

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 31<sup>st</sup> March, 2016.**

+ **W.P.(C) No. 7359/2014 & CM No.17214/2014 (for stay)**

**KUNAL CHAUHAN**

**..... Petitioner**

Through: Ms. Nandita Rao, Adv.

Versus

**NATIONAL COMMISSION FOR WOMEN  
& ANR**

**.....Respondents**

Through: Mr. Jasmeet Singh, CGSC and Ms.  
Astha Sharma, Adv. for R-1.  
Mr. Aditya Dewan, Adv. for R-2.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. This petition under Article 226 of the Constitution of India seeks mandamus to the respondent No.1 National Commission for Women (NCW) to recall its advisory dated 14<sup>th</sup> June, 2013 and seeks compensation in the sum of Rs.75,49,958/- jointly and severally from the respondent No.1 NCW and respondent No.2 Ms. Devika Singh.

2. The petition was filed pleading:

(i) that the respondent No.2 Ms. Devika Singh is the wife of the petitioner;

- (ii) that the petitioner is a Marine Engineer and was, at the time of his marriage and thereafter employed with Mitsui O.S.K. Lines Maritime (Indian) Pvt. Ltd.;
- (iii) that disputes and differences arose between the petitioner and the respondent No.2 Ms. Devika Singh and the respondent No.2 Ms. Devika Singh filed a complaint against the petitioner with the Special Unit of Women and Child of Crime Against Women (CAW) Cell of Delhi Police which issued notice to the petitioner;
- (iv) that the respondent No.2 Ms. Devika Singh also filed a petition in the District Court at Saket, New Delhi against the petitioner under the Protection of Women from Domestic Violence Act, 2005;
- (v) that the respondent No.2 Ms. Devika Singh using her clout as a Consultant to the National Mission for Empowerment of Women under the Ministry of Women and Child Development filed a complaint with the respondent No.1 NCW and the respondent No.1 NCW ignoring the fact that the CAW Cell of Delhi Police and the District Court at Saket were seized of the disputes between the parties and further ignoring the fact that all the properties of the petitioner are in India and without complying with the principles of natural justice

and giving the petitioner an opportunity of hearing, issued the impugned advisory dated 14<sup>th</sup> June, 2013 to the High Commission of India in Singapore, directing them to advise the employer of the petitioner not to post the petitioner outside India and with a copy to the employer of the petitioner;

(vi) that as a direct consequence of the aforesaid advisory, the petitioner's employer aforesaid discontinued the services of the petitioner vide their email dated 24<sup>th</sup> June, 2013, making the petitioner unemployed;

(vii) that though the petitioner represented to the respondent No.1 NCW to withdraw their advisory but to no avail;

(viii) that finally the respondent No.1 NCW in response to information sought by the petitioner under the Right to Information Act, 2005 (RTI Act) furnished to the petitioner the complaint made by the respondent No.2 Ms. Devika Singh and whereupon the advisory aforesaid had been issued;

(ix) that the District Court, Saket and the CAW Cell of Delhi Police have concluded that the respondent No.2 Ms. Devika Singh had taken forcible possession of the petitioner's property in Noida, U.P.;

(x) that owing to the illegal acts of the respondents, the petitioner has suffered loss.

3. The petition came up before this Court first on 31<sup>st</sup> October, 2014, when while issuing notice thereof, it was *prima facie* observed that the action of the respondent No.1 NCW of communicating directly with the employer of the petitioner was an abuse of authority by the respondent No.1 NCW and respondent No.1 NCW directed to consider withdrawing the letter dated 14<sup>th</sup> June, 2013.

4. However, notwithstanding the aforesaid opportunity, the respondent No.1 NCW did not withdraw the said advisory; this Court vide order dated 4<sup>th</sup> December, 2014, expressing a *prima facie* opinion that the authority of the respondent No.1 NCW extended only to taking up matters with the appropriate authorities in accordance with law and that the respondent No.1 NCW in issuing the impugned advisory had acted beyond the scope of its authority, stayed the operation of the impugned advisory till the disposal of the petition.

5. Counter affidavits have been filed by the respondents and to which rejoinders have been filed by the petitioner.

6. The counsel for the respondent No.1 NCW on 27<sup>th</sup> April, 2015 informed that the complaint of the respondent No.2 Ms. Devika Singh had been closed by the respondent No.1 NCW. Taking note of the same, it was observed that therewith the challenge in the petition to the advisory stood satisfied and the respondent No.1 NCW was directed to write to the Indian High Commission in Singapore about having closed the complaint and having withdrawn the advisory.

7. The counsels for the parties were heard on 30<sup>th</sup> September, 2015 and judgment reserved and permission sought to file written submissions granted. The written submissions have been filed and perused.

8. Though in the manner aforesaid, the relief sought in the petition qua the advisory dated 14<sup>th</sup> June, 2013 does not survive and only the claim of petitioner for compensation is to be considered but I may notice:

(A) That the respondent No.1 NCW, neither in its counter affidavit nor during the hearing nor in its written submissions, has referred to any of the provisions of the National Commission for Women Act, 1990 (NCW Act) under which the respondent No.1 NCW has been constituted and acting whereunder the impugned advisory was issued, which authorised / empowered it to issue the same.

(B) NCW, being a statutory body, cannot claim or exercise any inherent powers and can exercise only such powers as are prescribed in the statute creating it, to be exercised by it; this Court in ***Bhupinder Singh Vs. Delhi Commission for Women*** 137 (2007) DLT 411 held that the Delhi Commission for Women constituted under the Delhi Commission for Women Act, 1994 had no power for issuing any direction for payment of maintenance – it was observed that though the Commission had been vested with all the powers of a Civil Court in carrying out investigation relating to safeguards provided for women under the Constitution and other laws as also with regard to matters relating to deprivation of women's rights but in the absence of any power to pass order or direction for maintenance, the same could not be inferred. It was observed that powers to grant interim orders are vested in the Courts only.

(C) Section 10 of the NCW Act prescribes the functions, to perform which, NCW has been created. The said functions, except for those enumerated in Clause (f) of Sub-section (1) of Section 10, do not pertain to adjudication of complaints / claims of women in individual cases; they pertain to issues of women in general. Though Clause (f)

of Sub-section (1) of Section 10 of the NCW Act makes it a function of the respondent No.1 NCW, to *inter alia* look into complaints relating to deprivation of women's rights aimed at mitigating hardships and ensuring welfare and providing relief to women but only to take up the issues arising therefrom with the appropriate authorities. Under the said provision also, the respondent No.1 NCW has not been authorised to become a Judge or an Arbiter in the individual complaints of women. The same authorises NCW to, on a complaint, take up the issues arising therefrom with the appropriate authorities. The expression 'appropriate authorities', in my opinion, refers to authorities entrusted with the protection of women's rights and implementation of laws or to resolve the issue in general arising from the complaint. The same also does not empower NCW to approach any authority or person or office as an agent of the complaining woman and issue directions thereto. It cannot be lost sight of that the respondent No.1 NCW being a statutory body, its direction or advisory would carry much more weight than a complaint, if were to be directly made by the aggrieved woman. That is what appears to have happened in the present case. The impugned

advisory on the letterhead of the respondent No.1 NCW to the High Commission of India in Singapore with copy to the employer of the petitioner has been acted upon, resulting in the petitioner losing his employment. In my opinion, no provision of Section 10 of the NCW Act empowers the respondent No.1 NCW to take such an action.

(D) This Court in *Vikram Sharma Vs. Union of India* 171 (2010) DLT 671 relied upon by the counsel for the petitioner held the action of NCW, in that case of writing to the authorities for issuance of Look-out Circular against the petitioner in that case, to be without the authority of law and burdened NCW with compensation of Rs.20,000/- and to ensure that such actions do not recur, directed NCW to take steps in that regard. However, it appears that the judgment aforesaid of this Court in *Vikram Sharma* has had no impact on the respondent No.1 NCW.

(E) NCW, in its counter affidavit has however sought to draw authority for its action impugned in this petition from the letter dated 28<sup>th</sup> April, 2009 of the Ministry of Overseas Indian Affairs, Government of India. Vide the said letter, NCW was appointed as “the co-ordinating agency at the national level, to receive and process all

the complaints related to Indian women deserted by their overseas Indian husbands”, in pursuance to the recommendation of the Parliamentary Committee on Empowerment of Women (14<sup>th</sup> Lok Sabha) on the “Plight of Indian Woman deserted by NRI husbands”, to evolve a well defined / co-ordinated mechanism to deal with the issue of problematic NRI marriages to enable the women to get respectable solution to the problem. (I may notice that Section 10(1)(n) of the NCW Act empowers the NCW to perform any other function which may be referred to it by the Central Government). It is the stand of NCW in its counter affidavit that upon the respondent No.2 complaining to its NRI Cell expressing apprehension that the petitioner will attempt to get a posting outside India so as to avoid resolving the matrimonial dispute and leaving her in distress, it was of the “prima facie” view that in order to give justice to complaint made by the respondent No.2, the petitioner should be available in India and thus issued the impugned letter dated 14<sup>th</sup> June, 2013.

(F) I am afraid the NCW is misconstruing its functions in pursuance to letter dated 28<sup>th</sup> April, 2009 of the Ministry of Overseas Indian Affairs. The same also appoints NCW only as a co-ordinating agency

at national level and does not, as indeed it cannot, empower NCW to 'on a prima facie view' or for that matter take a final view on complaints received by it as to which of the warring spouses is at fault and to use it's clout to inflict punishment on the spouse which according to it is at fault. The role of NCW as a co-ordinating agency is only to ensure that the women in distress are guided to "appropriate agencies/authorities" empowered and constituted to take action on their complaints and such agencies act on the complaint and that the orders/directions issued by such agencies/authorities are in turn implemented by other agencies/authorities empowered /constituted/required to implement the same. The need for appointing such a co-ordinating agency at national level was felt, as the respondent No.1 NCW in its counter affidavit admits, owing to technical difficulties being faced by such women in serving court notices, process, orders outside the country and to assist the women in the same. However NCW appears to have abrogated to itself the task of the judge as well as of executing its own decisions and which it is not entitled to. All that the NCW, on receipt of complaint from the respondent No.2, could have done is to advise the respondent No.2 to

approach the police/court empowered to compel the presence of the petitioner and to ensure that the police considered the application/representation of the respondent No.2 in accordance with law and/or to direct the petitioner to other governmental agencies empowered to pass orders permitting the petitioner to remain abroad and to file objections to grant of such permission if any to petitioner and to ensure that orders passed by appropriate authorities are served on the petitioner and implemented, again by agencies empowered in law to implement them. Instead, NCW chose to adopt a procedure not sanctioned in law. It cannot be forgotten that the petitioner is not an overseas citizen but holding Indian passport and procedure exists in law for compelling return of such person to India. The apprehensions of respondent No.2 on which NCW acted thus had no basis and appear to be guided by desire to cause harm to the petitioner and in which NCW appears to have played along.

(G). This becomes further obvious from the respondent No.1 NCW having not even pursued the complaint of the respondent No.2 Ms. Devika Singh or taken it to its logical conclusion and having closed

the same after, 'on a *prima facie* view', causing damage to the petitioner.

(H) In this regard, the averment of the petitioner of the respondent No.2 Ms. Devika Singh at the relevant time working as a Consultant to the National Mission for Empowerment of Women under the Ministry of Women and Child Development and which averment has not been disputed by the respondent No.2 Ms. Devika Singh becomes relevant. The possibility of misuse of such position by the respondent No.2 Ms. Devika Singh cannot be ruled out.

(I). The respondent No.1 NCW vide the impugned advisory dated 14<sup>th</sup> June, 2013 directed the High Commission of India in Singapore to take up the matter with the employer of the petitioner, so that the petitioner should not be posted to any foreign country, until he resolves his matrimonial dispute with the respondent No.2 Ms. Devika Singh. There is on record a response dated 16<sup>th</sup> July, 2013 of the High Commission of India in Singapore to the respondent No.1 NCW to the effect that it would be beyond its jurisdiction to force the employer of the petitioner to deny employment to the petitioner or to terminate the employment of the petitioner. The counsels for the respondents

during the hearing also were unable to cite the authority of the High Commission of India in Singapore to take such an action. The law by which the respondent No.1 NCW has been constituted does not empower the respondent No.1 NCW to do so. It is not understandable, as to how the respondent No.1 NCW expected the High Commission of India in Singapore to exercise the power which it had directed. The only reason could be to do indirectly what could not be done directly, by making a copy of the letter directly to the employer of the petitioner.

(J) The action of the respondent No.1 NCW in the present case is clearly found to be illegal, beyond its jurisdiction and perhaps guided by the office which the respondent No.2 Ms. Devika Singh was at the relevant time occupying.

9. I have devoted considerable time to the issue in the hope that the respondent No.1 NCW would not, in future, act beyond its jurisdiction. The respondent No.1 NCW does not appear to have given requisite heed to the judgments aforesaid of this Court. Else, after the dicta in ***Vikram Sharma and Bhupinder Singh*** supra, the respondent No.1 NCW should have been cautioned and not acted as it did in issuing the advisory.

10. While on the subject, mention may also be made of certain other judgments dealing with the subject.

11. This Court in *U.S. Verma, Principal and Delhi Public School Society Vs. National Commission for Women* 163 (2009) DLT 557 held i) that NCW was conceived of and functions as a national level body primarily looking into the policy issues, to highlight them and recommend the appropriate measures to the governments concerned; ii) it cannot, in principle, look into individual issues unless they pose or concern a wider policy or legislative structural dilemma which requires to be addressed; iii) the findings or recommendations of NCW are of little or no evidentiary value and do not amount to substantive evidence in judicial proceedings; iv) it's investigations are to be 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; and, v) NCW cannot look into the material and examine witnesses to decide whether the allegations made in a complaint are well founded or not and cannot return factual findings drawn.

12. Supreme Court in *Bhabani Prasad Jena Vs. Convenor Secretary, Orissa State Commission for Women* (2010) 8 SCC 633 was concerned

with the power of State Commission for Women constituted under the Orissa (State) Commission for Women Act, 1993. It was held that the said Commission was broadly assigned the role of i) taking up studies on issues of economic, educational and healthcare that may help in overall development of women of the State; ii) to gather statistics concerning offences against women; iii) probe into complaints relating to atrocities on women, deprivation of women of their rights and upon ascertainment of facts take up the matter with the concerned authorities for remedial measures; and, iv) to 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. It was further held that the power conferred on the State Commission to receive complaints and to take up the matter with the authorities concerned for appropriate remedial measures did not entrust 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. It was yet further held that the conferment of the powers of a Civil Court on the State Commission did not give jurisdiction to the State Commission to make an order as made in that case, of payment of maintenance and direction for

conduct of a DNA test and which was held to be beyond the competence of the State Commission.

13. A Division Bench of the High Court of Bombay in ***KPMG India Pvt. Ltd. Vs. National Commission for Women*** MANU/MH/1256/2014 has also held that the NCW cannot arrive at a conclusion or grant relief though can make recommendations on the basis of such facts in the larger interest of women. It was held that NCW has no jurisdiction to determine whether or not there was an unfair dismissal or demand a letter of apology or direct payment of compensation or grant relief by way of ordering payment of bonus. It was reiterated that NCW functions in a recommendatory capacity and is not an adjudicatory body and the provisions of Section 10(4) of the NCW Act investing NCW with powers of a Civil Court do not entitle it to arrive at findings of fact or to arrive at final conclusions or grant reliefs that a Civil or Criminal Court can.

14. I will be failing in my duty if do not mention another judgment of this Court in ***Dr. Anil Seth Vs. Delhi Commission for Women*** MANU/DE/2731/2010 which appears to take a different stand inspite of noticing ***U.S. Verma, Principal and Delhi Public School Society*** supra but without noticing the dicta of the Supreme Court in ***Bhabani Prasad Jena***

supra However in the light of the otherwise consistent judgments supra, the same cannot be said to be laying down good law.

15. However, as far as the claim of the petitioner for damages is concerned, though the counsel for the petitioner has referred to, (i) **Vikram Sharma** supra; (ii) **Chairman, Railway Board Vs. Chandrima Das** (2000) 2 SCC 465; and, (iii) **M.S. Grewal Vs. Deep Chand Sood** (2001) 8 SCC 151 in this respect to contend that compensation can be awarded in writ jurisdiction but considering that the present is essentially a matrimonial dispute, I do not find it to be a fit case for award of damages / compensation in writ jurisdiction. However, since the respondent No.1 NCW, notwithstanding the earlier judgments has acted beyond its jurisdiction, I deem it appropriate to award costs of this petition of Rs.30,000/- to the petitioner payable by the respondent No.1 NCW within four weeks of today.

16. The petition is allowed to the aforesaid extent with liberty to the petitioner to, in accordance with law, pursue the claim for damages / compensation which has not been entertained for the reasons aforesaid.

**RAJIV SAHAI ENDLAW, J.**

**MARCH 31, 2016**

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