

GAHC010125872014



THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

Writ Petition (Civil) no. 3827/2014

PRADIP KR. BARMAN
S/O LT. PRATAP BARMAN
R/O HOUSE NO. 4, BARNACHAL ROAD,
P.O. BAMUNIMAIDAM, P.S. CHANDMARI,
GUWAHATI-21, DIST. KAMRUP, ASSAM.

.....Petitioner

-Versus-

- 1) THE ASSAM STATE COMMISSION FOR WOMAN and 3 ORS,
REPRESENTED BY ITS CHAIRMAN, MAIDAMGAON, BELTOLA, GUWAHATI-28,
DIST. KAMRUP, ASSAM.
- 2) MEMBER SECRETARY,
ASSAM STATE COMMISSION FOR WOMEN,
BELTOLA, MAIDAMGAON, GUWAHATI-28.
- 3) SMTI. RUPALI DUTTA
W/O MR. PRADIP KR. BARMAN
TEACHER OF PUB-GUWAHATI GIRLS' HIGH SCHOOL, CHANDMARI
GUWAHATI-3, PERMENT RESIDET OF HOUSE NO. 4, BARNACHAL ROAD,
BAMUNIMAIDAM,
P.O. BAMUNIMAIDAM, PS. CHANDMARI, GUWAHATI-21, DIST. KAMRUP
METRO, ASSAM.
- 4) THE COMMISSIONER & SECRETARY TO THE GOVERNMENT OF ASSAM,
HEALTH & FAMILY WELFARE A DEPARTMENT, DISPUR, GUWAHATI-6

.....Respondents

Advocates :

Petitioner : Ms. B. Bora, Advocate
Respondent nos. 1 & 2 : Ms. S. Sarma, Junior Government Advocate
Respondent no. 3 : Ms. D. Bora, SC, Health Department
Date of Hearing and Judgment & Order : 15.03.2023

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER

By this writ petition under Article 226 of the Constitution of India, the petitioner has made assailment of an order dated 19.07.2014 passed by the respondent Assam State Commission for Women [‘the ASCW’ or ‘the Commission’, for short] in ASCW Case no. 174/2013.

2. By the impugned order dated 19.07.2014, the respondent ASCW had directed the Commissioner and Secretary to the Government of Assam, Health & Family Welfare Department to finalize the subsistence allowance of the petitioner immediately and thereafter, to deduct a sum of Rs. 72,790/- out of the arrears amount and to deposit the same in the savings account no. 20016089494 of the respondent no. 3 maintained at State Bank of India, Silpukhuri Branch for the education expenses of the son of the petitioner and the respondent no. 3.

3. The background events leading to the passing of the impugned order dated 19.07.2014 by the respondent ASCW can be narrated, in brief, as follows :-

3.1. The marriage between the petitioner and the respondent no. 3 was solemnized on 15.12.1993 as per Hindu rites and rituals. Out of the wedlock, a son was born to the couple on 25.07.1995. At the time of institution of the writ petition, the petitioner was serving as

Service Engineer –cum- In-Charge Divisional Engineer in the Department of Health & Family Welfare, Government of Assam with posting at Silchar and on the other hand, the respondent no. 3 was working as a teacher in Pub-Guwahati Girls' High School, Chandmari, Guwahati. The son of the petitioner and the respondent no. 3 was studying in the Central Institute of Technology [CIT], Kokrajhar.

3.2. According to the petitioner, the relationship between him and the respondent no. 3 started becoming non-cordial and turning sour since the year 1999.

3.3. The relationship went on deteriorating thereafter. The respondent no. 3, on 17.07.2013, lodged a First Information Report [FIR] before the Officer In-Charge, Chandmari Police Station against the petitioner alleging commission of cruelty in different forms. On receipt of the FIR, the Officer In-Charge, Chandmari Police Station registered a case, Chandmari Police Station Case no. 350/2013 for the offence under Section 498A of the Indian Penal Code [IPC]. In the course of investigation, the petitioner was arrested and subsequently, he was released on bail on 31.07.2013. Because of his detention after arrest in connection with Chandmari Police Station Case no. 350/2013 for more than 48 hours, the petitioner was placed under suspension by his employer i.e. the Government of Assam on 14.08.2013. According to the petitioner, he received subsistence allowance for the initial period of 3 [three] months but at a later point of time, the subsistence allowance was stopped which situation continued at the time of institution of the writ petition.

3.4. After lodging of the FIR on 17.07.2013, the respondent no. 3 had also filed a complaint against the petitioner before the District Social Welfare Officer, Kamrup [M], on 22.07.2013, alleging domestic violence by him. The said complaint stood forwarded by the District Social Welfare Officer, Kamrup & Protection Officer with a Domestic Incident Report under Sections 9/12 r/w Section 37[2][c] of the Protection of Women from Domestic Violence Act, 2005 [‘the DV Act’, for short] to the Court of learned Chief Judicial Magistrate, Kamrup [M] at Guwahati on 24.07.2013. On receipt of the same, the complaint had been registered and numbered as D.V. Case no. 153^m/2013. At the time of institution of the writ petition, the case, D.V. Case

no. 153^m/2013 was pending before the Court of learned Sub-Divisional Judicial Magistrate no. 1, Kamrup [M], Guwahati. The petitioner had claimed that when he had been paying maintenance to their then minor son regularly through the post office, the respondent no. 3 made a claim for maintenance in D.V. Case no. 153^m/2013. The learned court after considering all aspects, passed an interim order on 28.03.2014 granting interim maintenance @ Rs. 3,000/- per month to the respondent no. 3 as the aggrieved person by the petitioner apart from directing the petitioner to continue to pay the education expenses of the then minor son.

3.5. The petitioner had, on the other hand, preferred a petition in September, 2013 before the Court of learned Principal Judge, Family Court, Kamrup [M] seeking dissolution of the marriage by a decree of divorce. The petition filed by the petitioner was registered and numbered as F.C.[Civil] Case no. 693/2013. The petitioner had sought dissolution of the marriage by a decree of divorce under Section 13[1][i-a] of the Hindu Marriage Act, 1955. At the time of institution of the writ petition, the proceeding of F.C.[Civil] Case no. 693/2013 was pending.

3.6. The respondent no. 3 had, in the meantime, filed a petition on 13.05.2013 before the Court of learned Sub-Divisional Judicial Magistrate no. 1, Kamrup [M] in D.V. Case no. 153^m/2013 seeking further interim maintenance. When the said petition came up for consideration on 17.07.2014, the petitioner agreed to pay a sum of Rs. 9,400/- on the basis of the documents submitted by the respondent no. 3 in respect of expenses incurred. The respondent no. 3 had again filed a petition before the said Court on 17.07.2014 seeking a further amount of Rs. 59,140/- towards education expenses of the child.

3.7. When the proceedings of the afore-mentioned cases were pending, the petitioner stated to have received a notice from the respondent Commission whereby he was asked to appear before the respondent Commission in connection with a case registered as ASCW Case no. 174/2013. Along with the notice, the petitioner received a copy of the complaint wherefrom the petitioner came to learn that the respondent no. 3 had approached the

respondent Commission, on 26.07.2013, seeking a number of reliefs in the form of – [i] maintenance, [ii] relief from domestic violence, and [iii] miscellaneous. On receipt of the notice, the petitioner appeared before the respondent Commission and had also filed a written statement on 19.04.2014 delineating the facts including the factum of pendency of a number of proceeding, afore-mentioned, before various judicial fora between the petitioner and the respondent no. 3.

3.8. The ground for preferring this writ petition is the impugned order dated 19.07.2014, the contents of which are extracted hereinbelow :-

**IN THE ASSAM STATE COMMISSION FOR WOMEN
ASCW CASE NO. : 174/2013
ORDER SHEET**

Smti. Rupali Dutta Complainant

- vs -

Sri Pradip Kumar Barman Opposite Party

Dated : 19.07.2014

ORDER

Both parties are present.

By order dated 28.03.2014 passed by the SDJM, 1, Kamrup in D.V. Case No. 153m/2013, the Honorable Magistrate directed the opposite party to pay Rs. 3000/- per month to his son for his monthly expenses apart from paying the educational expenditures. It is stated by the complaint that though the opposite party is paying the monthly expenses, he is not paying the educational expenses.

It is stated that the opposite party was working as In-Charge Divisional Engineer, Silchar under the Director of Health Services, Assam who was placed under suspension on 14.08.2013. Due to non-payment of the subsistence allowances by the Government, he is not in a position to pay the educational expenses.

Therefore, the Commission deems it fit to take up the matter with the

Government. Resultantly, the Commissioner and Secretary to the Government of Assam, Health & Family Welfare Department, is hereby directed to finalize the subsistence allowances of the opposite party immediately. Therefore, out of the arrears amount Rs. 72,790/- shall be deducted and the same shall be deposited in savings account of complainant, i.e. A/C No. 20016089494, S.B.I., Silpukhuri for the educational expenses of the son incurred by her till today. The matter may be taken very seriously as the son of both parties suffering due to the fight of the parties. It is also noteworthy that the son of the parties is a brilliant student and he got admitted in C.I.T. Kokrajhar. Therefore, due to the action of the parties, the education of their son should not suffer.

List again on 16.08.2014 for further orders. On that day they said Commissioner & Secretary shall furnish the compliance report before the commission.

4. I have heard Ms. B. Bora, learned counsel for the petitioner; Ms. S. Sarma, learned Junior Government Advocate, Assam for the respondent nos. 1 & 2; and Ms. D. Bora, learned Standing Counsel, Health & Family Welfare Department for the respondent no. 4. As per order dated 10.12.2021 of the Lawazima Court, the service of notice upon the respondent no. 3 was duly effected. But, despite service of notice, the respondent no. 3 has chosen not to enter appearance in the instant writ proceedings.

5. Ms. Bora, learned counsel for the petitioner has submitted that the respondent Commission has no power, authority and jurisdiction to pass such kind of an order in a matrimonial dispute like the one dated 19.07.2014. In support of her submissions, she has extensively referred to the provisions of the Assam State Commission for Women [ASCW] Act, 1994, more particularly, Section 10 thereof which has laid down the functions of the Commission. Ms. Sarma, learned Junior Government Advocate has submitted, in response, that the respondent Commission had to step in when the petitioner did not pay the education expenses of the son and the order dated 19.07.2014 was passed as an ameliorative measure.

6. I have given due consideration to the rival submissions of the parties and have also gone through the materials on record. I have gone through the provisions of the Assam State

Commission for Women Act, 1994 [Assam Act No. XXI of 1994].

7. The Assam State Commission for Women Act, 1994 [‘the ASCW Act’, for short] is an Act of the State legislature providing for constitution of the Assam State Commission for Women and for matters connected therewith or incidental thereto. It received the assent of the Governor on 05.05.1991 and was published in the Official Gazette on 06.05.1994. The ASCW has been constituted in terms of Section 3 of the ASCW Act, 1994 and the functions to be discharged by the respondent Commission are delineated in Section 10 of the ASCW Act, 1994. The provisions contained in Section 10 of the ASCW Act, 1994 are extracted hereinbelow, for ready reference, in its entirety :-

Section 10 [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 State 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 by the State;
- [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 of short coming in such legislations;
- [e] take up the cases of violation of the provisions 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 to 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 issue arising out of such matters with appropriate

authorities;

[g] call for special studies or investigations into specified 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 service, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity;

[i] participate and advice on the planning process of socio-economic development of women;

[j] evaluate the progress of the development of women under the State;

[k] inspect or cause to be inspected a jail, remand home, women's institution or other place or 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] any other matter which may be referred to it by State Government.

[2] The State Government shall cause all the reports referred to in Clause [b] of sub-section [1] to be laid before the State Legislature along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance if any, of any of such recommendations.

[3] The Commission shall, while investigating any matter referred to in sub-clause [i] or clause [f] of sub-section [1] have all the powers of the civil courts trying a suit and, in particular in respect of the following matters, namely :-

[a] summoning and enforcing the attendance of any person from any part of Assam and examining him on oath;

[b] requiring 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.

8. On a close perusal of the provisions of Section 10 of ASCW Act, 1994, it is noticed that the Commission is empowered to look *inter alia* into complaints and also take *suo moto* notices in matters relating to deprivation of women's rights and non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development under sub-clauses [i] & [ii] of Clause [f] of sub-section [1] of Section 10. Sub-section [3] of Section 10 has provided that the Commission shall, while investigating any matter referred to in sub-clause [i] of clause [f] of sub-section [1] of Section 10, that is, looking into complaints of matters relating to deprivation of women's rights have all the powers of the civil courts trying a suit and, in particular, in respect of the following matters, namely, [a] summoning and enforcing the attendance of any person from any part of Assam and examining him on oath; [b] requiring 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.

9. Though the respondent Commission is empowered to receive and look into complaints even *suo moto* in respect of the matters specified in Section 10[1][f][i], the Commission has not been given any power, authority or jurisdiction to adjudicate and determine the rights of the parties. As per sub-clause [iii] of Clause [f] of Section 10, the Commission apart from looking into complaints, can also look into the matters of non-compliance of policy decisions, guidelines or instructions, aimed at mitigating hardships and ensuring welfare and providing relief to women and take up the issue arising out of such matters with appropriate authorities. As the respondent Commission constituted under the ASCW Act, 1994 has not been specifically entrusted with the power, authority and jurisdiction for determination of the respective rights of the parties in a dispute of the kind involved in the case in hand, this Court is of the considered view that the State Commission does not have the power, authority and jurisdiction to discharge functions of any judicial character or of a Court.

10. In this connection, it is apposite to refer to the decision of the Hon'ble Supreme Court

of India in **Bhabani Prasad Jena vs. Convenor Secretary, Orissa State Commission for Women and other**, reported in [2010] 8 SCC 633. The extent of power of State Commission constituted under Section 3 of the Orissa State Commission for Women Act, 1993 came up for consideration in before the Hon'ble Supreme Court of India in **Bhabani Prasad Jena** [supra].

11. In **Bhabani Prasad Jena** [supra], the respondent no. 2 therein filed a complaint before the Orissa State Commission for Women against the appellant therein alleging inter alia that she was married to the appellant and due to torture meted out to her by the appellant and his family members, the spouses were compelled to live separately. As the respondent no. 2 had no source of income and was pregnant, she filed a complaint before the Orissa State Commission for Women. On the basis of the said complaint, the Orissa State Commission for Women issued notice to the appellant. After the appearance of the appellant before the Orissa State Commission for Women, the Commission on 11.05.2009 passed an order directing inter alia a compensation amount of minimum 50% of the gross salary of the appellant and also passed a direction to the office of the Drawing and Disbursing Officer [DDO] to deposit the amount in the account of the respondent no. 2 directly.

12. The Orissa State Legislature had constituted the Orissa State Commission for Women under the Orissa State Commission for Women Act, 1993 and Section 10 of the Orissa State Commission for Women Act, 1993 has set forth the functions of the Commission. On comparison of the provisions of Section 10 of the Orissa State Commission for Women Act, 1993 and the provisions contained in Section 10 of the ASCW Act, 1994, it is noticed that the said provisions are almost similar. More specifically, the provisions contained in Section 10[1][d] of the Orissa State Commission for Women Act, 1993 are similar to the provisions contained in Section 10[1][f] of the ASCW Act, 1994. Similarly, the provisions contained in Section 10[3] of the Orissa State Commission for Women Act, 1993 are similar to the provisions contained in Section 10[3] of the ASCW Act, 1994.

13. At the juncture, it is apposite to refer to the following observations made by the Hon'ble Supreme Court of India in **Bhabani Prasad Jena** [supra].

“9. It would be seen from Section 10 of the 1993 Act that the State Commission has been authorized to take up studies in respect of economic, educational and health situation of the women of the State and also the working conditions of women in the factories, establishments, construction sites and make its recommendations to the State Government. The State Commission is empowered to compile information in respect of the offences against women and to coordinate with the State Cell and District Cells for atrocities against women. Further, the State Commission is competent to receive complaints in respect of the matters specified in Section 10[1][d] and take up the grievances raised in the complaint/s with the concerned authorities for appropriate remedial measures. The State Commission is also given role of assisting, training and orienting the non-Government organization in the State in legal counseling of poor women and enabling such women to get legal aid. Under clause [f] of Section 10[1], the State Commission is authorized to 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 these matters for remedial action.

10. In other words, the State Commission is broadly assigned to take up studies on issues of economic, educational and healthcare that may help in overall development of the women of the State; gather statistics concerning offences against women; probe into the complaints relating to atrocities on women, deprivation of women of their rights in respect of minimum wages, basic health, maternity rights, etc. and upon ascertainment of facts take up the matter with the concerned authorities for remedial measures; help women in distress as a friend, philosopher and guide in enforcement of their legal rights. However, no power or authority has been given to the State Commission to adjudicate or determine the rights of the parties.

11. Mr. Ranjan Mukherjee, learned counsel for respondent no. 2 submitted that once a power has been given to the State Commission to receive complaints including the matter concerning deprivation of women of their rights, it is implied that the State Commission is authorized to decide these complaints. We are afraid, no such implied power can be read into Section 10[1][d] as suggested by the learned counsel. The

provision contained in Section 10[1][d] is expressly clear that the State Commission may receive complaints in relation to the matters specified therein and on receipt of such complaints take up the matter with the authorities concerned for appropriate remedial measures. The 1993 Act has not entrusted the State Commission with the power to take up the role of a court or an adjudicatory tribunal and determine the rights of the parties. The State Commission is not a tribunal discharging the functions of a judicial character or a court.

12. Learned counsel for respondent no. 2 then referred to Section 10[3] and submitted that the State Commission has been conferred with all the powers of a Civil Court trying a suit. We are afraid, this is not at all proper reading of Section 10[3]. The expression, 'have all the powers of a Civil Court' in Section 10[3] is qualified by the following words, 'in respect of the following matters'. That is to say, the State Commission has powers of Civil Court trying a suit for the matters specified in clauses [a] to [f] thereof and not for other purposes.

14. Having regard to the provisions contained in the ASCW Act, 1993, more particularly, the functions that can be discharged by the respondent Commission and the observations made in **Bhabani Prasad Jena** [supra], it is clearly discernible that the Legislature has not given any power, authority and jurisdiction to the respondent Commission to make an order like the order dated 19.07.2014 assailed herein whereby the respondent Commission had directed the Commissioner & Secretary to the Government of Assam, Health & Family Welfare Department to deduct a sum of Rs. 72,790/- from the arrears of the petitioner and to deposit the same in the account of the respondent no. 3. It is pertinent to note that the Court of learned Sub-Divisional Judicial Magistrate no. 1, Kamrup [M], Guwahati had passed the order dated 28.03.2014 as an interim measure in exercise of the powers conferred by Section 23 of the D.V. Act. It is also worthwhile to refer to the provisions contained in Section 26 of the D.V. Act. Section 26[1] has provided that any relief available under Sections 18, 19, 20, 21 and 22 of the DV Act may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of the DV Act. As per sub-section [2] of Section 26, any relief referred to in Section 26[1] may be sought for in addition to and along

with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil court or criminal court and in case any relief has been obtained by the aggrieved person in any proceeding other than the proceeding under the DV Act, the aggrieved person is duty bound under Section 26[3] to inform the Magistrate trying the case under the DV Act of the grant of such relief. The respondent Commission had proceeded ahead to deal with the complaint, in essence, on the premise that the petitioner as the respondent in D.V. Case no. 153^m/2013 failed to comply with interim order dated 28.03.2014 whereby the Court of learned Sub-Divisional Judicial Magistrate no. 1, Kamrup [M], Guwahati ordered the respondent therein i.e. the petitioner herein to continue to pay educational fees of the son. The Court of learned Sub-Divisional Judicial Magistrate, Kamrup [M], Guwahati is well empowered to enforce its order, be it an interim order. The respondent Commission is neither a civil court nor a family court nor a criminal court, as referred to in Section 26 of the DV Act. Thus, it is ex-facie clear that the respondent Commission while passing the impugned order dated 19.07.2014, had assumed jurisdiction which was not vested in it under the law. The impugned order dated 19.07.2014 is clearly, thus, found out to be outside the power, authority and jurisdiction of the respondent Commission and the same is non est in law since the respondent Commission has also no power, authority or jurisdiction to adjudicate or determine the rights of the parties on the basis of complaint lodged by one of the spouses before it.

15. In the above fact situation obtaining in the case and for the reasons assigned, the impugned order dated 19.07.2014 being a void order, is liable to be set aside and quashed. It is accordingly set aside and quashed. The interim order dated 08.08.2014 stands merged with this order. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant