

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

Pronounced on: 28th March, 2017

+ LPA 274/2016 & C.M. No. 15941/2016

DEVIKA SINGH

...Appellant

Versus

KUNAL CHAUHAN & ANR.

...Respondents

+ LPA 440/2016 & C.M. No. 28284-86/2016

NATIONAL COMMISSION FOR WOMEN

...Appellant

Versus

KUNAL CHAUHAN & ANR.

...Respondents

Present:- Ms. Pinky Anand, ASG with Mr. Jasmeet Singh, CGSC, Ms.Somya Rathore, Advocate for NCW in LPA 440/2016.

Mr. Kailash Vasudev, Senior Advocate with Mr. Shailendra Swarup, Mr.K. K. Patra, Ms. Aparajita Swarup, Mr. Sumer Singh Sandhu, Mr. Dhruv Chand Saxena, Ms. Divija Rajkhowa, Mr.Umrad Singh Rawat, Advocates for the appellant in LPA 274/2016 and for R-2 in LPA 440/2016.

Ms.Rebecca M. John, Senior Advocate with Mr.Vishal Gosain, Ms.Srilina Roy, Mr. Harsh Bora, Ms. Rudrani Tyagi, Advocate for R-1.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

: **Ms. G. ROHINI, CHIEF JUSTICE**

1. These two appeals arising out of the order of the learned Single Judge dated 31.03.2016 in W.P.(C) No.7359/2014 are heard and decided together.

2. The said writ petition filed by Kunal Chauhan (arrayed as Respondent No.1 in both the appeals) was allowed in part by the order under appeal. Aggrieved by the same, the respondent No.2 in the writ petition (Devika Singh) preferred LPA No.274/2016 whereas the respondent No.1 in the writ petition (National Commission for Women) preferred LPA No.440/2016.

3. For the sake of convenience, the parties to these appeals shall hereinafter be referred to as they were arrayed in the writ petition.

4. We have heard the learned counsel appearing for the parties in both the appeals.

5. As could be seen from the material available on record, the writ petitioner (Kunal Chauhan) and the respondent No.2 (Devika Singh) got married on 11.02.2008 and a child was born in the year 2013 out of the wedlock. It appears that certain disputes arose between the writ petitioner and the respondent No.2 and the respondent No.2 made a complaint to the National Commission for Women (for short "NCW") alleging that she and her one and a half year old child were abandoned by her husband Kunal Chauhan and that she is being abused mentally and physically since their marriage. By that time, the husband Kunal Chauhan was employed as a Marine Engineer in a company at Singapore, however, posted in India. Therefore, she requested the NCW to take up the matter with his employer in Singapore and to ensure that he is not posted to any foreign country until he resolves the matrimonial dispute. On the basis of the said complaint, the NCW addressed the letter dated 14.06.2013 to the High Commission, Singapore to take appropriate action as per law and procedure under intimation to NCW. A copy of the said letter was also marked to the employer of the petitioner. Basing on the said letter dated 14.06.2013, the

employer of the petitioner discontinued the services of the petitioner on 24.06.2013.

6. It appears that though the petitioner requested NCW to withdraw their advisory, there was no response and thereafter he could obtain a copy of the letter dated 14.06.2013 by making an application under the Right to Information Act, 2005.

7. On 10.10.2014, the petitioner filed W.P.(C) No.7359/2014 seeking a direction to NCW to recall its advisory dated 14.06.2013 and further to direct an inquiry/investigation into the illegal, wrongful and mala fide conduct of the officials of NCW. The petitioner also sought compensation of Rs.75,49,958/- for the loss suffered by him.

8. The writ petition was contested by both NCW/respondent No.1 and Ms.Devika Singh/respondent No.2.

9. It is relevant to note that during the pendency of the writ petition, NCW closed the complaint of the respondent No.2 (Devika Singh) and when the said fact was reported to this Court, the learned Single Judge directed NCW to write to the Indian High Commission in Singapore about the closure of the complaint and withdrawal of the advisory dated 14.06.2013. Thus though the petition qua the advisory did not survive, the learned Single Judge proceeded to consider the powers of NCW under the National Commission for Women Act, 1990 (for short 'NCW Act') and recorded findings which may be summed up as under:

- (i) No provision of Section 10 of NCW Act empowers NCW to send the advisory dated 14.06.2013.
- (ii) The role of NCW as a coordinating agency at the National level to receive and process the complaints related to Indian women

deserted by their overseas Indian husbands (vide recommendation of the Parliamentary Committee on Empowerment of Women) 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 that the orders/directions issued by such agencies are in turn implemented by other agencies/authorities empowered/constituted/required to implement the same.

- (iii) All that 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 consider the application/representation of the respondent No.2 in accordance with law.
- (iv) Instead NCW chose to adopt a procedure not sanctioned in law and has abrogated to itself the task of the judge as well as of executing its own decision.

10. Having taken note of the fact that at the relevant point of time, the respondent No.2 (Devika Singh) was working as a consultant to the National Mission for Empowerment of Women under the Ministry of Women and Child Development, the learned Single Judge also observed that the misuse of such position by respondent No.2 cannot be ruled out.

11. The learned Single Judge referred to various judgments of the Supreme Court, this Court as well as other Courts holding that NCW functions in a recommendatory capacity and it is not an adjudicatory body. Making a specific reference to the decision of this Court in ***Vikram Sharma***

vs. Union of India; 171 (2010) DLT 671 wherein the action of NCW in writing to the authorities for issuance of look out circular against the petitioner therein was held to be without the authority of law and observing that notwithstanding the earlier judgments NCW had acted beyond its jurisdiction, the learned Single Judge disposed of the writ petition imposing costs of Rs.30,000/- payable by NCW to the petitioner.

12. Assailing the said order, Ms.Pinky Anand, the learned ASG appearing for NCW/Appellant in LPA No.440/2016 contended that the letter dated 14.06.2013 of NCW was merely informative and not in the manner of an advisory and never intended to direct the employer of the respondent No.1 to terminate his employment. Placing reliance upon the decision of the Supreme Court in *National Commission for Women vs. Bhaskar Lal Sharma & Ors.; (2014) 4 SCC 252* it is further submitted by the learned ASG that NCW is empowered to look into the complaints and take suo moto notice of matters relating to deprivation of rights of women and also entitled to take up the cases of violation of the provisions of the Constitution and other laws relating to women with the appropriate authorities.

13. Sh.Kailash Vasudev, the learned Senior Counsel appearing for the appellant in LPA No.274/2016 (Devika Singh) submitted that the only apprehension of the appellant was that the respondent No.1 would abandon her and her child by fleeing away from the country without prior intimation and it was never her intention that the services of the respondent No.1 are terminated. It is further submitted that the appellant has no reservation from her side, if the respondent No.1 resumes his employment.

14. It is vehemently contended by the learned Senior Counsel that the inference drawn by the learned Single Judge that the appellant being a

consultant in the National Mission for Empowerment of Women and Child Development might have misused her position is uncalled for and unwarranted.

15. Per contra, it is submitted by Ms.Rebecca John, the learned Senior Counsel appearing for the respondent No.1 (Kunal Chauhan)/writ petitioner that the NCW has no power whatsoever to adjudicate or determine the rights of the parties. In support of her submission, the learned Senior Counsel relied upon *Bhabani Prasad Jena Vs. Convenor, Secretary, Orissa State Commission for Women and Anr.*; (2010) 8 SCC 63, *U.S.Verma, Principal, DPS & Anr. vs. NCW*; 163 (2009) DLT 57, *Vikram Sharma vs. Union of India*; 171 (2010) DLT 671, *KPMG India Pvt. Ltd. & Anr. Vs. NCW*; (2014) LAB.I.C. 4311, *Bhupinder Singh vs. Delhi Commission for Women*; 2007 (94) DRJ 487, *Dr.Anil Seth Vs. Delhi Commission for Women & Ors.*; 2010 (119) DRJ 87, *Prasanna Kumar Mishra vs. State of Orissa & Ors.*; AIR 1998 Orissa 85 and *Munshi Ram vs. Dr.Y.S.Parmar University & Ors.*; 2007 LAB.I.C. 380. It is further urged that the apprehension of the appellant in LPA No.274/2016 (Devika Singh) that her husband is likely to flee away from the country is without any basis and in fact she was very well aware that he is a citizen of India and all his assets and properties are in India.

16. It is no doubt true that the NCW is empowered to look into complaints and take *suo moto* notice of matters pertaining to deprivation of rights of women. However, a perusal of letter dated 14.06.2013 addressed by NCW to the High Commission of India, Singapore stating that the respondent No.1/writ petitioner should not be posted to any foreign country until he resolves his matrimonial dispute with Devika Singh manifests that it

was in the form of an advisory. It is also relevant to note that the said letter culminated into termination of employment of writ petitioner/respondent No.1 herein. More significantly, the writ petitioner/respondent No.1 was never intimated by NCW with regard to the complaint of Devika Singh.

17. In the light of the aforementioned undisputed facts, the learned Single Judge was justified in holding that the procedure adopted by NCW is without any authority. Having regard to Section 10 of the NCW Act and the object sought to be achieved by the said Act, we are clear in our mind that it has never been the legislative intent to empower NCW to arrive at any final conclusion on any complaint received by it or to grant any relief which a Court is empowered to do. Therefore, as rightly held by the learned Single Judge, NCW is not entitled to issue the impugned advisory to the employer of the writ petitioner/respondent No.1, that too without any information to him.

18. We, therefore, do not find any justifiable reason to interfere with the order under appeal.

19. Both the appeals are accordingly dismissed. There shall be no order as to costs.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J

MARCH 28, 2017

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