
(2008) 08 KL CK 0002

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 25754 of 2008

Uthuppan, P.P.

APPELLANT

Vs

K.S. Girija and Others

RESPONDENT

Date of Decision : 27-08-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 19
Protection of Human Rights Act, 1993 — Section 2

Citation : (2008) 3 KLJ 416 : (2008) 4 KLT 189

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : P.V. Baby and R. Kiran, for the Appellant; Anu Sivaraman, Sr. Government Pleader, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—Petitioner is the President of a Co-operative Society. The first Respondent, an employee of that Society filed a complaint before the fourth Respondent Kerala Women's Commission, hereinafter referred to as the "Commission", constituted under the provisions of the Kerala Women's Commission Act, 1990 (Act 17 of 1995), which provides for the constitution of a Commission for the purposes of that statute and with such powers, duties and responsibilities as are enjoined therein. The Commission, through its member, heard the first Respondent and the Petitioner regarding the complaint and drew up a report to the effect that after her initial appointment, the first Respondent was promoted as an Accountant. However, the Commission opined that, in appointing the Secretary, the claim of the first Respondent was overlooked and that there was intention to harass the first Respondent. This was on the basis of the allegation of the first Respondent that the Petitioner had made unwelcome sexual advances, which the first Respondent resisted. The Commission also stated that the proper thing is to expeditiously constitute independent Grievances Redressal Cell according to Supreme Court guidelines. That report is under challenge.

2. The report, Ext P-6, is one drawn up by the Commission in the course of its proceedings under the statute. That has been forwarded to the Registrar of Co-operative Societies, the third Respondent. Entitlement to a promotion would depend upon the approved feeder category rules, if any; the relevant statutory provisions in the Kerala Co-operative Societies Act, 1969, hereinafter referred to as the "Act" and the Kerala Co-operative Societies Rules, 1969, hereinafter referred to as the "Rules". An unqualified person cannot claim a promotion. In the case in hand, the matter having already reached the third Respondent Registrar, it is appropriate that the third Respondent looks into the grievance of the first Respondent as to whether she has been denied the due opportunity of promotion. This shall be done by the force of this judgment, notwithstanding anything contained in Section 69 of the Act, having regard to the very peculiar facts and circumstances and because Ext. P-6 report has already been forwarded by the Commission to the third Respondent. The findings in the report Ext. P-6, having regard to the nature of the provisions of the Kerala Women's Commission Act, would take its course only in accordance thereof and shall not be used for any purpose for which it is not relevant.

3. However, the Commission has rightly directed the constitution of an Independent Grievances Redressal Cell according to Supreme Court guidelines. The reference made by the Commission is obviously to the decision of the Apex Court in Vishaka and others Vs. State of Rajasthan and Others, wherein the Apex Court noticed that incidents of sexual harassment in work places result in violation of fundamental right "Gender Equality" and the "Right to Life and Liberty". It is a clear violation of right under Articles 14, 15 and 16 of the Constitution. It is also the logical consequences of such incidents, that the fundamental right under Article 19(1)(g) "to practice any profession or to carry out any occupation, trade or business" is always violated. The Apex Court searched the existing law only to find that there was total absence of legislative measures to safeguard women against sexual harassment at work places. It was found that it was absolutely essential to find an effective alternate mechanism to fulfil the felt and urgent social need to provide suitable methods for the true concept of gender equality and to prevent sexual harassment of working women in all work places. It was found necessary that in the absence of legislative measures, it was absolutely necessary to have such guidelines in place, issued through judicial process, to fill the vacuum in existing legislation. Accordingly, guidelines were issued by the Apex Court clearly laying down that those directions are enforceable in law until suitable legislation is enacted to occupy the field and that the guidelines and norms issued thereby have to be observed in all work places for the preservation and enforcement of the right to gender equality of working women. That judgment was delivered by the Apex Court on 13-8-1997. More than 11 years have gone through. There is no legislation either by the Union or the State of Kerala. This should be a matter of national pain when we, the Indians, speak vociferously about gender equality, woman empowerment and reservation for women in all sectors.

4. Work place for the purpose of the guidelines in Vishaka's case (supra) is not confined to Government establishments, public sector organizations or industrial establishments. It extends to all work places, including private. The quality of womanhood does not change by the place where she works, be it public or private.

5. The rights sought to be protected by the issuance of guidelines in Vishaka's case (supra) have been essentially enunciated as referable to human rights to be protected and human rights as defined in Section 2(d) of the Protection of Human Rights Act, 1993. Those guidelines were issued taking note of the fact that the existing civil and penal laws do not adequately provide for specific protection for women in work places and that it is necessary and expedient for employers in work places as well as other responsible persons or institutions to pre-observe certain guidelines to ensure the prevention of sexual harassment of women. Under the aforesaid circumstances, the guidelines enumerated in Vishaka's case (supra) including the requirement to have a Complaint Mechanism, Disciplinary Action, Criminal Proceedings, Preventive Steps, Complaints Committee, Workers' Initiative, Awareness and provisions against Third Party Harassment etc. apply in their full force to all work places, be it co-operative societies or private establishments and for applying those guidelines, sexual harassment is defined among those guidelines themselves.

For the aforesaid reasons, the guidelines in Vishaka's case (supra) are to be followed and the directions therein apply to all Co-operative Societies in the State of Kerala and all private establishments. It is so declared. The guidelines and directions in Vishaka's case (supra) are to be complied with by the Petitioner, a Co-operative Society. The Petitioner shall carry out the obligations under this judgment and form the Complaints Committee and Complaint Mechanism within an outer limit of one month from now. Any guideline by the Government in the form of Government Orders or by the Registrar in the form of circulars touching the above subject shall also be duly applied to the extent they are not contrary to the directions in Vishaka's case (supra). It is also directed that any woman member available as the member of the committee of Petitioner Co-operative Society shall also be a member of any such committee. It is further directed that the Registrar of Co-operative Societies shall issue appropriate circular containing general directions in terms of what is stated above and incorporating the guidelines and norms prescribed by the Honourable Supreme Court of India in Vishaka's case (supra), which are appended to this judgment for guidance:

Extract of the guidelines issued by the Hon"ble Supreme Court in Vishaka and others Vs. State of Rajasthan and Others,

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 work places and that enactment of such legislation will take considerable time.

It is necessary and expedient for employers in work places 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 work places and other institutions:

It shall be the duty of the employer or other responsible persons in work places 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 work place 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 work place 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 work places and no employee woman 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 member 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 this Protection of Human Rights Act, 1993.

Accordingly, we direct that the above guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field.