

enactments which required their manning by IAS officers. It was contended that on account of failure of the Central Government to timely review the cadre strength as statutorily required, the promotion of the promotees got inordinately delayed and they lost their seniority in the promoted cadre. This Court held that the rule does not confer any right on the petitioners to seek a mandamus for encadring those ex-cadre/temporary posts. Any such mandamus would run counter to the statutory provisions governing the creation of cadre and fixation of cadre strength, and it was held that asking the State or the Central Government for encadrement of the ex-cadre/temporary posts will amount to asking the Government to create more posts (SCC pp. 735-36, para 18).

**24.** In the background of the law well settled by this Court, we are of the definite opinion that the direction issued by the Tribunal and the order of the High Court affirming the order of the Tribunal are wholly without jurisdiction. The impugned orders passed by the Tribunal as also by the High Court are, therefore, liable to be set aside.

**25.** For the aforesaid reasons, we allow this appeal and set aside the orders passed by the State Administrative Tribunal in OA No. 97 of 2009 and the impugned order<sup>1</sup> passed by the High Court.

*CA No. 1968 of 2013 arising out of SLP (Civil) No. 8676 of 2013*

**26.** Leave granted. This civil appeal is disposed of in terms of the judgment passed in Civil Appeal No. 1967 of 2013 arising out of SLP (Civil) No. 20635 of 2011.

(2013) 11 Supreme Court Cases 641

(BEFORE G.S. SINGHVI AND S.J. MUKHOPADHAYA, JJ.)

SEEMA LEPCHA

Appellant;

*Versus*

STATE OF SIKKIM AND OTHERS

Respondents.

Civil Appeal No. 1632 of 2012<sup>2</sup>, decided on February 3, 2012

**A. Constitution of India — Arts. 136, 21, 15, 42, 51-A(a) and 32 — Implementation of guidelines framed in *Vishaka*, (1997) 6 SCC 241 and *Medha Kotwal Lele*, (2013) 1 SCC 311 regarding sexual harassment at workplace — Held, State Government to give comprehensive publicity to the notifications and orders issued by it in compliance with the guidelines framed by Supreme Court by publishing them in newspapers having maximum circulation in the State after every two months — Wide publicity to be given on local Doordarshan every month — Social Welfare Department and State Legal Services Authority to give wide publicity to**

*State of Orissa v. Jagabandhu Panda*, WP (C) No. 7963 of 2010, decided on 8-10-2010 (Ori)  
Arising from SLP (C) No. 34153 of 2010

notifications and orders issued by State Government not only for government departments of the State and its agencies/instrumentalities but also for private companies — Protection of Human Rights Act, 1993 — S. 2(d) — Service Law — Sikkim Government Servants Conduct Rules, 1981 — Human and Civil Rights — Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 — Ss. 3 to 6 and 9 — Crimes Against Women and Children — Sexual harassment/Outraging modesty (Para 7)

B. Constitution of India — Arts. 15, 32 and 136 — Rights of working women against sexual harassment at workplace — Directions in *Medha Kotwal Lele*, (2013) 1 SCC 311, reiterated, that the Complaints Committees shall be deemed to be the inquiry authority for purpose of Central Civil Services (Conduct) Rules, 1964 and that report of Complaints Committees will be deemed to be the inquiry report under the Rules — Service Law — Central Civil Services (Conduct) Rules, 1964 — Service Law — Sikkim Government Servants Conduct Rules, 1981 — Human and Civil Rights — Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 — Ss. 3 to 6 and 9 — Crimes Against Women and Children — Sexual harassment/Outraging modesty (Para 6)

*Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 : 1997 SCC (Cri) 932; *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 311 : (2013) 1 SCC (Civ) 472 : (2013) 1 SCC (L&S) 174 : (2013) 1 SCC (Cri) 472, followed

*Seema Lepcha v. State of Sikkim*, WP (C) No. 15 of 2010, decided on 29-9-2010 (Sikk.); *Seema Lepcha v. State of Sikkim*, SLP (C) No. 34153 of 2010, order dated 21-1-2011 (SC); *Seema Lepcha v. State of Sikkim*, (2013) 11 SCC 647, referred to

SB-D/50656/SLR

*Chronological list of cases cited*

*on pages*

1. (2013) 11 SCC 647, *Seema Lepcha v. State of Sikkim* 643a-b, 643f-g
2. (2013) 1 SCC 311 : (2013) 1 SCC (Civ) 472 : (2013) 1 SCC (L&S) 174 : (2013) 1 SCC (Cri) 472, *Medha Kotwal Lele v. Union of India* 643c-d, 643d-e, 646.
3. SLP (C) No. 34153 of 2010, order dated 21-1-2011 (SC), *Seema Lepcha v. State of Sikkim* 643a-b
4. WP (C) No. 15 of 2010, decided on 29-9-2010 (Sikk.), *Seema Lepcha v. State of Sikkim* 643.
5. (1997) 6 SCC 241 : 1997 SCC (Cri) 932, *Vishaka v. State of Rajasthan* 642h, 643a-b, 643c, 643d-e, 643g, 644a-b, 644b, 647a, 647a-b, 647b-c.

ORDER

1. Leave granted. The appellant, who became a victim of sexual harassment but could not succeed in getting the wrongdoer punished filed Writ Petition No. 15 of 2010 under Article 226 of the Constitution for issue of a mandamus to the official respondents to implement the guidelines framed by this Court in *Vishaka v. State of Rajasthan*<sup>1</sup>. By the impugned

<sup>1</sup> (1997) 6 SCC 241 : 1997 SCC (Cri) 932

order<sup>2</sup>, the Division Bench of the Sikkim High Court disposed of the writ petition by simply relying upon the statement made by the learned Additional Advocate General of Sikkim that the State Government is prepared to bring a proper legislation in terms of the guidelines framed in *Vishaka case*<sup>1</sup>.

2. Notice of the special leave petition was issued on 21-1-2011<sup>3</sup>. After some adjournments, this Court passed order dated 2-1-2012<sup>4</sup>, which reads as under:

“Heard the learned counsel for the parties.

The learned Senior Counsel appearing for the State of Sikkim is directed to instruct the officer concerned to file a comprehensive list of all public and private establishments operating within the State. The needful be done within a period of four weeks.

The Chief Secretary, State of Sikkim should file an affidavit and give details of the steps taken by the State Government for implementation of the guidelines framed by this Court in *Vishaka v. State of Rajasthan*<sup>1</sup> as also order dated 26-4-2004 passed in *Medha Kotwal Lele v. Union of India*<sup>5</sup>. The needful be done within a period of four weeks.

List in the first week of February, 2012.”

3. In compliance with the aforementioned order, Shri Karma Gyasto, Chief Secretary of Sikkim filed affidavit dated 30-1-2012 detailing the steps taken by the State Government for implementation of the guidelines framed in *Vishaka case*<sup>1</sup> and the directions contained in the orders passed by this Court in *Medha Kotwal Lele v. Union of India*<sup>5</sup>. These include the amendment of the Sikkim Government Servants Conduct Rules, 1981 vide Notification dated 4-1-2012 and sending of communications to the private establishments to take steps for constitution of Complaints Committees, etc. Shri J.K. Rai, Joint Secretary, Department of Social Justice, Empowerment and Welfare Department (Women and Child Development Division), Sikkim, has also filed affidavit dated 30-1-2012 along with copies of the letters dated 6-9-2010 and 16-9-2010 issued by the Social Justice Empowerment and Welfare Department, copy of the letter dated 13-1-2012 issued by the Department of Commerce and Industries and two other documents showing the steps taken for constituting the Complaints Committees.

4. Shri Colin Gonsalves, learned Senior Counsel for the petitioner fairly stated that in furtherance of the direction given by the Court on 2-1-2012<sup>4</sup>, the State Government and others have taken steps for implementation of the guidelines framed in *Vishaka case*<sup>1</sup> and the directions given in *Medha Kotwal*

<sup>2</sup> *Seema Lepcha v. State of Sikkim*, WP (C) No. 15 of 2010, decided on 29-9-2010 (Sikk)

<sup>1</sup> *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 : 1997 SCC (Cri) 932

<sup>3</sup> *Seema Lepcha v. State of Sikkim*, SLP (C) No. 34153 of 2010, order dated 21-1-2011 (SC) wherein it was directed:

“Issue notice returnable in eight weeks. Dasti, in addition, is permitted. The corrected copy of the judgment filed by the learned counsel is taken on record. The same may be attached with the paper books of the case.”

<sup>4</sup> *Seema Lepcha v. State of Sikkim*, (2013) 11 SCC 647

<sup>5</sup> (2013) 1 SCC 311 : (2013) 1 SCC (Civ) 472 : (2013) 1 SCC (L&S) 174 : (2013) 1 SCC (Cri) 472

*case*<sup>†</sup>. He then submitted that the State Government may be directed to give wide publicity to the notifications and orders issued by it. Shri A.K. Ganguli, learned Senior Counsel appearing for the State of Sikkim submitted that his client is prepared to take all steps necessary for full compliance with the guidelines framed in *Vishaka case*<sup>1</sup> and the directions given in *Medha Kotwal case*<sup>‡</sup>.

5. In *Vishaka case*<sup>1</sup> this Court had issued the following guidelines and norms: (SCC pp. 252-54, para 17)

“17. 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 workplaces and that enactment of such legislation will take considerable time,

It is necessary and expedient for employers in workplaces 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 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; 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 otherwise, 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

<sup>†</sup> Ed.: Reference may be made to *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 473 : (2013) 1 SCC (Cri) 473 : (2013) 1 SCC (L&S) 175 : (2013) 1 SCC (Civ) 474.

<sup>1</sup> *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 : 1997 SCC (Cri) 932

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 Penal Code, 1860 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 victimised 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 organisation 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." (emphasis in original)

6. In *Medha Kotwal case*<sup>5</sup>, the Court directed that the Complaints Committees shall be deemed to be the inquiry authority for the purpose of the Central Civil Services (Conduct) Rules, 1964 and that the report of the Complaints Committees will be deemed to be the inquiry report under the Rules.

7. Having gone through the affidavits filed by the Chief Secretary of the State and Shri J.K. Rai, we are satisfied that the State Government has taken

<sup>5</sup> *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 311 : (2013) 1 SCC (Civ) 472 : (2013) 1 SCC (L&S) 174 : (2013) 1 SCC (Cri) 472

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the steps necessary for implementing the guidelines and norms laid down by this Court in *Vishaka case*<sup>1</sup> and the directions given in *Medha Kotwal case*<sup>†</sup>. Therefore, the appeal is disposed of with the following directions:

**7.1.** The State Government shall give comprehensive publicity to the notifications and orders issued by it in compliance with the guidelines framed by this Court in *Vishaka case*<sup>1</sup> and the directions given in *Medha Kotwal case*<sup>†</sup> by getting the same published in the newspapers having maximum circulation in the State after every two months.

**7.2.** 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 *Vishaka case*<sup>1</sup> and the directions given in *Medha Kotwal case*<sup>†</sup>.

**7.3.** Social Welfare Department and the Legal Services 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.

[CITED CASE]

(2013) 11 Supreme Court Cases 647

(Record of Proceedings)

(BEFORE G.S. SINGHVI AND S.J. MUKHOPADHAYA, JJ.)

SEEMA LEPCHA

.. Petitioner;

*Versus*

STATE OF SIKKIM AND OTHERS

.. Respondents.

SLP (C) No. 34153 of 2010<sup>†</sup>, decided on January 2, 2012

**Constitution of India — Arts. 136, 21 and 15 — Implementation of Guidelines framed in *Vishaka*, (1997) 6 SCC 241 and in *Medha Kotwal Lele*, (2013) 1 SCC 311 regarding sexual harassment at workplace — State of Sikkim Officer concerned to file comprehensive list of all public and private establishments operating within the State within four weeks — Chief Secretary of State to file an affidavit and give details of the steps taken by the State Government**

*Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 : 1997 SCC (Cri) 932; *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 311 : (2013) 1 SCC (Civ) 472 : (2013) 1 SCC (L&S) 174 : (2013) 1 SCC (Cri) 472, referred to

SB-D/51116/SRL

Advocates who appeared in this case :

Colin Gonsalves, Senior Advocate (Dr Doma Bhutia and Ms Jyoti Mendiratta, Advocates) for the Petitioner;

Dhruv Mehta and A. Mariarputham, Senior Advocates (Ms Jayashree Wad, Ashish Wad, Ms Aruna Mahtur and Yusuf Khan, Advocates) for the Respondents.

<sup>1</sup> *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 : 1997 SCC (Cri) 932

<sup>†</sup> From the Judgment and Order dated 29-9-2010 in WP No. 15 of 2010 of the High Court of Sikkim