

GAHC030004242022



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

Case No. : WP(C)/102/2022

H.C. Vanlalruata
S/o HC Sapthankhuma(L)
R/o Salem Veng, Mualpui,
Aizawl, Mizoram.

VERSUS

Mizoram State Commission for Women r/b the Chairperson and Anr.
Aizawl, Mizoram. 2:K. Vanlalven

Advocate for the Petitioner : Mr T Lalzekima

Advocate for the Respondent : Mr. T Lalnunsiana for R1

**BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO**

JUDGEMENT

Date : 01-03-2023

Heard Mr. T. Lalzekima, learned counsel for the petitioner, Mr. T. Lalnunsiam, learned counsel for the respondent No. 1 and Ms. Lalngaihsaki Fanai, learned Legal Aid Counsel for respondent No. 2.

2. Having regard to the nature of controversy raised in this writ petition, the matter is taken up for disposal at the admission stage.

3. The case of the petitioner in brief is that he got married with the respondent No. 2, as per the Mizo Customary Law by handing over the bride's price on 30.04.2018. Subsequently, they got married as per the Christian rites in the Church on 30.07.2020. Although the petitioner and the respondent No. 2 have no issue between them, both of them have children from their earlier marriage. The petitioner has 4 (four) children from his earlier marriage, i.e., 3 (three) daughters and 1 (one) son. All the 3 (three) daughters are married off while the son remains with his father. As for the respondent No. 2, she has 2 (two) sons from her earlier marriage and both of them live with her. After marriage, the family moved in to their newly constructed house at Mualpui, Aizawl in the month of September, 2020. However, due to certain differences amongst the family members, the 2 (two) sons of the respondent No. 2 moved out from the house and subsequently, even the respondent No. 2 moved out from the house at Mualpui to join her sons. The respondent No. 2 then submitted a complaint before the respondent No. 1 asking their assistance in

the matter. The respondent No. 1 then summoned the petitioner by issuing a notice for appearance on 26.08.2022 by fixing 30.08.2022 as a date for appearance. The petitioner appeared on the date fixed and on the same day itself, the respondent No. 1 directed the petitioner to deposit monthly maintenance of Rs. 5,000/- in favour of respondent No. 2 with effect from the month of September, 2022. Aggrieved with the same, the petitioner is before this Court.

4. Mr. T. Lalzekima, learned counsel for the petitioner submits that the respondent No. 1 has no authority to direct the petitioner to pay maintenance to the respondent No. 2. Referring to Chapter-III of the Mizoram State Commission for Women Act, 2004, the learned counsel submits that the same deals with the functions of Commission. A bare perusal of Section 10 of Chapter-III nowhere provides that the Commission can pass an order for payment of monthly maintenance. He submits that no doubt the Commission can investigate in the matter but upon conclusion of such investigation, the Commission can only make recommendations to the appropriate authority for taking further steps. Since there is no source of power, the impugned Order dated 30.08.2022 cannot be sustained and should be set aside. In support of his submission, the learned counsel has relied upon the following authorities:-

(i) *Union of India and Another Vs. Tulsiram Patel*,
reported in (1985) 3 SCC 398.

(ii) *Sarup Singh and Another Vs. Union of India and Another*, reported in (2011) 11 SCC 198.

(iii) *Indian Bank Vs. Manilal Govindji Khona*, reported in (2015) 3 SCC 712.

5. Mr. T. Lalnunsiam, learned counsel appearing for respondent No. 1 on the other hand submits that the respondent No. 2 approached the respondent No. 1 with her grievance and that is how the respondent No. 1 has taken up the matter. Since the respondent No. 2 and the petitioner are not staying together, the respondent No. 1 deemed it fit and proper to direct the petitioner to pay a sum of Rs. 5,000/- as monthly maintenance. The respondent No. 1 is also looking into the family problem of the parties, so as to find out a solution while examining as to whether there has been deprivation of rights of the respondent No. 2 and also examine as to what safeguards can be made. The respondent No. 1 had in fact upon summoning the parties, asked the petitioner as to whether he was willing to give some maintenance and to which, the petitioner did not answer. It was under such circumstance that the respondent No. 1, though it fit to grant some maintenance pending further consideration of the complaint submitted by the respondent No. 2. The learned counsel submits that under the fact and circumstance, the order passed by the respondent No. 1 may not be interfered with.

6. Ms. Lalngaihsaki Fanai, learned Legal Aid Counsel for respondent No. 2 submits that the respondent No. 2 got married with the petitioner as per the Mizo Customary Law in the year 2018. Since the petitioner was a divorcee and did not have a clearance from the Church to remarry, the petitioner and the respondent No. 2 got married as per the Christian rites only in the year 2020. The parties did not have issues between them, but as contended by the learned

counsel for the petitioner, they have their respective issues from their previous marriage. Although the petitioner promised to look after the respondent No. 2 and her sons, certain differences cropped up after their marriage and it became impossible for the 2 (two) sons of the respondent No. 2 to live together with the rest of the family. The 2 (two) sons of the respondent No. 2 were forced by the petitioner to move out from the house and therefore, they began living separately since December, 2021. Thereafter, it also became no longer conducive for the respondent No. 2 herself to live with the petitioner and his son and was therefore, forced to move out from the house from August, 2022. Since then, the respondent No. 2 and her sons are living together by renting a house @ Rs. 8,000/- per month.

7. Before their marriage, the petitioner had promised the respondent No. 2 that he would look after her and her children, that is why she had given up her work at Lunglei and moved in with the petitioner. However, in view of the prevailing situation, the respondent No. 2 and her sons are having a tough time and are unable to maintain themselves. As such, the respondent No. 1, as an interim measure, rightly directed the petitioner to pay sum of Rs. 5,000/- as monthly maintenance to the respondent No. 2 and her children.

8. I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

9. The issue to be considered is as to whether the impugned Order dated 30.08.2022 (Annexure-5) can be sustained. As may already noticed, by the impugned order, respondent No. 1 had directed the petitioner to deposit a sum of Rs. 5,000/- in the Bank Account of the respondent No. 2 as monthly

maintenance with effect from the month of September, 2022. The said order has been passed by the respondent No. 1 pursuant to the complaint submitted by the respondent No. 2 seeking assistance/help from the Commission. Chapter-III of the Mizoram State Commission for Women Act, 2004 (Act of 2004) provides for the function of Commission.

10. For better appreciation, Section 10 of the Act of 2004 may be abstracted as below:-

“FUNCTIONS OF COMMISSION

10. (1) Subject to the provisions of this Act, the Commission shall perform all or any of the following functions, namely:-

(a) to investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws and recommend steps to be taken by the State Government for effective implementation of such safeguards;

(b) to 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 shortcomings in such legislation;

(c) to take up the cases of violation of the provisions of the Constitution and of other laws relating to women with the appropriate authorities;

(d) to look into complaints and take suo moto notice of matters relating to

(i) deprivation or 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 to take up the issues arising out of such matters with appropriate authorities;

(e) to 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;

(f) to undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres of life 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;

(g) to participate and advise on the planning process of socio-economic development of women;

(h) to evaluate the progress of the development of women under the State

(i) to visit 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;

(j) to fund litigation involving issues affecting large group or groups of women;

(k) to make periodical report to the Government on any matter pertaining to women and in particular various difficulties under which women toil;

(1) any other matter which may be referred to it by the Central Government or the National Commission for Women.

(2) The Commission shall, while investigating any matter referred to in clause (a) or sub-clause(i) of clause (d) of sub-section (1), have all the powers of a civil court trying a suit under the existing laws 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) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) any other matter which may be prescribed.

(3) (a) On any investigation mentioned in clause (a) or sub-clauses (i) and (ii) of clause (d) of sub-section (1) being completed, the Commission while taking up the matter with the State Government or the appropriate authority under clause (c) or clause (d) of sub-section (1), may recommend to the State Government or the appropriate authority, as the case may be, to institute legal proceeding or prosecution in the matter and may also recommend to the State Government or to the appropriate authority to appoint a counsel or a special prosecutor for the conduct of any such legal proceedings or prosecution; and the State Government may, having regard to the nature of the case and on being satisfied that it is so necessary, to appoint a counsel or special prosecutor, do so.

(b) The State Government or the appropriate authority, as the case may be, shall communicate in writing to the Commission from time to time the progress of any such legal proceeding or prosecution filed on the recommendation of the Commission.

(4) The State Government or the appropriate authority as the case may be, shall not apply for withdrawal of any such case or proceeding instituted under sub-section (3) without prior consultation in writing with the Commission.

(5) It shall be the duty of the Commission to furnish comments and recommendations on any report of the National Commission for Women on any matter with which the State Government is concerned as that Government may call for."

11. From the above abstract, it may be seen that the Commission is empowered to investigate and examine all the matters relating to the safeguards provided for women under the Constitution and other laws and recommend steps to be taken by the State Government for effective implementation of such safeguards. The Commission is also empowered to look into complaints and take suo moto notice of matters relating to deprivation of women's rights or non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development. Therefore, Section 10 of the Act of 2004 mainly provides that the function of the Commission is to make recommendation to the appropriate authority for taking appropriate steps for safeguarding and protecting women's rights. The same however, does not include the powers of the Commission to impose a penalty or to direct deposit of monthly maintenance to a party as has been done in the present case.

12. The Apex Court in the case of *Union of India and Another Vs. Tulsiram Patel (Supra)* in the given facts held that there cannot be an exercise of a power unless such power exists in law. If such power does not exist in law, the purported exercise of it would be an exercise of a non-existent power and would be void. The exercise of a power is, therefore, always referable to the source of such power and must be considered in conjunction with it. The case of *Sarup Singh & Anr. (Supra)* and *Indian Bank (Supra)* is also with the same finding.

13. Coming back to the present case as already noticed herein above, the Act of 2004 no doubt provides for certain functions of the Commission to look into the complaints submitted and take necessary steps for safeguard the women's

rights but at the same time, it nowhere provides that the Commission would be empowered to direct payment of monthly maintenance. Therefore, there being no source of power, I am of the considered view that the impugned Order dated 30.08.2022 is not sustainable in law and accordingly the same is set aside.

14. It is however provided herein that notwithstanding the setting aside of the impugned Order dated 30.08.2022, the respondent No. 1 will have the liberty to consider the complaint submitted by the respondent No. 2 in accordance with law and within the powers and functions as provided under the Act of 2004.

15. The interim order passed earlier is made absolute and with the above observation and direction, the writ petition stands disposed of.

JUDGE

Comparing Assistant