

Supreme Court of India

Medha Kotwal Lele & Ors vs U.O.I. & Ors on 19 October, 2012

Author: R Lodha

Bench: R.M. Lodha, Anil R. Dave, Ranjan Gogoi

REPORTABLE

IN THE SUPREME COURT OF INDIA
ORIGINAL/APPELLATE JURISDICTION
WRIT PETITION (CRIMINAL) NOS. 173-177 OF 1999

Medha Kotwal Lele and Others

Petitioners

Vs.

Union of India and Others

Respondents

WITH
T.C. (C) NO. 21 OF 2001
CIVIL APPEAL NO. 5009 OF 2006
CIVIL APPEAL NO. 5010 OF 2006

JUDGMENT

R.M. LODHA, J.

The Vishaka[1] judgment came on 13.8.1997. Yet, 15 years after the guidelines were laid down by this Court for the prevention and redressal of sexual harassment and their due compliance under Article 141 of the Constitution of India until such time appropriate legislation was enacted by the Parliament, many women still struggle to have their most basic rights protected at workplaces. The statutory law is not in place. The Protection of Women Against Sexual Harassment at Work Place Bill, 2010 is still pending in Parliament though Lok Sabha is said to have passed that Bill in the first week of September, 2012. The belief of the Constitution framers in fairness and justice for women is yet to be fully achieved at the workplaces in the country.

2. This group of four matters in the nature of public interest litigation raises principally the grievance that women continue to be victims of sexual harassment at workplaces. The guidelines in Vishaka¹ are followed in breach in substance and spirit by state functionaries and all other concerned. The women workers are subjected to harassment through legal and extra legal methods and they are made to suffer insult and indignity.

3. Beijing Declaration and Platform for Action, inter alia, states, Violence against women both violates and impairs or nullifies the enjoyment by women of human rights and fundamental freedoms. In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture.

4. Vishaka guidelines require the employers at workplaces as well as other responsible persons or institutions to observe them and ensure the prevention of sexual harassment to women. These guidelines read as under :

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.

5. In these matters while highlighting few individual cases of sexual harassment at the workplaces, the main focus is on the lack of effective implementation of Vishaka guidelines. It is stated that the attitude of neglect in establishing effective and comprehensive mechanism in letter and spirit of the Vishaka guidelines by the States as well as the employers in private and public sector has defeated the very objective and purpose of the guidelines.

6. In one of these matters, Medha Kotwal Lele, this Court has passed certain orders from time to time. Notices were issued to all the State Governments. The States have filed their responses. On 26.4.2004, after hearing the learned Attorney General and learned counsel for the States, this Court directed as follows :

Complaints Committee as envisaged by the Supreme Court in its judgment in Vishakas case will be deemed to be an inquiry authority for the purposes of Central Civil Services (Conduct) Rules, 1964 (hereinafter called CCS Rules) and the report of the complaints Committee shall be deemed to be an inquiry report under the CCS Rules. Thereafter the disciplinary authority will act on the report in accordance with the rules. This Court further directed in the order dated 26.4.2004 that similar amendment shall be carried out in the Industrial Employment (Standing Orders) Rules. As regards educational institutions and other establishments, the Court observed that further directions would be issued subsequently.

7. On 17.1.2006, this Court in couple of these matters passed the following order:

These matters relate to the complaints of sexual harassment in working places. In Vishaka vs. State of Rajasthan, (1997) 6SCC 241, this Court issued certain directions as to how to deal with the problem. All the States were parties to that proceedings. Now, it appears that the directions issued in Vishaka case were not properly implemented by the various States/Departments/Institutions. In a rejoinder affidavit filed on behalf of the petitioners, the details have been furnished. The counsel appearing for the States submit that they would do the needful at the earliest.

It is not known whether the Committees as suggested in Vishaka case have been constituted in all the Departments/Institutions having members of the staff 50 and above and in most of the District level offices in all the States members of the staff working in some offices would be more than 50. It is not known whether the Committees as envisaged in the Vishaka case have been constituted in all these offices. The number of complaints received and the steps taken in these complaints are also not available. We find it necessary to give some more directions in this regard.

We find that in order to co-ordinate the steps taken in this regard, there should be a State level officer, i.e., either the Secretary of the Woman and Child Welfare Department or any other suitable officer who is in charge and concerned with the welfare of women and children in each State. The Chief Secretaries of each State shall see that an officer is appointed as a nodal agent to collect the details and to give suitable directions whenever necessary.

As regards factories, shops and commercial establishments are concerned, the directions are not fully complied with. The Labour Commissioner of each State shall take steps in that direction. They shall work as nodal agency as regards shops,

factories, shops and commercial establishments are concerned. They shall also collect the details regarding the complaints and also see that the required Committee is established in such institutions.

Counsel appearing for each State shall furnish the details as to what steps have been taken in pursuance of this direction within a period of eight weeks. Details may be furnished as shown in the format furnished by the petitioners in the paperbooks. A copy of this format shall form part of the order. The above facts are required at the next date of hearing. A copy of this order be sent to the Chief Secretary and Chief Labour Commissioner of each State for taking suitable action.

8. From the affidavits filed by the State Governments the following position emerges in respect of each of these States: GOA The amendments in the Civil Services Conduct Rules and the Standing Orders have not been made so far.

GUJARAT No amendments in the Civil Services Conduct Rules and the Standing Orders have been made so far. It is not stated that all Complaints Committees are headed by women. There is no information given whether in such committees NGO members have been associated. NCT OF DELHI The amendments in the Civil Services Conduct Rules have been made. The position about amendments in the Standing Orders has not been clarified. It has not been specified that all Complaints Committees are headed by women.

HIMACHAL PRADESH There is nothing to indicate that the State of Himachal Pradesh has made amendments in the Civil Services Conduct Rules and the Standing Orders. No details of formation of Complaints Committees have been given.

HARYANA The amendments in the Government Employees (Conduct) Rules, 1966 have been made. However, it is not specified that the amendments in Standing Orders have been made.

MAHARASHTRA Necessary amendments in Maharashtra Civil Services (Conduct) Rules, 1974 have been made. The Labour Commissioner has taken steps for amending Mumbai Industrial Employment (Permanent Orders) Rules, 1959. MIZORAM The State of Mizoram has amended Civil Services Conduct Rules and also constituted Central Complaints Committee to look into complaints pertaining to cases of sexual harassment of working women at all workplaces for preservation and enforcement. A notification has been issued giving necessary directions to all private bodies.

SIKKIM The amendments in the Civil Services Conduct Rules have been carried out and a notification has been issued for constitution of complaints committees by departments/institutions with 50 or above staff to look into sexual harassment of women at workplaces.

UTTARANCHAL The State of Uttaranchal has carried out amendments in Civil Services Conduct Rules as well as the Standing Orders. The District Level and State Level Complaints Committees have been constituted. WEST BENGAL The amendments in the Rules relating to duties, rights and obligations of government employees have been made. The amendments in the Standing Orders

have been carried out. Out of 56 departments of Government of West Bengal, Complaints Committees have been formed in 48 departments and out of 156 Directorates under the Government, Complaints Committees have been formed in 34 Directorates. Of 24 institutions under the Government, Complaints Committees have been formed in 6. MADHYA PRADESH Although State of Madhya Pradesh has made amendments in the Civil Services Conduct Rules but no amendments have been made in the Standing Orders. The Complaints Committees have been constituted in every office of every department right from the Head of the Department level to the District and Taluka level. The District Level Committees have been constituted under the chairmanship of the District Collector. The steps taken by the District Committees are monitored by the nodal departments. PUNJAB The State of Punjab has carried out amendments in the Civil Services Conduct Rules as well as the Standing Orders. 70 Complaints Committees have been constituted at the headquarters of different Directorates and 58 Complaints Committees have been constituted in various Field Offices. ORISSA No amendments in the Civil Services Conduct Rules and the Standing Orders have been made.

ANDHRA PRADESH Amendments in the Civil Services Conduct Rules and in the Standing Orders have been made.

KARNATAKA The amendments in the Civil Services Conduct Rules have been made by the State of Karnataka but no amendments have been made in the Standing Orders. It is stated that in most of the committees, the number of women members is above 50%. The Chairpersons are women and in most of the committees, an outside member, i.e., an NGO has been associated. RAJASTHAN The State of Rajasthan has carried out amendments in the Civil Services Conduct Rules but no amendments have been carried out in the Standing Orders.

BIHAR The State of Bihar has made amendments in the Civil Services Conduct Rules but there is nothing to show that amendments in Standing Orders have been made. However, only one Complaints Committee has been constituted for the entire State.

MEGHALAYA The State of Meghalaya has neither carried out amendments in the Civil Services Conduct Rules nor in the Standing Orders. TRIPURA The State of Tripura has carried out the amendments in the Civil Services Conduct Rules. There are no Standing Orders applicable in the State. 97 Complaints Committees have been constituted in most of the state government departments and organisations.

ASSAM Amendments in the Civil Services Conduct Rules have been made but no amendments have been carried out in the Standing Orders. MANIPUR The State of Manipur has carried out amendments in the Civil Services Conduct Rules, but no definite information has been given regarding amendments in the Standing Orders. Only one Complaints Committee has been formed for the entire State.

UTTAR PRADESH Amendments both in the Civil Services Conduct Rules and the Standing Orders have been carried out.

JAMMU AND KASHMIR The State of Jammu and Kashmir has carried out amendments in the Civil Services Conduct Rules. It is stated that steps are being taken for amendments in the Standing Orders.

NAGALAND The amendments have been carried out in the Civil Services Conduct Rules by the State of Nagaland but no amendments have been carried out in the Standing Orders.

ARUNACHAL PRADESH The State of Arunachal Pradesh has neither carried out amendments in the Civil Services Conduct Rules nor in the Standing Orders. There is only one State Level Committee for the entire State of Arunachal Pradesh.

KERALA Amendments in the Civil Services Conduct Rules and in the Standing Orders have been carried out. There are 52 Complaints Committees in the State. All such committees are headed by women and 50% members of these committees are women and there is representation of NGO members in these committees.

TAMILNADU The State of Tamil Nadu has carried out amendments in the Civil Services Conduct Rules. However, no amendments in the Standing Orders have been made so far.

JHARKHAND The State of Jharkhand has carried out amendments in the Civil Services Conduct Rules. However, no amendments in the Standing Orders have been made so far.

9. From the affidavits filed by the State Governments, it transpires that the States of Orissa, Meghalaya, Himachal Pradesh, Goa, Arunachal Pradesh and West Bengal have amended the Rules relating to duties, public rights and obligations of the government employees but have not made amendments in Civil Services Conduct Rules. Similarly, the States of Sikkim, Madhya Pradesh, Gujarat, Mizoram, Orissa, Bihar, Jammu & Kashmir, Manipur, Karnataka, Rajasthan, Meghalaya, Haryana, Himachal Pradesh, Assam, NCT of Delhi, Goa, Nagaland, Arunachal Pradesh, Jharkhand and Tamil Nadu have not carried out amendments in the Standing Orders. These States appear to have not implemented the order passed by this Court on 26.4.2004 quoted above. The States which have carried out amendments in the Civil Services Conduct Rules and the Standing Orders have not provided that the report of the Complaints Committee shall be treated as a report in the disciplinary proceedings by an Inquiry Officer. What has been provided by these States is that the inquiry, findings and recommendations of the Complaints Committee shall be treated as a mere preliminary investigation leading to a disciplinary action against the delinquent.

10. The States like Rajasthan, Meghalaya, Himachal Pradesh, Assam and Jammu and Kashmir seem to have not formed Complaints Committees as envisaged in the Vishaka guidelines. Some States have constituted only one Complaints Committee for the entire State.

11. The Union Territories of Andaman and Nicobar Islands, Daman and Diu, Lakshadweep, Dadra and Nagar Haveli and Puducherry have not made amendments in the Standing Orders. The Union Territory of Chandigarh does not seem to have carried out amendments in the Civil Services Conduct Rules. Some of the Union Territories like Dadra and Nagar Haveli and Chandigarh are

reported to have not yet formed Complaints Committees. Daman and Diu have formed one Complaints Committee for the Union Territory.

12. While we have marched forward substantially in bringing gender parity in local self-governments but the representation of women in Parliament and the Legislative Assemblies is dismal as the women represent only 10-11 per cent of the total seats. India ranks 129 out of 147 countries in United Nations Gender Equality Index. This is lower than all South-Asian Countries except Afghanistan. Our Constitution framers believed in fairness and justice for women. They provided in the Constitution the States commitment of gender parity and gender equality and guarantee against sexual harassment to women.

13. The implementation of the guidelines in Vishaka has to be not only in form but substance and spirit so as to make available safe and secure environment to women at the workplace in every aspect and thereby enabling the working women to work with dignity, decency and due respect. There is still no proper mechanism in place to address the complaints of sexual harassment of the women lawyers in Bar Associations, lady doctors and nurses in the medical clinics and nursing homes, women architects working in the offices of the engineers and architects and so on and so forth.

14. In Seema Lepcha[2] this Court gave 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 Vishakas case and the directions given in Medha Kotwals 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 Vishakas case and the directions given in Medha Kotwals 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.

15. As a largest democracy in the world, we have to combat violence against women. We are of the considered view that the existing laws, if necessary, be revised and appropriate new laws be enacted by Parliament and the State Legislatures to protect women from any form of indecency, indignity and disrespect at all places (in their homes as well as outside), prevent all forms of violence domestic violence, sexual assault, sexual harassment at the workplace, etc; and provide new initiatives for education and advancement of women and girls in all spheres of life. After all they have limitless potential. Lip service, hollow statements and inert and inadequate laws with sloppy enforcement are not enough for true and genuine upliftment of our half most precious population the women.

16. In what we have discussed above, we are of the considered view that guidelines in Vishaka should not remain symbolic and the following further directions are necessary until legislative enactment on the subject is in place.

(i) The States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Services Conduct Rules (By whatever name these Rules are called) shall do so within two months from today by providing that the report of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, the disciplinary authority shall treat the report/findings etc. of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. The findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent.

(ii) The States and Union Territories which have not carried out amendments in the Industrial Employment (Standing Orders) Rules shall now carry out amendments on the same lines, as noted above in clause (i) within two months.

(iii) The States and Union Territories shall form adequate number of Complaints Committees so as to ensure that they function at taluka level, district level and state level. Those States and/or Union Territories which have formed only one Committee for the entire State shall now form adequate number of Complaints Committees within two months from today. Each of such Complaints Committees shall be headed by a woman and as far as possible in such Committees an independent member shall be associated.

(iv) The State functionaries and private and public sector undertakings/organisations/bodies/institutions etc. shall put in place sufficient mechanism to ensure full implementation of the Vishaka guidelines and further provide that if the alleged harasser is found guilty, the complainant victim is not forced to work with/under such harasser and where appropriate and possible the alleged harasser should be transferred. Further provision should be made that harassment and intimidation of witnesses and the complainants shall be met with severe disciplinary action.

(v) The Bar Council of India shall ensure that all bar associations in the country and persons registered with the State Bar Councils follow the Vishaka guidelines. Similarly, Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and other statutory Institutes shall ensure that the organisations, bodies, associations, institutions and persons registered/affiliated with them follow the guidelines laid down by Vishaka. To achieve this, necessary instructions/circulars shall be issued by all the statutory bodies such as Bar Council of India, Medical Council of India, Council of Architecture, Institute of Company Secretaries within two months from today. On receipt of any complaint of sexual harassment at any of the places referred to above the same shall be dealt with by the statutory bodies in accordance with the Vishaka guidelines and the guidelines in the present order.

17. We are of the view that if there is any non-compliance or non-adherence to the Vishaka guidelines, orders of this Court following Vishaka and the above directions, it will be open to the aggrieved persons to approach the respective High Courts. The High Court of such State would be in a better position to effectively consider the grievances raised in that regard.

18. Writ petitions (including T.C.) and appeals are disposed of as above with no orders as to costs.

.. J.
(R.M. Lodha)

J.
(Anil R. Dave)

.. J.
(Ranjan Gogoi)

NEW DELHI.
OCTOBER 19, 2012.

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- [1] Vishaka and Others v. State of Rajasthan and Others; [(1997) 6 SCC 241]
 - [2] Seema Lepcha v. State of Sikkim & Ors. [Petition for Special Leave

to Appeal (Civil) No. 34153/2010 decided on 3.2.2012]
