

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 4424/2005

DR. ANIL SETH

..... Petitioner

Through Mr. Anup J. Bhambhani with
Ms. Nisha Bhambhani, Advocate.

versus

DELHI COMMISSION FOR WOMEN & ORS. Respondents

Through Mr. Vinay Kumar Sharma, Advocate for
Mr. Rohit Kumar, Advocate for R-3.
None for R-1 & 2.

CORAM: JUSTICE S. MURALIDHAR

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| 1. Whether Reporters of local papers may be
allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

JUDGEMNT
22.09.2010

1. Questioning the very jurisdiction of the Delhi Commission for Women ('DCW') [the Respondent No. 1] to entertain a complaint made by Respondent No. 3 against him of sexual harassment, the Petitioner has approached this Court with the present writ petition, seeking the quashing of the complaint and all proceedings consequent thereto.

Background Facts

2. The Petitioner states that he holds a Doctorate in History and teaches at the Deshbandhu College, University of Delhi. He lives on the first floor of his house at Pamposh Enclave, New Delhi. He is a co-owner of the house along with his brother. He states that while teaching at the Deshbandhu College he came to know Respondent No. 3 as well as her husband, both of whom were students at the same College. The Petitioner and his family were going to be

away to Japan as he had accepted to work as a Senior Lecturer in a university there between May 2000 and March 2003. There would be no one in the house during this time. Consequently a portion of the ground floor of the house was let out to Respondent No.3 and her husband at a monthly rent of ₹ 5,500/- with effect from December 2000. The tenancy was in the name of Respondent No. 3. The Petitioner states that in terms of the lease agreement between the parties, he retained one room in the front portion of the ground floor for storing his furniture and other personal effects while he was away in Japan.

3. The Petitioner states that Respondent No. 3 stopped paying rent after September 2001. He further claims that he and his wife lent to Respondent No. 3 and her husband money to the tune of Rs. 1,25,000/-. He states that when Respondent No. 3 was approached for the rent beyond September 2001 onwards, she assured that it would be paid upon the Petitioner returning to India from Japan. The Petitioner states that he returned to Delhi on 23rd April 2004 after finishing his teaching stint in Japan and began to reside in the first floor of the property with his wife. He also commenced using a room on the ground floor for a study and no objection was raised by Respondent No. 3. He states that the room had an independent access from outside. It may be noted that the husband of Respondent No.3 was away from India on some assignment and the occupants of the tenanted premises were Respondent No.3, her minor daughter and a domestic help.

Complaint and Counter Complaints

4. The Petitioner's version is that soon after he returned from Japan, "due to

the illicit influence of neighbours”, Respondent No. 3 “turned dishonest and developed illegal designs in relation to the said property.” It is alleged that pursuant to such design, Respondent No. 3 “transgressed and trespassed” into the said room of the Petitioner on the ground floor on 23rd August 2004 and the Petitioner found to his dismay that the room was locked from inside and he could not access it from outside. The Petitioner decided to file a complaint with the police on 23rd August 2004 itself. A photocopy of the said complaint made to the SHO, Greater Kailash-I (‘GK-I’), Police Station (‘PS’) by the Petitioner with the stamp of acknowledgement of receipt made on it has been enclosed with the petition.

5. The Petitioner states that pursuant to her “illegal designs to unlawfully retain use and occupation of the tenanted premises” and under advice of certain neighbours, Respondent No. 3 “created an imagined dispute with the Petitioner” and on 25th August 2004 filed with the SHO, GK-I PS a complaint which was backdated to 23rd August 2004. A photocopy of the said complaint has been enclosed with the petition. In the said complaint, Respondent No. 3 first stated that since the arrival of the Petitioner three months ago, he was “harassing and mentally torturing me by his indecent behavior and illegitimate demands.” She then alleged that he had been illegitimately demanding free access to her premises at any hour during the day and night, and picked up a huge fight when he was denied entry into her house after 10 p.m. She alleged that since she was living alone with her minor child and a full time female domestic help, the Petitioner wanted to take advantage of her “vulnerable position to press forth his sexual advances towards me and his

indecent proposals.” She went on to urge that “on the pretext of being very liberal minded he says that he believes in multiple sexual relationships and henceforth he has been making sexual advances towards me and also towards my female domestic help. No dignified person can ever agree to such indecent proposals therefore when we categorically denied, he threatened us to throw us out of our house.” The complainant further states that the Petitioner was forcing her to abandon her watchdog as the dog’s presence restricted his free entry into her house. She added that “to my utter dismay, I have found him stalking me at many occasions which proves his evil intentions. He peeps through our glass doors and windows and even hides behind the staircase to monitor our activities. This is strictly trespassing in my privacy and in my house.” She stated that she was deeply concerned for the safety and security of her child, her maid and herself.

6. It appears that neighbours also wrote a letter to the police on 25th August 2004 which appears to have been received at the PS, GK-I, on 30th August 2004. The Petitioner has enclosed a copy of this complaint as well. At the bottom of the complaint is a note written by Respondent No. 3 dated 3rd September 2004 to the Chairperson of the DCW which, according to the Petitioner, constituted an understanding arrived at between the parties. In terms of this note, Respondent No. 3 stated that the Petitioner should give an undertaking that he will not interfere with her peaceful living and possession of the ground floor premises and he must also recognize that she was a tenant since December 2000 on a monthly rent of Rs. 8,000/- p.m. She further wrote that “he must undertake that he will not harass me, mentally torture and

approach me directly and indirectly for anything.” Further, “he will not evict me forcibly and if necessary he will do so by the due process of law. But if he ever tries to harass me in future my complaint will be deemed to be alive, will be treated as in place.”

7. Respondent No. 3 appears to have made an independent complaint to the Chief Minister of the National Capital Territory of Delhi (‘NCT of Delhi’) which was received by the Chairperson of the DCW by making an endorsement on the said complaint. Although the complaint is dated 23rd August 2004, it appears to have been received by the Chairperson of the DCW on 25th August 2004. On 27th August 2004 Respondent No. 3 submitted another complaint to the Chairperson of the DCW on the subject of “sexual harassment and mental torture.” On 1st September 2004 a further complaint was made to the Assistant Commissioner of Police, G.K.-I PS by Respondent No. 3. In this complaint she referred to the conduct of the Petitioner which had become unbearable as a result of which she had lodged a complaint with the SHO of the G.K.-I PS and also the Chief Minister of the GNCTD and that it was marked to the DCW and was under investigation. Respondent No. 3 alleged that some time in the afternoon of 31st August 2004 the Petitioner barged into her house with 10-12 of his so-called friends and they forced her to sign on a letter which was written on the specific dictation of the Petitioner and was later handed over to the police. She once again asked for a full-fledged investigation into her complaint.

Proceedings before the DCW

8. On the basis of the complaint of Respondent No. 3, DCW summoned the Petitioner to appear before the DCW on 10th September 2004. On 10th

September 2004 the Petitioner wrote to the DCW stating that he had received the summons only at 4.30 p.m. on that date by ordinary post and, therefore, could not appear before the DCW at 3.00 pm. A fresh summons was issued by the DCW to the Petitioner on 13th September 2004 requiring him to appear on 20th September 2004 which the Petitioner received on 13th September 2004. On 16th September 2004 he wrote to the DCW stating that “ordinarily I would have gladly complied but my mother-in-law is due for open-heart surgery at the Delhi Heart and Lung Institute, Panchkuian Road, New Delhi on the 20th of September itself as is evident from her prescription enclosed herewith. You will recognize that this is a matter of grave concern for my wife and me.” He accordingly asked for an adjournment. On 19th September 2004, the Petitioner wrote a detailed letter to the Chairperson of the DCW giving his version of the incidents and accusing Respondent No. 3 of being a “confidence-trickster”. He accused Respondent No. 3 of inventing “the false allegations of sexual harassment against me to browbeat and blackmail me to extort various undue advantages on the tenancy front.” He further accused Respondent No. 3 of defaming and harassing him and his family and that she was “bent upon using her trumped-up charges of sexual harassment as an intimidatory instrument to extract undue and illegitimate gains with regard to the tenancy issues.” The Petitioner did not appear before the DCW on 20th September 2004.

9. Thereafter, he was called by the DCW over the phone to be informed that he had to appear on 4th October 2004 at 3.00 p.m. He did appear before the DCW on that date and met a Member of the DCW but was unable to meet the

Chairperson of the DCW since the Petitioner's mother-in-law, Ms. Saroj Garg suddenly developed an alarming condition and had to be hospitalized that very afternoon. By a lengthy letter dated 4th October 2004 addressed to the Member of the DCW both the Petitioner and his wife again put forth their version of the events. Thereafter, a meeting took place on 15th October 2004 following which on 20th October 2004 the Petitioner again wrote to the Member of the DCW. Another discussion took place on 8th November 2004 following which on 16th November 2004 a lengthy letter was written by the Petitioner and his wife to the DCW, stating *inter alia* that the charges of sexual harassment by Respondent No. 3 against the Petitioner were completely false and fabricated.

10. On 20th November 2004 a further letter was written by Respondent No. 3 to the DCW complaining of the misbehavior of the Petitioner stating that from 9th November 2004 onwards "he has started coming to my ground floor portion and also started creating nuisance by coming into that room again and again even at odd hours, which he forcibly snatched from me by mobbing my house ransacking that room with his so called friends and others who identified themselves as police officers." She complained that although the DCW had instructed the Petitioner not to use the room on the ground floor, he had "stepped up his activities to further intimidate and harass me." She prayed that an FIR should be registered by the police.

11. On 24th November 2004 a lengthy letter was written again by the Petitioner and his wife to the DCW accusing Respondent No. 3 of harassing

him on various issues. This was followed by another letter on 30th December 2004. By that letter, the Petitioner informed the DCW that three suits had been instituted against Respondent No. 3 by his wife and himself; one for recovery of loans given by the Petitioner to the husband of Respondent No. 3, the second for recovery of the loans given by the wife of the Petitioner to Respondent No. 3 and the third for ejectment, possession, damages and *mesne* profits. On 31st December 2004 the Petitioner wrote to the DCW requesting for copies of the complaints, statements of witnesses, notes of the proceedings etc. pertaining to the allegations made by Respondent No. 3 against him. Summons dated 11th January 2005 were issued to the Petitioner asking him to appear before the DCW on 14th March 2005.

Pleadings

12. The present writ petition was filed on 7th March 2005 in which, *inter alia*, the Petitioner sought the quashing of the complaint of Respondent No. 3 and all proceedings consequent thereto before the DCW being without jurisdiction. According to the Petitioner, the DCW had only “recommendatory” and “advisory” role with regard to the broad policy matters relating to women’s issues and power to investigate a complaint by an individual was not vested in it. It was further alleged that “by summoning and seeking written versions of his case from the Petitioner, Respondent No. 1, (i.e., the DCW) is creating evidence in favour of the Complainant, which evidence may ultimately be read and held against the Petitioner, thereby negating constitutional and legal safeguards available to every accused under our criminal jurisprudence and legal system.” It is alleged that the DCW was only vested with certain limited powers of a civil court and therefore cannot

exercise the powers of a criminal court as it is purporting to do. The petition also complained of the DCW not furnishing to the Petitioner copies of statements of the complainant's witnesses purportedly recorded before the DCW *inter alia* on 8th November 2004 including the statements of the complainant/Respondent No. 3 and the statements of two other witnesses. It was further alleged in the petition that in the absence of any clear procedure, the DCW could not be permitted to proceed with its inquiry. The Petitioner alleged that the DCW did not maintain proper records of the proceedings; it did not record the receipt of any documents etc. Further DCW did not index the papers retained on its files. The Petitioner accused the DCW of "interfering in the investigation of an allegation relating to a criminal offence pending against the Petitioner, which is not permissible under the Constitution and the law." The Petitioner also accused DCW of acting in a biased manner and that it was acting "at the behest and instance of the political establishment."

13. At the very first hearing of this writ petition on 11th March 2005 while directing notice to issue, an interim order was passed staying any further proceedings before the DCW. The interim order was made absolute on 22nd May 2006 when rule was issued.

14. In its affidavit in response to the petition, the DCW asserted that it had the jurisdiction to hold an inquiry into the complaint made by Respondent No. 3 against the Petitioner of sexual harassment. As regards non-furnishing of copies of the complaint, the DCW pointed out that the Petitioner had

himself enclosed with the petition a copy of the complaint filed by Respondent No. 3. At the time of the filing of the complaint, Respondent No. 3 had not enclosed any annexures and therefore there was no occasion for the DCW to supply the so-called annexures with the copy of the complaint. The allegation by the Petitioner that copies of statements of witnesses and the documents were refused was denied as being baseless. It was asserted that the DCW does not hold an inquiry of criminal nature for an offence falling under the Indian Penal Code (IPC) or any other penal laws. It was denied that statements of witnesses were recorded behind the Petitioner's back. It was maintained that statements of two of the witnesses were recorded on 8th November 2004 and 7th January 2005 in the presence of the Petitioner. It was maintained that the DCW had no intention of disregarding the principles of natural justice.

15. Respondent No. 3 filed a separate counter affidavit denying the allegations. She denied having borrowed any sum of ₹ 1,25,000/- as loan. The Petitioner was alleged to be giving the dispute the colour of a landlord tenant dispute which was not the case. She maintained in the reply that she had been sexually harassed by the Petitioner. Rejoinders have been filed to both the counter affidavits by the Petitioner reiterating what has been stated in the writ petition.

Submissions of counsel for the Petitioner

16. Mr. Anup J. Bhambhani, the learned counsel appearing for the Petitioner first submitted that the DCW completely lacked jurisdiction to inquire into any complaint of sexual harassment made before it. He referred to the ***W.P. (C) No. 4424/2005***

provisions of the Delhi Commission for Women Act, 1994 ('the DCW Act') and the judgments of the learned Single Judges of this Court in *U.S. Verma, Principal, DPS v. National Commission for Women* 163 (2009) DLT 557 and *Bhupinder Singh v. Delhi Commission for Women* 137 (2007) DLT 411. Since this is the principal point urged in the matter, this Court proposes to deal with it straightway.

Jurisdiction of the DCW

17. The DCW Act was enacted by the Legislative Assembly of the NCT of Delhi in 1994. In terms of Section 3(2) of the Act, the DCW has to consist of a Chairperson committed to the cause of women, to be nominated by the GNCTD; five members to be nominated by the GNCTD from and amongst the persons having not less than 10 years' experience in the field of women welfare, administration, economic development, health education or social welfare. The proviso to Section 3(2)(b) states that at least one member should be from amongst the persons belonging to either a Scheduled Caste or Schedule Tribe. There has to be, in terms of Section 3(2)(c), a Member Secretary to be nominated by the GNCTD, who shall be either an expert in the field of management, organizational structure of sociological movement or an officer who is member of a civil service of the Union or of an All-India Service or holds a civil post under the Union with appropriate experience.

18. Section 10(1) of the DCW Act sets out the functions of the DCW and reads as under:

“10. **Function of the Commission.** (1) The Commission shall perform all or any of the following functions, namely:-

- (a) **investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws;**
- (b) present to the Government annually and at such other times as the Commission may deem fit, reports upon the working of these safeguards;
- (c) make in such reports recommendations for the effective implementation of those safeguards for improving the conditions of women in the Capital.;
- (d) review, from time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or short comings in such legislations;
- (e) take up the cases of violation of the Provision of the Constitution and of other laws relating to women with the appropriate authorities;
- (f) **Look into complaints and take suo moto notice of matters relating to:-**
 - (i) **Deprivation of women's rights:**
 - (ii) **non-implementation of laws enacted to provide protection to women and also achieve the objective of equality and development;**
 - (iii) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, and take up the issues arising out of such matters with appropriate authorities;
- (g) call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against

women and identify the constraints so as to recommend strategies for their removal;

- (h) undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement, such as lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity;
- (i) participate and advise on the planning process of socio-economic development of women;
- (j) evaluate the process of the development of women in the Capital;
- (k) inspect or cause to be inspected a jail, remand home, women's institution or other place of custody where women are kept as prisoners or otherwise, and take up with the concerned authorities for remedial action, if found necessary;
- (l) fund litigation involving issues affecting a large body of women;
- (m) make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil;
- (n) and other matter which may be referred to it by the Government.” (emphasis supplied)

19. Section 10(3) which is relevant for the present case reads as under:

“(3) The Commission shall while investigating any matter referred to in clause (a) or sub-clause (i) of clause (f) of subsection (1), have all the powers of a civil court trying suit and in particular, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) recruiting the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any Court or office;
- (e) issuing commissions for the examination of witnesses and documents; and
- (f) any other matter which may be prescribed.”

20. Section 10(1)(a) DCW Act empowers the DCW to “investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws.” Section 10(1)(f) specifically empowers DCW to look into complaints and take suo moto notice of matters relating to deprivation of women’s rights; non-implementation of special laws for women and non-compliance of policy decisions.

21. Under Section 10(3) DCW Act, the DCW has been vested with the powers of a civil court trying a suit when it investigates any matter referred to under Section 10(1)(a) or 10(1)(f)(i) of the DCW Act. This includes summoning of witnesses, requiring the production of documents, receiving evidence on affidavits; requisitioning any public records or copy thereof from any court or office, issuing commissions for the examination of witnesses and documents and any other matter which may be prescribed. Section 10(3) of the DCW Act, therefore, specifically refers to the aspect of examination of

complaints by the commission under Section 10(1)(f)(i) as well as Section 10(1)(a).

22. Under Section 17 DCW Act, the GNCTD has the power to make rules, *inter alia*, for matters relating to Section 10(3)(f) of the DCW Act. Admittedly, no rules have been framed by the Government in terms of Section 17 of the DCW Act. It may be noticed at this stage that Section 10 DCW Act is *impari materia* Section 10 of the National Commission for Women Act, 1990 ('NCW Act') which specifies the functions of the National Commission for Women ('NCW'). Incidentally no rules have been framed under the NCW Act either to specify the procedure that will be followed by the NCW in conducting enquiries and investigations into complaints.

23. It appears to this Court that the sweeping submission of the learned counsel for the Petitioner that the DCW simply has no jurisdiction whatsoever to undertake an investigation or inquire into a complaint made by a woman of sexual harassment is not borne out by the above provisions of the DCW Act. On the other hand these provisions vest in the DCW the power to investigate complaints and while doing so exercising the powers of a civil court.

24. Since extensive reliance has been placed by the counsel for the Petitioner on the two decisions of this Court referred to above, they require to be discussed in some detail. In *U.S. Verma, Principal, DPS v. National Commission for Women*, the factual matrix was that complaints were made

against the Petitioner by three women teachers and one staff member of the DPS School, Faridabad of sexual harassment by the Principal. There were two committees constituted by the DPS Society which gave two separate reports. Subsequently, two committees were constituted by the NCW on the same date. The central point to be considered in that case was whether the NCW could have constituted the two separate committees to investigate the same complaint. It was contended by the Petitioner against whom the complaint had been made, that in terms of Section 10 NCW Act the NCW merely had the power to investigate the matter. The fairness of the procedure by the DPS Society in conducting the inquiry was also questioned. The DPS Society supported its Principal's contention and submitted before this Court that "Section 10 of the NCW Act did not permit any adjudicatory role to the commission." It was urged that the NCW was only a consultative and advisory body clothed with advisory powers and its recommendations were not binding.

25. This Court then framed the following questions for consideration in *U.S. Verma, Principal, DPS v. NCW* (DLT @ p. 574):

- "36. ... (1) Jurisdiction of the Commission and fairness of the procedure adopted by it;
- (2) Whether the DPS Society and the DPS Faridabad followed the *Vishaka* guidelines suitably, in addressing the allegations of sexual harassment at the workplace, by the teachers;
- (3) If the answer to the previous question is in the negative, the appropriate relief."

26. As regards question No. 1 formulated above, after discussing the provisions of Section 10 NCW Act, which as already noted are incidentally *impari materia* Section 10 DCW Act, the Court concluded that the NCW could not “in principle, look into individual issues, unless they pose, or concern, a wider policy, or legislative structural dilemma, which requires to be addressed. In line with this understanding, it is established that such "findings" or recommendations are of little or no evidentiary value; they do not amount to substantive evidence in judicial proceedings. At the same time, one must hasten to add that some species of judicial tribunals are also given the appellation of "commission" - a nomenclature, which cannot denude the binding nature of their adjudicatory determinations. The Commission, in this case, in the opinion of this Court, falls into the former, and not the latter category; its investigations are to be - particularly since it is a national level body - exerted towards broad policy issues and concerns, advising or "recommending" the appropriate government or agencies of the best practices aimed at addressing a broad range of gender related concerns, generally.”

27. Thereafter in para 42 in *U.S. Verma, Principal, DPS v. NCW*, the Court gave its conclusions on the issue No. 1 as under (DLT @ p. 578):

“42. As a result of the above discussion, it is held that **the Commission could at best have investigated into the matter, upon receipt of complaints from the teachers, with the aim of finding out if the management of the school had taken or was contemplating taking any step towards following the Vishaka guidelines, for determining whether any sexual harassment had taken place.** It could certainly have commented if no response was taken, and suggested that or adequate measures to follow the

guidelines had to be taken. **However, it could not have inquired into the matter in a manner in which the Committee, required to be set-up under *Vishaka*, could have. Saying that the Commission could have performed that role would be permitting it a function that had to be discharged primarily by the employer, in setting up the *Vishaka* mandated mechanism.** That is clearly beyond the domain of the Commission's jurisdiction. Another way of looking at the matter is that wherever an employer does not act or acts contrary to *Vishaka*, automatically the Commission would be empowered to examine and decide on the nature of the compliance (or non-compliance) with the law-jurisdiction that is clearly that of the Courts of law. The power to so decide is essentially a judicial one, and cannot - unless the controlling statute (here, the 1990 Act) had so provided - be performed by the Commission. Here, the Commission not only looked into the materials, but also examined witnesses to decide whether the allegations were well founded, or not. Such an exercise cannot be termed as a "fact finding" one, aimed at investigating whether the *Vishaka* guidelines were followed; it clearly impinged on the merits and veracity the allegations, and decided the complaints. That the final recommendations suggested remedial action by appropriate authorities, does not detract from the objective fact that the report (of the Commission) reflects and decides the truth and veracity of the allegations. The findings in the report, on the merits, were, in the opinion of the Court, therefore, clearly beyond the Commission's jurisdiction.” (emphasis supplied)

28. This Court does not understand the above judgment as laying down any law that the NCW has no role at all to investigate into the complaints made to it of sexual harassment. It must be remembered that the above complaints were in the context of sexual harassment at the workplace. What weighed

with this Court was that detailed guidelines have already been formulated by the Supreme Court in *Vishaka v. State of Rajasthan 1997 (6) SCC 241* whereby the employer had to constitute a committee of a certain composition to examine the complaint of an alleged victim of sexual harassment. It was in the above context that it was held that the NCW could not supplant the function of such committees. The present case is not concerned with the complaint of sexual harassment at the work place at all. It concerns a complaint of sexual harassment made by a woman against her neighbour living on the first floor of the same premises. This is a very different context from the one which was before this Court in *U.S. Verma*. The ratio of the judgment has to be understood in the factual context in which the case came to be decided. To use the above observations in paras 41 and 42 in *U.S. Verma*, to conclude that the NCW can never examine any complaint of sexual harassment made by any woman is to completely overlook the very purpose and object of the NCW Act and for that matter the DCW Act. In the present case, the stage of DCW making any recommendation has not arisen. In fact, the DCW has not been permitted to proceed with the complaint in view of the interim order of this Court. Therefore, the further question whether the recommendation, if any, made by the DCW would be 'advisory' or 'recommendatory' simply does not arise. It is premature to anticipate what the DCW will ultimately do on the complaint of Respondent No. 3. This Court in *U.S. Verma*, while categorically holding that the findings/reports of the NCW were recommendatory or advisory, did not hold that the NCW completely lacked jurisdiction to examine any complaint. The above judgment in *U.S. Verma*, in the considered view of this Court, does not support the contention of the Petitioner that the DCW in the instant case has

no jurisdiction to entertain or inquire into the complaint made by Respondent No. 3.

29. This Court next turns to the decision in *Bhupinder Singh v. Delhi Commission for Women*. The issue there was whether, after filing an application under Section 125 CrPC before the Magistrate, the complainant could also pursue parallel proceedings before the DCW for recovery of maintenance. It was in this context that it was held as under: (DLT @ p. 413)

“5. ...While it is true that the Commission by virtue of Section 10(3) has been vested with all the powers of a civil court in carrying out an investigation with regard to the matters relating to safeguards provided for women under the constitution and other laws as also with regard to the matters relating to deprivation of women's rights, **there is, however, no power granted to the Commission to pass orders and or directions for maintenance. These powers are vested in the courts, both civil and criminal.** The rights and obligations in respect of maintenance pertaining to parties, who are Hindus, are to be determined under the Hindu Maintenance and Adoption Act, 1956. Such matters are to be adjudicated by a civil court. Recognizing the fact that such an adjudication may take some time, the legislature has enacted Section 125 of the Code of Criminal Procedure, 1973 to provide immediate relief to such persons who deserve maintenance as an interim measure till the civil court decides the entire disputes with regard to maintenance.” (emphasis supplied)

30. This Court fails to appreciate as to how the above observations can help the Petitioner in the present case. There are no criminal proceedings arising from the complaint made by Respondent No. 3 to the police. There is no basis for the apprehension that the DCW would be adjudicating an issue

already pending in some other court. There is also no basis for the apprehension that the Petitioner will be compelled to make statements which might prejudice his defence in a criminal case.

31. The submission of the Petitioner that the DCW, by entertaining the complaint of Respondent No. 3, was trying to usurp the powers of a criminal court is misconceived. It must be emphasized that the remedy a person may have under the criminal law is independent of a remedy such person may have under the civil law or any other special law enacted for that purpose. In the instant case, in the six years since Respondent No. 3 made the complaints to the police, no progress appears to have been made whatsoever to register any criminal case. Mr. Bhambhani in all fairness submitted that to the best of the Petitioner's knowledge not even an FIR has been registered and no private complaint was filed either before the learned Magistrate. Therefore, the question of there being any parallel criminal case at this stage on the same set of facts does not arise. That perhaps was the apprehension in the mind of the Petitioner when he filed the petition that there might be criminal proceedings arising out of the complaints made by Respondent No. 3 to the police. Now in 2010, with not even an FIR having been registered or a private complaint having been filed, there is no basis for such apprehension at all. In other words, there is no scope of parallel criminal proceedings being faced by the Petitioner for an offence under the IPC or any other criminal law arising out of the complaints made by Respondent No. 3 to the police. In the above circumstances, one of the apprehensions expressed by the Petitioner that by being compelled to make statements before the DCW he might be prejudiced in his defence in the criminal proceedings, is unfounded.

32. For the aforementioned reasons, this Court is of the considered view that the Petitioner's submission, that the DCW lacks the authority or jurisdiction to inquire into the complaint made by Respondent No. 3 against the Petitioner, should be rejected.

33. Having held that the DCW does have jurisdiction to inquire into the complaint, this Court refrains from making any observation on the merits of such complaint or on the defence that the Petitioner may have on the complaint. That will be a matter for the DCW to form an opinion on. Also, it is made clear that this Court has not been called upon, at this stage, to consider whether the opinion to be formed by the DCW upon completion of such investigation, will be binding or will have only a recommendatory or advisory value. That event not having happened, it is premature to form an opinion on the issue.

The Investigation Procedure

34. That leaves the question of the procedure to be followed by the DCW. This Court is constrained to note that the NCW in the 20 years of its existence has not formulated any rules or procedures for regulating its proceedings in exercise of its inquiry powers vested in it under Section 10 of the NCW Act. Likewise, the DCW which has been in existence for over 15 years also does not appear to have formulated any rules or procedures to regulate its enquiry proceedings. This is a matter for concern since there would be complaints which would involve the right to privacy of both the complainant as well as the person against whom such complaint is made.

Unless a procedure is devised, which is consistent with the principles of

natural justice, the investigation itself may turn out to be either stigmatic or prejudicial to the parties to the complaint. While Section 10(3) of the DCW Act vests with the DCW the powers of a civil court in relation to the matters specified in Section 10(1)(f) of the DCW Act, it is imperative that the DCW should formulate a proper procedure, particularly since there are no rules yet framed by the GNCTD in exercise of its powers under Section 17(2)(c) of the DCW Act. It is imperative that all the parties to a complaint know, even at the stage of commencement of the inquiry, the procedure that will be followed by the DCW. This will also minimize the complaints of arbitrariness in the procedure and ensure certainty and uniformity as far as the procedure is concerned.

35. It may be mentioned at this stage that the National Human Rights Commission ('NHRC') which is a statutory body under the Protection of Human Rights Act, 1993 has formulated the National Human Rights Commission (Procedure) Regulations, 1994. The DCW may want to formulate a procedure on the lines of such regulations. Such a procedure is mandated by the very terms of Section 10(1)(a) read with Section 10(1)(f)(i) read with Section 10(3) of the DCW Act.

36. It appears to this Court that the Petitioner had received a copy of the complaint. If there is any document which forms part of the record of the complaint of Respondent No. 3 before the DCW, that he has not been provided a copy of, the Petitioner can apply for and obtain such copy. This Court notes that in reply to this petition, the DCW has stated that as and when the Petitioner applies for copies of documents it will readily provide the same

to him.

37. As regards the examination of witnesses, the DCW's stand that the statements of two witnesses have been recorded in the presence of the Petitioner, cannot be disbelieved particularly if it is reflected by the record of the case before the DCW. This Court does not wish to comment on this aspect except to say that if upon again examining the record the DCW finds that the statements of any of the witnesses examined thus far have not been recorded in the Petitioner's presence then the recording of the deposition of such witness will have to recommence in the presence of the Petitioner. This aspect is left to the DCW to decide.

38. The inquiry before the DCW will revive from the stage at which it was halted pursuant to the interim orders of this Court. It is made clear that as and when such inquiry revives, every endeavour should be made to ensure that the statements of the witnesses are be recorded in the presence of the Petitioner. The witnesses cited by the complainant should be permitted to be cross-examined by the Petitioner. Given the nature of the complaint, the likelihood of any adverse finding on such complaint being stigmatic as regards the Petitioner, and the possibility of adverse civil consequences for him, the procedure adopted by the DCW must be just, fair and reasonable and consistent with the requirements of principles of natural justice. No material which is sought to be relied upon by the complainant should be allowed to be taken on record by the DCW without ensuring that a copy of such document or statement is also given to the Petitioner. Likewise, copy of every such document that may be relied upon by the Petitioner during the inquiry

proceedings should be furnished to the complainant.

39. The DCW while holding such inquiry will maintain a meticulous record of all its proceedings by properly minuting the discussions that take place, recording the attendance of its members, obtaining the signatures of each of the members who have attended the hearings on the minutes book as well as in the attendance register. Further, the entire record of the case must be properly indexed and paginated so that it can be easily referred to at any of the subsequent stages by not only the DCW and the parties, but any superior judicial authority which may be called upon to review the decision of the DCW. This is imperative in inquiries of this nature, and even otherwise, for the proper functioning of the DCW while exercising its powers under Section 10 of the DCW Act.

40. It is directed that the DCW will, consistent with what has been observed hereinbefore, formulate a procedure for its inquiries within a period of eight weeks from today. In the meanwhile, as far as the complaint of Respondent No. 3 is concerned, it will straightway adopt the procedure as outlined hereinbefore.

41. With the above observations, it is directed as under:

- (i) The interim order passed by this Court on 11th March 2005 is hereby vacated. The inquiry by the DCW into the complaint by Respondent No. 3 will revive from the stage at which it was when the above interim order was passed.

(ii) The inquiry to be undertaken by the DCW hereinafter will be by following the procedure as outlined by this Court in paras 36 to 40.

(iii) The complaint of Respondent No. 3 will now be listed before the DCW on 25th October 2010 for further directions as to the dates on which the inquiry will be taken up. The DCW will make every effort to ensure that the inquiry is completed within a further period of three months thereafter and in any event not later than 31st January 2011.

42. With the above directions, the writ petition is disposed of with no order as to costs. A copy of this judgment will be delivered forthwith to the Chairperson, DCW. Dasti to the parties.

S. MURALIDHAR, J.

SEPTEMBER 22, 2010
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