

THE HIGH COURT OF MEGHALAYA AT SHILLONG.

WP(C) No. 246 of 2014

Shri Iumingstar Nongsiej,
S/o Shri Smik Lyngdoh,
Fireman at Fire & Emergency
Services, Mawngap, near
Police Station, Meghalaya

..... Petitioner

-Versus-

1. **The State of Meghalaya,**
Represented by its Secretary
& Commissioner (Home),
Shillong, Meghalaya

2. **The Superintendent of Police,**
Fire & Emergency Services,
Mawngap, near Police Station,
East Khasi Hills, Meghalaya.

3. **The Secretary,**
Meghalaya State Commission
for Women,
Lower Lachumiere, Shillong,
Meghalaya.

4. **Smti Rosa Warbah,**
D/o Smti T. Warah,
R/o Mawlai, Nongkwar,
Block-6, Shillong,
Meghalaya.

..... Respondents

**BEFORE
THE HON'BLE MR JUSTICE SR SEN**

For the Petitioner : Mr. Z.A. Siddiqui, Advocate

For the Respondent s : Mrs. N.G. Shylla, GA
Mr. A.H. Hazarika, Adv.

Date of hearing : **06.02.2015**

Date of Judgment & Order : **18.03.2015**

JUDGMENT AND ORDER

The petitioner's case in a nutshell is that:

"The Meghalaya State Commission for Women i.e. the Respondent No. 3 following a prayer for maintenance by the Petitioner's wife i.e. the Respondent No. 4 summoned the Petitioner for personal appearance on 23.03.2012 and on his appearance he was made to sign a pre-typed Agreement and thereafter the Commission vide letter dated 26.07.2012 directed the Respondent No. 2 to deduct an amount of Rs. 10, 000/- (Rupees Ten Thousand) only from his salary and the Respondent No. 2, without application of mind, vide impugned Order dated 19.07.2012 started deducting Rs. 10, 000/- (Rupees Ten Thousand) only per month from the salary of the Petitioner and the Petitioner being aggrieved vide his Representation dated 9.9.2012 and 15.4.2014 requested the Respondent No. 2 to revoke the impugned Order dated 19.7.2013 but the Respondent No. 2 vide his letter dated 30.4.2013 refused to do stating that the same can only be done on receipt of the settlement agreement with the Meghalaya State Commission for Women or on the orders of the appropriate court having jurisdiction over the powers and functions of the State Commission for Women.

Hence, this Petition".

2. Mr. Z.A. Siddiqui, learned counsel appearing for and on behalf of the petitioner had submitted that, The Meghalaya State Commission for Women has no power to direct to deduct the maintenance at the source to the employer of the petitioner. He further argued that, The Meghalaya State Commission for Women had called the parties and settled the matter for maintenance. The petitioner and the respondent No. 4 had settled the matter and fixed the maintenance at the rate of Rs. 10, 000/- per month (Rupees ten thousand) only and directing the employer of the petitioner to deduct the

amount from the salary of the petitioner and to remit the same to the respondent No. 4. Being aggrieved by the said illegal order of the Commission, the petitioner approach this court and prays that necessary direction may be given. In support of his submission, he relied on the Orissa State Commission for Women Act, 1993, the Meghalaya State Commission for Women Act, 2005 as well as the citations in the case of Bhabani Prasad Jena versus Convenor Secretary, Orissa State Commission for Women and another passed by the Division Bench of Hon'ble the Apex Court reported in (2010) 8 SCC 633.

3. On the other hand, Mrs. N.G. Shylla, learned GA appeared for and on behalf of the State as well as Mr. A.H. Hazarika, learned counsel appeared for the respondent No. 4. Both the learned counsels argued that the Commission has rightly passed the order and there is nothing wrong in the order. So, it may not be interfered with.

4. Section 10 at Chapter-III of the Orissa State Commission for Women Act, 1993 defines the functions of Women Commission, which is reproduced herein below:

“10. (1) The Commission shall perform all or any of the following functions namely :-

(a) make in-depth studies on-

(i) the economic, educational and health situation of the women of the State, with particular emphasis on the tribal districts and areas which are under-developed with respect to women's literacy, mortality and economic development.

(ii) Condition in which women work in factories, establishments construction sites and other similar situations.

and recommended to the State Government on the basis of specific reports on improving the status of women in the said areas;

- (b) *compile information, from time to time, on instance of all offences against women in the State, or in selected areas, including cases related to marriage and dowry, rape, kidnapping, criminal abduction, eve-teasing, immoral trafficking in women and cases of medical negligence in causing delivery or sterilization or medical intervention that relates to child bearing or child birth;*
- (c) *will co-ordinate with the State Cell and District Cells for atrocities against women, if any for mobilization of public opinion in the State as a whole or in specific areas which would help in speedy reporting and detection of offences of such atrocities and mobilization or public opinion against the offenders.*
- (d) *Receive complaints on-*
 - (i) *atrocities on women and offences against women,*
 - (ii) *deprivation of women of their rights relating to minimum wages basis health and maternity rights,*
 - (iii) *non-compliance of policy decisions of the Government relating to women.*
 - (iv) *rehabilitation of deserted and destitute women and women forced into prostitution.*
 - (v) *atrocities on women in custody,*

and take up with authorities concerned for appropriate remedial measures,
- (e) *assist, train and orient the non-Government organization in the State in legal counseling of poor women and enabling such women to get legal aid,*
- (f) *inspect or cause to be inspected, 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.*
- (g) *perform functions in relating to any other matter which may be referred to it by the State Government.*

(2) *The State Government shall cause all the recommendations or reports, or any part thereof, as may be presented to it by the Commission under (1), which relate to any matter with which the State Government is concerned, to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations of the Commission and the reasons for the non-acceptance, if any of such recommendation.*

(3) *The Commission shall while investigating any matter referred to in clause (a) or clause (d) of sub-section (1) have all the*

powers of a Civil Court trying a suit 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 documents;*
- (c) receiving evidence on affidavits;*
- (d) requisitioning any public record or copy thereof from any court or office;*
- (e) issuing commissions for examination of witness and documents;*
- (f) any other matter which may be prescribed”.*

5. Similarly, Section 12 at Chapter-III of the Meghalaya State Commission for Women Act, 2005 defines the power of the Commission, which is reproduced herein below:

“12.(1) The Commission shall, for the purpose of any inquiry under this Act have the same powers as are vested in a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely :-

- (a) summoning and enforcing the attendance of any witness and examining him/her.*
- (b) requiring the discovery and production of any document;*
- (c) receiving evidence on affidavit;*
- (d) requisitioning any public records or copy thereof from any public office;*
- (e) issuing commissions for examination of witnesses.*

(2) Any proceeding before the Commission shall be deemed to be a judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code (Central Act 45 of 1860) and the Commission shall be deemed to be a court for the purpose of Section 195 of the Code of Criminal Procedure 1973 (Central Act 2 of 1974).

6. After perusal of the powers as defined both in the Orissa State Commission for Women Act, 1993 and the Meghalaya State Commission for Women Act, 2005, it is understood that though, the Commission has given some civil powers, but it cannot be said that it is a full fledged civil court or having power to enforce its orders.

7. On bare perusal of the power as defined under section 10 of the Orissa State Commission for Women Act, 1993 and the Meghalaya State Commission for Women Act, 2005 is almost similar.

8. Now, after perusal of both the Acts, the question remains whether the Meghalaya State Commission for Women can determined the maintenance and to direct the employer of the petitioner to deduct the maintenance amount and to transmit the same to the petitioner.

9. Hon'ble the Apex Court in ***Bhabani Prasad Jena versus Convenor Secretary, Orissa State Commission for Women and another: reported in (2010) 8 SCC 633 at Para 9, 10 and 13*** are reproduced herein below:

"9. It would be seen from Section 10 of the 1993 Act that the State Commission has been authorized to take up studies in respect of economic, educational and health situation of the women of the State and also the working conditions of women in the factories, establishments, construction sites and make its recommendations to the State Government. The State Commission is empowered to compile information in respect of the offences against women and to coordinate with the State Cell and District Cells for atrocities against women. Further, the State Commission is competent to receive complaints in respect of the matters specified in Section 10(1)(d) and take up the grievances raised in the complaint(s) with the authorities concerned for appropriate remedial measures. The State Commission is also given the role of assisting, training and orienting the non-governmental organizations in the State in legal counseling of poor women and enabling such women to get legal aid. Under clause (f) of Section 10(1), the State Commission is authorized to inspect or cause to be inspected, 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 authorities concerned these matters for remedial action.

10. In other words, the State Commission is broadly assigned to take up studies on issues of economic, educational and health care that may held in overall development of the women of the State; gather statistics concerning offences against women; probe into the complaints relating to atrocities on women, deprivation of women of their rights in respect of minimum wages, basic health, maternity rights etc. and upon ascertainment of facts take up the matter with the authorities concerned for remedial measures; 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.

13. It is clear to us that the legislature has not gone so far as to give jurisdiction to the State Commission to make an order such as the one that has been made. From whatever angle we may examine the validity of the directions given by the State Commission in its order dated 11-5-2009, it appears to us that the said order was outside the jurisdiction, power or competence of the State Commission. It was an order which the State Commission had no competence to make and, therefore, a void order. The High Court instead of correcting that order went a step further and directed that DNA test of the child as well as the appellant shall be conducted”.

10. After examining the facts and circumstances of the case as well as considering the Meghalaya State Commission for Women Act, 2005 and keeping in mind the observations made by the Hon'ble Supreme Court in the above quoted case, I am of the view that, the Commission has no scope or authority to determine the maintenance of the parties and direct the employer of the petitioner to deduct the determined maintenance amount and to remit the same to the petitioner. At best, the Commission can assist the aggrieved party to place her case before the competent court having a competent jurisdiction. Accordingly, the impugned Agreement dated 16.01.2012 at Annexure-III as well as letter dated 26.02.2012 at Annexure-IV are hereby set aside. However, this judgment and order will not preclude the respondent No. 4 for claiming the maintenance or any other financial support against the writ petitioner from a court of competent jurisdiction.

11. With this observation and direction, the instant writ petition is allowed to that extent and stands disposed of.

12. No order as to costs.

JUDGE

D. Nary