

Case Summary in Medha Kotwal Lele vs. Union of India

Application Number: 2012 STPL (Web) 616 SC Jurisdiction

1. Reference Details

Jurisdiction: Supreme Court of India

Date of Decision: 19th October 2012

Case Status: Case might open access to respective High Courts of State Governments.

Link to full case: http://www.stpl-india.in/SCJFiles/2012_STPL%28Web%29_616_SC.pdf

2. Background and Facts of the Case

The case arises against a background of the long-running attempt to tackle the problem of sexual harassment of women at work in India, both through the courts and before the legislature.

In 1997, in a landmark case before the Supreme Court of India stemming from the brutal gang rape of a publicly employed social worker at work (*Vishaka and Others v. State of Rajasthan and Others* (1997) 6 SCC 241), the Court stated that a woman's Constitutional rights to life (with dignity), to equality and to practice any profession or carry out any occupation, demanded safeguards against sexual harassment in the workplace. In the absence of legislative safeguards, the Court, stated that an "affective alternative mechanism" was needed to prevent violations of these fundamental rights in the workplace. To that end, the Court established guidelines ("Vishaka Guidelines") with regards to the prevention and redress of sexual harassment in the workplace. These set out a series of obligations on employers to prevent or deter acts of sexual harassment and to remedy occasions where such acts take place. The Court stated that the Vishaka Guidelines were to be treated as a declaration of law and to apply until relevant protective legislation was enacted by the Parliament.

Since then, the "Protection of Women against Sexual Harassment at Workplace Bill 2010", which seeks to provide the requisite protection, has been passed by the Lok Sabha (the lower house of Parliament) in September 2012. It is currently pending in the Rajya Sabha (the upper house of Parliament) and so is not yet in force.

The present case arose when Medha Kotwal Lele, coordinator of Aalochana, a centre for documentation and research on women and other women's rights groups, together with others, petitioned the Court highlighting a number of individual cases of sexual harassment and arguing that the Vishaka Guidelines were not being effectively implemented. In particular, the petitioners argued that, despite the guidelines, women continued to be harassed in the workplace because the Vishaka Guidelines were being breached in both substance and spirit by state functionaries who harass women workers via legal and extra legal means, making them suffer and by insulting their dignity.

The Court was specifically required to consider whether individual state governments had made the changes to procedure and policy required by the Vishaka Guidelines and a number of earlier orders of the Court.

3. Law

National laws:

- Article 141 Constitution of India
- The Vishaka Guidelines
- Protection of Women against Sexual Harassment Bill 2010 (the Bill) – still pending.
- Central Civil Service (conduct) Rules, 1964 (CCS Rules)
- Industrial Employment (Standing Orders) Rules.

International laws:

- The Beijing Platform for Action

4. Decision

The Court recalled that the Beijing Platform for Action states that:

“[V]iolence against women both violates and impairs or nullifies the enjoyment by women of human rights and fundamental freedoms (...) in all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture”.

It went on to reproach the fact that India’s record on gender equality remains poor, stating:

“[W]e have marched forward substantially in bringing gender parity in local self-governments but the representation of women in Parliament and the Legislative Assemblies is dismal as the women represent only 10-11 per cent of the total seats. India ranks 129 out of 147 countries in United Nations Gender Equality Index (...) Our Constitution framers believed in fairness and justice for women. They provided in the Constitution the States’ commitment of gender parity and gender equality and guarantee against sexual harassment to women.”

The Court stated that the Vishaka Guidelines had to be implemented in form, substance and spirit in order to help bring gender parity by ensuring women can work with dignity, decency and due respect. It noted that the Vishaka Guidelines require both employers and other responsible persons or institutions to observe them and to help prevent sexual harassment of women.

The Court held that a number of states were falling short in this regard. It referred back to its earlier findings on 17 January 2006, that the Vishaka Guidelines had not been properly implemented by various States and Departments in India and referred to the direction it provided on that occasion to help to achieve better coordination and implementation. The Court went on to note that some states appeared not to have implemented earlier Court decisions which had required them to make their legislation compliant with the Vishaka Guidelines. It

noted that some states had only amended certain aspects of their legislations rather than carrying out all required amendments and others had taken even less action.

The Court, reiterated that there is an obligation to prevent all forms of violence. It stated that *“lip service, hollow statements and inert and inadequate laws with sloppy enforcement are not enough for true and genuine upliftment of our half most precious population – the women”*.

Accordingly, it held that the Vishaka Guidelines should not remain just symbolic but rather shall provide direction until the legislative enactment of the Bill. Hence, holding that a number of states had not done everything required to comply with the Guidelines, the Court provided the following directions:

- States governments must make the necessary amendments to their CCS Rules and Standing Orders within two months of the date of judgment.
- States governments must ensure there is an adequate number of Complaint Committees within each state to hear complaints and that such Committees are headed up by a woman.
- State functionaries must put in place sufficient mechanisms to ensure effective implementation of the Vishaka Guidelines.
- The Bar Council of India shall ensure that all bar associations in the country and persons registered with the State Bar Councils follow the Vishaka Guidelines. Similarly, the Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and other statutory Institutes shall ensure that the organisations, bodies, associations, institutions and persons registered/affiliated with them follow the Vishaka Guidelines.

Finally, the Court stated that, in the event of non-compliance to the Vishaka Guidelines, the Courts orders and/or directions above, aggrieved persons should approach the High Court of the state concerned.