, S.R. Sharan for the State of Bihar and Mr. Vishwa Mohan Kumar Sinha, for the Respondent

Judgement

1. The issues raised in the writ petition relate to non-implementation of the provisions of the Protection of Women from Domestic Violence Act, 2005 (for short, "Act of 2005") in the State of Bihar. To be specific, the petitioner has raised grievance That steps in giving publicity to the provisions of the Act of 2005 have not been taken by the Central-Government and the State Government? it is alleged that the Central Government and the State Government have failed to discharge their duties provided in Section 11 of the Act of 2005. The petitioner has also raised grievance that in the entire Slate of Bihar, there is not a single shelter home notified for the purposes of this Act; no service providers, nor full time Protection Officers have been appointed. There are counter affidavits by the opposite parties. Insofar as Central Government is concerned, counter affidavit has been filed by Under Secretary, Ministry of Women and Child Development, wherein he has stated that the copies of the Act of 2005 have been circulated to all the State Governments to implement the Act of 2005. The proforma listing out certain essential indicators relating to implementation of the Act has also been sent to all the State Governments and they have been asked to supply the information as per proforma on a quarterly basis to enable the Ministry to assess

the actual status of implementation of the Act of 2005. The Deputy Secretary has further stated that as per the information supplied by the Government of Bihar, the Child Development Project Officers have been given the additional charge of Protection Officers as a temporary measure until regular Protection Officers are appointed.

2. On behalf of the State Government and its functionaries, it is stated that the provisions of the Act had been sent to the Information and Public Relations Department for advertising in all the leading newspaper in the State vide letter no. 10/Sanstha/22/2006-1194 dated 19.7.2007. In the new comprehensive scheme on women development and empowerment titled "Nari Shakti", a number of components for the rehabilitation of the victims and mass level awareness programme have been planned. In the near future all the thirty-eight districts shall be equipped with helpline services and short stay homes for the victims of domestic violence. Additionally, "Samajik Punervas Kosh has been created to provide support to those victims of violence whose rehabilitation requirements are not met by other schemes. An amount of Rs. 5,69,32,000/- (Rupees five crore, sixty nine lakhs thirty two thousand only) has been sanctioned to provide rehabilitation services to the victims of violence and exploitation, including domestic violence and to raise awareness with regard to the Act. The capacity building programme for all the Protection Officers is planned to be organized in near future.

3. The enactment of Protection of Women from Domestic Violence Act, 2005 is virtually a legislative effort to have a law incorporating the framework of the Vienna Accord of 1994 and the Beijing declaration and the platform for Action (1995). That the domestic violence is a human rights issue is beyond doubt. The Act intends to provide for an effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family. It is a major social welfare legislation for the women.

4. The role of Protection Officers and the Service Providers is of immense importance in the scheme of this legislation. The duty has been cast upon the State Government to appoint such number of Officers in each district as it may consider necessary. The Act provides that Protection Officers shall as far as possible be women and possess such qualifications and experience as may be laid down by the Central Government by rules. Sections 8 and 9 of the Act of 2005 which provide for appointment of Protection Officers and their duties and functions may be reproduced by us as it is:-

"8. Appointment of Protection Officers.-(1) The State Government shall, by notification, appoint such number of Protection Officers in each district as it may consider necessary and shall also notify the area or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under this Act.

(2) The Protection Officers shall as far as possible be women and shall possess

such qualifications and experience as may be prescribed.

(3) The terms and conditions of service of the Protection Officer and the other Officers subordinate to him shall be such as may be prescribed.

9. Duties and functions of Protection Officers.- (1) It shall be the duty of the Protection Officer-

(a) to assist the Magistrate in the discharge of his functions under this Act;

(b) to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;

(c) to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;

(d) to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;

(e) to maintain a list of all service providers providing legal aid or counseling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;

(f) to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;

(g) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;

(h) to ensure that the order for monetary relief u/s 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);

(i) to perform such other duties as may be prescribed.

(2) The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under, this Act."

5. The Protection Officers, inter-alia, are required to assist the Magistrate in discharge of his functions under the Act and to make a domestic incident report to the Magistrate. They have duty to get the aggrieved person medically

examined, if bodily injuries have been suffered by the victims and put them in a safe shelter home if the aggrieved person so requires. The appointment of Protection Officers is, surely, not an empty formality. A State which has third largest population in the country exceeding eighty million of people and of which women population is not less than thirty eight million, needs effective implementation of the Act of 2005. The appointment of Child Development Project Officer having been given the additional charge of Protection Officer as a temporary measure is an eye wash and can hardly be countenanced. By such casual approach to an important legislative measure like this, the State Government cannot be said to have done justice to women population exceeding thirty eight million in the State, The Act of 2005 came into force with effect from 26th of October, 2006. If during the period of twenty one months, the State Government could not appoint the Protection Officers in its true spirit, something is really lacking in the effective implementation of the Act.

6. The role of Service Providers under the Act, 2005 is no less. A service provider has the power to record the domestic incident report; ensure that the aggrieved person is medically examined and that the victim woman is provided shelter in a shelter home.

7. Section 10 of the Act of 2005 provides for registration of voluntary association registered under the Societies Act, 1860 or a company registered under the Companies Act, 1956 having objective of protecting the rights and interest of the women to register itself with the State Government as service provider. In none of the affidavits, anything has been said about registration of service providers.

8. Availability of shelter homes for an effective implementation of the Act is a must and without that the aggrieved persons may continue to suffer domestic violence; protecting the women from such violence is the main objective.

9. The wide publicity to the provisions of the Act by the Central Government as well as the State Government have to be given. That there has to be sensitization and awareness training on the issues addressed by the Act of 2005 needs no emphasis as without that the objective sought to be achieved by the Act may not be achieved.

10. It is true that the State Government has referred to a few schemes with regard to women development and empowerment and also budget sanction for rehabilitation services to the victim of violence. But such schemes may not have any meaning unless the benefits percolate down the needy victim of domestic violence.

11. We need not remind the State Government that talk of women development and empowerment may remain hollow unless there is sincere implementation of Act, 2005.

12. Taking all these aspects into consideration and that the Act, 2005 has to be effectively implemented for protection of the rights of women in the State of

Bihar, we are satisfied that following order will meet the ends of justice:-

(i) The State Government shall ensure that for the time being at least one Protection Officer is appointed in each district as early as possible and in no case later than 30th of November, 2008. Looking to the incidents of domestic violence, if there is need of more than one Protection Officer in each district, the State Government shall appoint such number of Protection Officer in each district as it may consider necessary and also notify the area or areas within which the Protection Officers shall exercise the powers and perform the duties conferred upon them under the Act.

(ii) The State Government shall notify at least one shelter home for the purposes of the Act of 2005 in each district. While making available shelter home, the State Government shall ensure that such shelter home is safe for the women. If possible, the provision of adequate medical facilities be also provided at such shelter homes. This exercise shall be completed by the State Government positively by 30th of November, 2008.

(iii) The State Government shall create an environment or provide incentives that may lead non-governmental organizations, voluntary associations and the company registered under the Companies Act having an objective of protecting the rights and interest of the women to register them as service providers.

(iv) The State Government shall organise periodic sensitization and awareness training to the police officers and the members of the judicial services. Such sensitization and awareness training shall be held at least once in a year.

(v) The State Government shall ensure effective co-ordination between the ministries and the departments dealing with law, home affairs including law and order, health and human resources to address issues of domestic violence and shall further ensure that periodical review of the matter is conducted.

The writ petition is disposed of accordingly.