



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

Case No. : WP(C)/265/2023

Karpu Chisi and 2 Ors.

D/o Henkar Chisi,

Permanent Resident of Chisi Village, Dari Circle, PO/PS Basar, 791101, Lepa Rada
District, Arunachal Pradesh. 2: Henkar Chishi

Age:

Occupation :

3: Yapi Chishi

Age:

Occupation

VERSUS

THE STATE OF AP and 3 Ors.

Represented by Secretary, Women and Child Development, Itanagar, AP 2:the
Arunachal Pradesh State Commission for Women

Age: 0

Occupation :

3:the Member Secretary

Age: 0

Occupation :

4:Shrine Nima Chiram

Age: 0

Occupation

Advocate for the Petitioner : Sunil Mow

Advocate for the Respondent : GA (AP)

BEFORE
HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. S. Mow, Advocate.

For the Respondents : Ms. T. Wangmo,
Government Advocate.
Ms. J. Zongluju, Advocate.
For respondent No. 4.

Date of Hearing : 05.08.2024

Date of Judgment & Order : 05.08.2024

JUDGMENT & ORDER(ORAL)

1. Heard Mr. S. Mow, learned counsel for the petitioner. Also heard Ms. T. Wangmo, learned Government Advocate, Arunachal Pradesh, representing the State respondents and Ms. J. Zongluju, learned counsel for the respondent No. 4.
2. The present writ petition is filed under Article 226 of the Constitution of India by three petitioners, namely, Ms. Karpu Chisi, Sri Henkar Chishi and Smti. Yapi Chishi. They are aggrieved by a notice dated 30.05.2023 issued by the Arunachal Pradesh State Commissioner for Women (hereinafter referred to as APSCW) vide Memo No. APSCW/PP/EM & MH-08/2023 on a complaint filed by the respondent No. 4.
3. The facts which are not disputed either of the parties are to the following:-
 - I. The respondent No. 4 lodged a complaint before the APSCW on 20.04.2023 against the three petitioners.
 - II. The fundamental allegation is against the husband of the complainant, namely, Jimmy Chiram, which involves marital discord.
 - III. One of the allegation of the complaint is that her husband is maintaining an extra marital affairs with the petitioner No. 1, for which, her

family life has been ruined and her husband started cruelty upon her.

IV. The other two petitioners are the mother and father of the said petitioner No. 1.

V. The record reveals that during the pendency of this writ petition, the respondent No. 4 (wife) had also filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 against her husband which has been registered as DV Case No. 15/2023.

VI. The husband of the complainant (respondent No. 4) had also in the meantime filed a divorce petition being TS(D)/27/2023, which is now presently pending for adjudication before the learned District Judge, Yupia.

4. The learned counsel for the petitioner has fundamentally urged that on bare reading of the complaint dated 20.04.2023 lodged by the respondent wife shall not disclose any case to confer any jurisdiction upon the Commission to issue notice more particularly, against the petitioner Nos. 2 and 3. Therefore, on this count alone, the name of the petitioner Nos. 2 and 2 should be deleted from the proceeding of complaint dated 20.04.2024. So far relating to the petitioner No. 1, it is the contention of the learned counsel for the petitioner that though there are certain allegation of domestic violence etc., and cruelty that has been meted out upon the wife by the husband, however, the allegation of having an extra marital affairs of her husband with the petitioner No. 1, cannot be adjudicated by the Commission.

5. Alternatively, learned counsel for the petitioner also argues that since the husband and wife, both have approached before the appropriate forum for redressal of their grievances, the present petitioner No. 1, who is the 3rd party to their dispute should not be allowed to face unnecessary litigation.

6. Per contra, Ms. T. Wangmo, learned Government Advocate, Arunachal Pradesh, representing the State respondents as well as the Women Commission submits

that the notices were issued only with an object that the matter can be amicably settled between the parties, and for such object, it was necessary that the parties should remain present before the Commission. According to her, the Commission shall not be powerless to go for such a procedure, so as to redress the grievance of a woman. Accordingly, the learned Counsel representing the Commission submits that the Commission shall have jurisdiction and competent to proceed in the matter.

7. On the other hand, the learned counsel representing the respondent No. 4, i.e. wife, submits that this present writ petition is liable to be dismissed for the reason that the petitioners are having an efficacious alternative remedy before the Commission itself inasmuch as only a notice has been issued and the Commission could have decided its own jurisdiction and the petitioners ought not to have rushed to this Court for seeking judicial review of an order of issuance of notice and therefore, on this count alone, the present writ petition is liable to be dismissed.
8. She further contends that since there is specific allegation against the petitioner No. 1, being reason of marital discord in her life, therefore, a prima facie case is made out and accordingly, the Commission has issued the notice and in that background, this Court should not exercise its power of judicial review to determine such dispute, for which, a Commission has already been constituted by the State Legislature by enacting Arunachal Pradesh State Commission for Women Act, 2002.
9. She further contends that though proceeding before National Commission filed against husband was closed and she had also signed such proceeding, however, she put her signature without knowing the effect of such action inasmuch as wrong fact was recorded that dispute has already been resolved. Therefore, such consent cannot be a ground for allowing the present writ petition.
10. The learned counsel for the respondents relied on the decision of the High Court Manipur in the case of **Keisham Rojenkumar Singh –Vs- State of**

Manipur reported in **2016 SCC Online Mani 77**.

11. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the materials available on record.
12. The State Legislature has enacted the Arunachal Pradesh State Commission for Women Act, 2002 (for short APSCW Act, 2002). Section 15 of the Act, 2002 enumerate the function of the Commission, which amongst other, is to enquire into unfair practice against women, take decision thereto and to recommend to the Government the action to be taken in that manner. Such power is the most relevant function for the determination of this case.
13. One of the power and function given is to hold Family Court to dispose of cases related to unfair practices against women. Unfair Practice is defined under Section 2(8) which means any distinction, exclusion or restriction or exploitation made on the basis of sex for the purpose of which has the effect or impairing or nullifying the recognition, enjoyment or exercise by women of fundamental constitutional rights, or of human rights, or of fundamental freedom in the political economic, social cultural, civil or any other field for infringement of any right or benefit conferred on women by or under the provisions of any law for the time being in force etc.
14. In this context, it is important to note the determination of the Hon'ble Apex Court in the case of **Bhabani Prasad Jena –Vs- Convenor Secretary, Orissa State Commission for Women & Anr** reported in **2010 8 SCC 633** wherein the power of the Commission was dealt. In that case dealing with the Act of State of Odisha which is having pari materia provision to that of the APSC Act, held that the Commission has been authorized to take up service in respect of the economic, educational and health situation of the women in the State and also the working condition of the women etc. Similar provisions are also there in the APSCW Act, 2002, as discussed hereinabove.
15. In the aforesaid judgment, after discussing the scheme of the Act, the Hon'ble Apex Court concluded that though the State Commission may receive complaint

in relation to appropriate remedial measure, it has not entrusted the State Commission with the power to take up the role of a Court or any adjudicatory tribunal and determine the right of the parties. The State Commission is not a tribunal disturbing the function of a judicial institution or a Court. Therefore, the prescription under Section 15(1)(P) of the APSCW Act, 2002, empowering it to hold Family Court to dispose of cases related to a unfair practice cannot be read to have the power of Family Court Act or and/ or of court constituted to deal with the grievance as raised by the complainant in the impugned complaint.

16. Therefore, reading as a whole, the function, in the context of the present case, shall not come within the function to hold family court, more particularly, when the dispute admittedly, is a matrimonial dispute between husband and wife and the alleged exploitation and atrocities has been taken by the aggrieved party (complainant) to the appropriate court constituted under the Protection of Women from Domestic Violence Act, 2005, and therefore, simultaneous proceeding in the given facts of the present case shall not be permissible under law. It is also important that the husband of the complainant had also approached the appropriate court seeking divorce.
17. Therefore, in the aforesaid context and in the given facts of the present case, which is admittedly an allegation against the petitioner No. 1 having an extra marital affairs with the husband of the complainant, such complainant cannot be adjudicated by the tribunal more particularly, in the factual background that such dispute is being adjudicated in the appropriate courts.
18. So far relating the judgment relied on by the respondent No. 4, this Court is having no quarrel with the proposition inasmuch as in a given case, the Commission will have a power to issue notice, however, this is not the case where it ought to have issued the notice.
19. In view of the aforesaid, the present writ petition stands allowed by setting and quashing the notice dated 30.05.2023 issued by the Arunachal Pradesh State Commissioner for Women (hereinafter referred to as APSCW) vide Memo No.

APSCW/PP/EM & MH-08/2023 on a complaint filed by the respondent No. 4.

JUDGE

Comparing Assistant