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VISHAKA & ORS. VS STATE OF RAJASTHAN

Citation Of The Case- (1997) 6 SCC 24

Name Of The Court – Honourable Supreme Court Of India

Honorable Bench- Chief Justice J.S. Verma,

Justice Sujata V. Manohar and

Justice B.N. Kirpal.

Date Of Judgement- 13th August, 1997.

Facts Of The Case-

Bhanwari Devi, a woman belonging from Bhatari, Rajasthan started working under the Women's Development Project (WDP) run by the Government of Rajasthan, in the year 1985. She was employed as a 'Saathin' which means 'friend' in Hindi.

In the year 1987, as a part of her job, Bhanwari took up an issue of attempted rape of a woman who hailed from a neighboring village. For this act, she gained full support from the members of her village. In the year 1992, Bhanwari took up another issue based on the government's campaign against child marriage. This campaign was subjected to disapproval and ignorance by

all the members of the village, even though they were aware of the fact that child marriage is illegal.

In the meantime, the family of Ram Karan Gurjar had made arrangements to perform such a marriage, of his infant daughter. Bhanwari, abiding by the work assigned to her, tried to persuade the family to not perform the marriage but all her attempts resulted in being futile. The family decided to go ahead with the marriage.

On 5th May 1992, the sub-divisional officer (SDO) along with the Deputy Superintendent of Police (DSP) went and stopped the said marriage. However, the marriage was performed the next day and no police action was taken against it. Later, it was established by the villagers that the police visits were a result of Bhanwari Devi's actions. This led to boycotting Bhanwari Devi and her family. Bhanwari also lost her job amid this boycott.

On 22nd September 1992, to seek vengeance, five men i.e, four from the above-mentioned Gurjar family- Ram Sukh Gujjar, Gyarsa Gujjar, Ram Karan Gujjar, and Badri Gujjar along with one Shravan Sharma had attacked Bhanwari Devi's husband and later brutally gang-raped her.

The police had tried all possible ways to avoid filing any complaint against the accused which resulted in a delayed investigation. Even after facing so much criticism, Bhanwari Devi, with her incessant determination to get justice, managed to lodge a complaint. The medical examination was delayed for fifty-two hours. However, the examiner did not mention any commission of rape in the report but rather mentioned the age of the victim.

In the absence of sufficient evidence and with the help of the local MLA Dhanraj Meena, all the accused managed to get an acquittal in the Trial Court. But this acquittal resulted in a huge backlash from many women activists and organizations which supported Bhanwari. These

organizations came together and raised their voice to attain justice, which resulted in the filing of a Public Interest Litigation (PIL).

The PIL was filed by a women's rights group known as 'Vishaka'. It laid its focus on the enforcement of the fundamental rights of women at the Workplace under the provisions of Article 14, 15, 19, and 21 of the Constitution of India, it also raised the issue of the need for protection of women from sexual harassment at Workplace.

Explanation

Issues raised

Whether sexual harassment at the Workplace amounts to a violation of Rights of Gender Inequality and Right to Life and Liberty?

Whether the court could apply international laws in the absence of applicable measures under the existing?

Whether the employer has any responsibility when sexual harassment is done to/by its employees?

Petitioner's Arguments

A writ petition seeking the writ of Mandamus was filed by the Vishaka group consisting of NGOs, Women activists and other social organisations. They put forth the argument that the sexual harassment of women at their workplace was violative of the articles 14, 15, 19(1)(g) and 21 of the constitution. They threw light upon the loophole that the legislation had regarding the creation of a safe space for women at their workplaces. Further, they requested the honorable court to make guidelines for prevention of sexual harassment.

Respondent's Arguments

The learned Solicitor General from the respondent's side, did something unusual by supporting the petitioners in figuring out an efficient way to prevent sexual harassment in workplaces and in building structured guidelines for the same. The amicus curiae of the Honorable Court – Fali. S.

Nariman along with Ms. Naina Kapur and Ms. Meenakshi provided assistance to the Hon'ble court in dealing with the said case.

Judgement Of The Case

The lack of a law that would prevent sexual harassment and provide women with a safe working environment was acknowledged by the Hon'ble Supreme Court of India. Section 354 and 354A of the Indian Penal Code, 1860 were to be referred in any case of sexual harassment but these provisions were not specific to the issue at hand. This made the Hon'ble court realize the need for proper and effective legislation that would deal with sexual harassment.

The Hon'ble Court took reference from the international conventions to proceed with the case. It referred to the Beijing Statement of Principles on the independence of Judiciary^[3] in the LAWASIA region, to function as a guardian of citizens' rights and independently make laws in the absence of any legislative framework. Then the Hon'ble court took reference from the provisions of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)^[4]. They were-

Article 11 (1) (a) & (f)- which states that the State takes all appropriate measures to eliminate discrimination against women in the field of employment.

Article 24- which states that the State shall undertake to adopt all necessary measures at the national level aimed at achieving the full realization.

The Hon'ble Supreme Court framed the guidelines to prevent sexual harassment at the Workplace, known as **Vishaka Guidelines**, that were to be treated as law declared under Article 141 of the Indian Constitution. These guidelines were the foundation for The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Vishakha's Guidelines

EMPLOYER'S OR OTHER EQUIVALENT AUTHORITY'S DUTY– Employer or other responsible persons are bound to preclude such indecent incidents of sexual harassment from happening. In case such an act takes place, then the organization must consist of a mechanism to provide prosecutorial and conciliatory remedies.

DEFINITION – For this purpose “*Sexual Harassment*” means disagreeable sexually determined behavior direct or indirect as-

Physical contact and advances;

A demand or request for sexual favours;

Sexually coloured remarks;

Showing pornography;

Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

MEASURES FOR PREVENTION– Employers or persons in charge of the workplace must take preventive measures such as an express prohibition of sexual harassment in the form of notifications or circulars, penalties by the government against the offender, appropriate work conditions in respect of hygiene, health and leisure.

PROCEEDINGS IN CASE OF MISCONDUCT– If the offenses committed are the ones that fall under the purview of the Indian Penal Code, 1860, then the employer is bound to take prosecutorial action by complaining to the appropriate authority.

APPROPRIATE DISCIPLINARY ACTION– If there is an occurrence of the violation of service rules, appropriate disciplinary action must be taken.

REDRESSAL MECHANISM– An organization must have a redressal mechanism to address the complaints. This must be irrespective of the fact that whether the act constitutes an offense under the Indian Penal Code, 1860, or any other law as such.

REDRESSAL COMMITTEE– Such a redressal mechanism or more precisely such a complaint committee must have women as more than half of its members and its head must be a woman. The committee must comprise of a counseling facility. It is also acceptable to collaborate with NGOs or any such organisations which are well aware of such issues. A report must be sent to the government annually on the development of the issues being dealt by the committee.

SPREADING AWARENESS– To raise sexual harassment issues, employer-employee meetings must be held. The employer must take appropriate actions/measures to spread awareness on the said issue.

Analysis

The Vishakha guidelines were a great step towards empowering women and dealing with sexual harassment at workplaces in India. The honorable court took inspiration from the various international laws and conventions in the absence of a domestic law, applied them according to the law of the land and created a new law altogether. The guidelines gave women a strong legal platform to fight sexual harassment. These guidelines formed the basis for the establishment of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The true spirit of judicial activism highlighted in this was an inspiration for all. The constitutional principles of equality and liberty were protected and upheld by the Supreme Court.

Unfortunately, Bhanwari Devi, the spark that ignited the need for appropriate legislation to safeguard women against sexual harassment, even after two decades, is still awaiting justice to be served. It is paramount to take note of the fact that, though such comprehensive laws have been enacted to safeguard women in India, it still ranks as the most dangerous country for women. Maybe it is time to question ourselves, is it the law or is it us that must be responsible?

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