

THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Extra Ordinary Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W. P. (C) No. 21 of 2023

Shri Jiwan Kumar Bhusal,
S/o Late Dharma Raj Bhusal,
R/o Sinleybong, PW. Near Post Office,
West Pendam, District Pakyong,
Contact: 9883714770,
Pin Code: 737 134.

..... Petitioner

Versus

- 1.** The State of Sikkim,
Represented by the Secretary,
Social Welfare Department, Lumsay,
Tadong, Gangtok, Sikkim,
Pin Code: 737 101.
- 2.** Sikkim State Commission for Women
Represented by its Chairperson
Vishal Gaon, Pani House Road
Gangtok Sikkim
Pin Code: 737 101.
- 3.** Smt. Sunita Bhusal,
W/o Shri Jiwan Kumar Bhusal,
R/o Sinleybong, PW. Near Post Office,
West Pendam, District Pakyong,
Sikkim.
Contact: 9593784725
Pin Code: 737 134.

..... Respondents

Application under Article 226 of the Constitution of India.

Appearance:

Mr. Abhinav Kant Jha, Advocate for the Petitioner.

Mr. Shakil Raj Karki, Assistant Government Advocate for
the Respondent No.1.

Dr. Doma T. Bhutia, Senior Advocate for the Respondent
No.2.

Ms. Mon Maya Subba, Advocate for the Respondent No. 3.

Date of hearing : 30.11.2023

Date of judgment : 06.12.2023

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. The present writ petition filed on 02.06.2023 assails the Order dated 05.11.2020 passed by the Sikkim State Commission for Women (respondent no.2) on the ground that under the Sikkim State Commission for Women Act, 2001 it did not have the power to pass such an order.

2. The impugned order was passed on the following facts and circumstances. On 06.10.2020 the respondent no.3, the wife preferred a complaint before the respondent no.2. She alleged that she had been suffering because the petitioner, her husband, had been having an affair with his own relative i.e. sister-in-law for almost a year; when confronted the sister-in-law denied the facts and switched off her cell phone; she had proof regarding their affair and adultery; the petitioner used to mentally torture her and their children; the petitioner has not given her a single rupee from his salary; she was in grief not knowing what she was supposed to do and therefore, sought the guidance and help.

3. What happens thereafter, before the respondent no.2, is the pivotal issue which has led to the present writ petition being filed, although belated.

4. Admittedly, summons were issued to the petitioner and respondent no.3 by the respondent no.2. According to the respondent no.2 during investigation it was revealed that the petitioner was having an affair with the sister-in-law. Although it is not clear how the sister-in-law appeared before the respondent no.2, the respondent no.2 confirms she assured the respondent no.3 that she would not continue her relationship with the petitioner and sought apology from respondent no.3. When the respondent no.2, as asserted by it, was requested by the parties to record the confession of the sister-in-law, the Order dated 19.10.2020 was prepared by the respondent no.2. On 19.10.2020 the respondent no.2 heard the petitioner, the respondent no.3 as well as the sister-in-law and passed the following Order:-

“Heard both parties and their submissions. The other woman Ms. Jxx Sxx was also present. The husband has asked to get salary certificate on 23/10/2020. The other woman Ms. Jxx Sxx has submitted that she will not keep any kind of relation with her brother-in-law henceforth. She has sought apology from the wife of Jiwan Kr. Bhusal. Next date 23/10/2020.”

5. According to the respondent no.2 when the petitioner and the respondent no.3 appeared before it on 05.11.2020 both the parties were given full opportunity to place their grievance and after hearing them passed the impugned Order dated 05.11.2020 recording what was agreed by the petitioner before the respondent no.2 in the following manner:-

*“Government of Sikkim
 Sikkim State Commission for Women
 Gangtok*

In the matter of :

Smt. Sunita Bhusal *Complainant*
R/O: Bardang, East Sikkim

Versus

Shri. Jiwan Kr. Bhusal *Respondent*
R/O: Bardang, East Sikkim

ORDER

Memo No. 175/SSCW/2020-2021

Date: 05/11.2020

Heard both parties and their submissions. The husband has brought his salary certificate. As agreed by both, the husband will give Rs.20,000/- to his wife for the maintenance on monthly basis from December which will be directly deducted from the salary a/c as decided by the husband. Both parties will maintain cordial relationship.

*Sd/-
 Member Secretary*

Sd/-

1. *Smt. Sunita Bhusal*

Sd/-

2. *Shri Jiwan Kr. Bhusal”*

6. According to the petitioner, he was cleverly coerced to pay Rs.20,000/- to respondent no.3 as maintenance on monthly basis and also made the sister-in-law to pay Rs.3 lakhs in cash and a ‘*khada*’ to the respondent no.3. The respondent no.3 disputes this assertion and submits that the story of coercion after a lapse of four years is a false allegation. The respondent no.3 also disputes that the petitioner was coerced to pay the amount of Rs.20,000/- as maintenance but admits that the petitioner himself had voluntarily given consent to pay Rs.20,000/- per month. The respondent no.3 also submits that respondent no.2 had only assisted respondent no.3 in getting immediate financial help in the need of the hour. However, there

is no specific denial that an amount of Rs.3 lakhs was paid to the respondent no.3 by the sister-in-law in cash.

7. On 06.11.2020 the petitioner wrote a letter to the respondent no.2 agreeing to pay Rs.20,000/- from his salary account.

8. On 27.03.2023 the petitioner wrote to the respondent no.2 drawing its attention to the judgment of the Supreme Court in ***Bhabani Prasad Jena vs. Convenor Secretary, Orissa State Commission for Women and Another***¹ and requesting it to order to stop the deduction of Rs.20,000/- per month from his salary which he had paid for over two years. The petitioner thereafter approached the Sikkim Nationalised Transport Department to request it to stop the monthly deduction by its letter dated 27.03.2023. However, when these efforts failed he approached this Court by filing the present writ petition.

9. Heard Mr. Abhinav Kant Jha, learned counsel for the petitioner, Dr. Doma T. Bhutia, learned Senior Advocate for the respondent no.2 and Ms. Mon Maya Subba, learned counsel for the respondent no.3.

10. The learned counsel for the petitioner submits that the respondent no.2 had no authority to act in an adjudicatory manner as it had no power to adjudicate relying upon the judgment of the Supreme Court in ***Bhabani Prasad*** (supra).

¹ (2010) 8 SCC 633

11. The learned Senior Advocate for the respondent no.2 submitted that the facts in **Bhabani Prasad** (supra) were substantially different. She reiterated the submission, as has been contested in the counter-affidavit filed by the respondent no.2, that it had not passed any direction but only recorded what was agreed by the petitioner on 05.11.2020. According to the respondent no.2, it is a statutory body constituted by the Government of Sikkim under the Sikkim State Commission for Women Act, 2001 which has all the powers of the Civil Court under section 11 thereof. It is submitted that the respondent no.2 has been authorised to receive complaints from aggrieved women under section 11 thereof. Accordingly the respondent no.2 received the complaint from the respondent no.3 and being a statutory body issued summons to the parties. When the parties appeared before the respondent no.2, the petitioner voluntarily agreed to pay the amount of Rs.20,000/- from his salary as monthly expenses towards his wife and children. It is also submitted that the writ petition has been filed after a lapse of four years without any explanation.

12. The impugned Order is dated 05.11.2020. Admittedly, the petitioner has approached this Court only on 02.06.2023 after a substantially long delay. According to the petitioner, the delay was caused as he was naive to the intricacies of law and he was not aware that the respondent no.2 was not empowered to pass the impugned order. The learned Senior Counsel pressed the judgment of the Supreme

Court in **S.S. Balu & Anr. vs. State of Kerala & Ors.**² to submit that the discretionary jurisdiction of this Court may not be exercised in favour of those who approached the Court after a long time since delay and laches are relevant factors for exercise of equitable jurisdiction.

13. In **Bhabani Prasad Jena** (supra) the Supreme Court considered and interpreted the provision of section 10 of the Orissa State Commission for Women Act, 1993. On perusal of section 10 of the Orissa State Commission for Women Act, 1993 it is noticed that it is in *pari materia* with section 11 of the Sikkim State Commission for Women Act, 2001. For better clarity, the two provisions are extracted below in a tabular form:-

Comparison Chart on Section 11 of the Sikkim State Commission for Women Act, 2001 and Section 10 of the Orissa (State) Commission for Women Act, 1993

Section 11 Of Sikkim State Commission for Women Act, 2001	Section 10 Of Orissa (State) Commission for Women Act, 1993.
Functions of the Commission:- 11. (1) The Commission shall perform all or any of the functions, namely:- (a) Make in-depth studies on:- (i) The economic, social and health situations of the women of the State with particular emphasis on the tribal areas, which are under developed with respect to women's literacy, morality and economic development. (ii) Condition in which women work in factories; establishments, construction sites and other similar situations and recommend to the State Government on the basis of specific reports on	Functions of the Commission:- 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 woman work in factories, establishments, construction sites and other similar

² (2009) 2 SCC 479

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<p>improving the status of women in the said areas;</p> <p>(b) Compile information from time to time on instances 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 childbirth;</p> <p>(c) Co-ordinate with the State cell and district cells for atrocities against women; if any, for mobilisation of public opinion in the state and whole or in specific areas which would help in speedy reporting and detection of offences of such atrocities and mobilisation of public opinions against the offenders;</p> <p>(d) Receive complaints on: - (i) Atrocities on women and offences against women; (ii) Deprivation of women of their rights relating to minimum wages, basic 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, addiction and substance abuse; (v) Atrocities on women in custody and take up with authorities concerned for appropriate remedial measures;</p> <p>(e) Assist, train and orient the non-governmental organisations in the State in legal counselling of poor women and enabling such women to get legal aid:</p> <p>(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 concerned authorities for remedial activity if necessary;</p> <p>(g) Perform functions in relation to any other matter which may be referred to it by the State</p>	<p>situations, and recommend to the State Government on the basis of specific reports on improving the status of women in the said areas;</p> <p>(b) compile information, from time to time, on instances 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 of sterilization or medical intervention that relates to child beating or child birth;</p> <p>(c) will co-ordinate with the State Cell and District Cells for atrocities against women, if any for mobilisation 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 in obligation or public opinion against the offenders;</p> <p>(d) receive complaints on- (i) atrocities on women and offences against women; (ii) deprivation of women of their rights relating to minimum wages basic 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.</p> <p>(e) assist, train and orient the non-Government Organisation in the State in legal counselling of poor women and enabling such women to get legal aid;</p> <p>(f) inspect or cause to be inspected, a jail, remand, 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;</p> <p>(g) perform functions in relation to any other matter which may</p>
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Government;	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 sub- clause (ii) of clause (a) of sub-section (1) which relate to any matter with which the State Government is concerned to be laid before the legislature of the State along with Memorandum explaining the action taken or Proposed to be taken on the recommendations of the Commission and the reasons non acceptance, of such recommendations.	(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 Sub- section (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 recommendations.
(3) The Commission shall while investigating any matter referred to in clause (a) or clause (d) of sub-section (1) of section 11 have all the powers of the Civil court trying a suit and in particular in respect of the following matters, namely:-	(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 Civil Court trying a suit and in particular, in respect of the following matters, namely :
(a) Summoning and enforcing the attendance of any persons from any part of India and examining him on oath;	(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 document;	(b) requiring the discovery and production of any document;
(c) Receiving evidence on affidavits;	(c) receiving evidence on affidavits;
(d)Requisitioning any public record or copy thereof from any court or office	(d) requisitioning any public record or copy thereof from any Court or office;
(e) Issuing commissions or the examination of witnesses and documents;	(e) issuing commissions to the examination of witness and documents; and
(f) Any other matters which is required to be, or may be prescribed.	(f) any other matter which may be prescribed.

14. The Supreme Court in ***Bhabani Prasad Jena*** (supra) has held:

“9. It would be seen from Section 10 of the 1993 Act that the State Commission has been authorised 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 organisations in the State in legal counselling of poor women and enabling such women to get legal aid. Under clause (f) of Section 10(1), the State Commission is authorised 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 help 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.*

11. *Mr Ranjan Mukherjee, learned counsel for Respondent 2 submitted that once a power has been given to the State Commission to receive complaints including the matter concerning deprivation of women of their rights, it is implied that the State Commission is authorised to decide these complaints. We are afraid, no such implied power can be read into Section 10(1)(d) as suggested by the learned counsel. The provision contained in Section 10(1)(d) is expressly clear that the State Commission may receive complaints in relation to the matters specified therein and on receipt of such complaints take up the matter with the authorities concerned for appropriate remedial measures. The 1993 Act has not entrusted 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. The State Commission is not a tribunal discharging the functions of a judicial character or a court.”*

15. When the Supreme Court has on examination of section 10 of the Orissa State Commission for Women Act, 1993 already held as above, no other interpretation of the *pari materia* provision of section 11 of the Sikkim State Commission for Women Act, 2001 is possible. Accordingly it is held, on reading of the Sikkim State Commission for Women Act, 2001 and specifically section 11 thereof, that the respondent no.2 has

been authorised to perform the functions enumerated in section 11 (1) (a) to (g) only. The respondent no.2 while it is authorised to receive complaints *inter alia* on atrocities on women and offences against women; deprivation of women of their rights relating to minimum wages, basic health and maternity rights; and investigate the matter it can thereafter, only take up the grievances raised in the complaint with the authorities concerned for appropriate remedial measures. The respondent no.2 does not have the power or authority to adjudicate or determine the rights of the parties. The Sikkim State Commission for Women Act, 2001 has not entrusted the respondent no.2 with the power to take up the role of a Court or an adjudicatory tribunal and determine the rights of the parties. The respondent no.2 is therefore, not a tribunal discharging the function of a judicial character or a Court.

16. Viewed on the above parameters, the act of respondent no.2 in the present case has been adjudicatory. Even if this Court was to believe that no coercion was exercised by the respondent no.2 to compel the petitioner to agree in paying maintenance to the respondent no.3 as recorded in the impugned Order dated 05.11.2020 admittedly, the respondent no.2 sought to take an adjudicatory role which was clearly impermissible. The Sikkim State Commission for Women Act, 2001 has not given jurisdiction to the respondent no.2 to pass the impugned order and adjudicate the issues between the petitioner and the respondent no.3 in the manner it did. The

impugned order dated 05.11.2020 was outside the jurisdiction of the respondent no.2 as it had no competence to pass it and therefore, a void order.

17. This Court is therefore, of the view that although there is substantial delay on the part of the petitioner to approach this Court, it must be condoned. It is trite the discretionary jurisdiction may not be exercised in favour of those who approach the Court after a long time. It has also been repeatedly held by the Supreme Court that however, there is another facet and the Court is required to exercise “judicial discretion”. Delay and latches is not an absolute impediment and sometimes there are mitigating factors. It depends on facts of each case. When the act complained of shocks the judicial conscience, the Court should not hesitate to exercise the discretion more so when no third party interest is involved. There could be cases where the demand for justice is so compelling, that this Court would be inclined to interfere in spite of the delay. The judicial discretion must be exercised fairly and justly to promote justice and not defeat it. When the claim made by the petitioner is legally sustainable, delay should be condoned. Where circumstances justifying the conduct exists, the illegality which is manifest, cannot be sustained on the sole ground of latches. No one has a vested right in injustice being done or perpetuated.

18. The plea of the respondent no.3 is substantially on the wrong doings alleged against the petitioner. The complaint

of the respondent no.3 relates to matrimonial dispute between the respondent no.3 and the petitioner which is required to be inquired into by a competent Court. This Court is not inclined to examine the merits thereof. Although this Court is of the view that the impugned Order dated 05.11.2020 cannot stand and accordingly sets it aside, it is clarified that it shall not preclude the respondent no.3 from claiming maintenance or any other order of financial support or otherwise against the petitioner in appropriate proceedings from the Court of competent jurisdiction. The petitioner, needless to say, shall be at liberty to contest the claim of the respondent no.3 on all available grounds.

19. The writ petition is accordingly allowed and disposed of along with the pending application.

**(Bhaskar Raj Pradhan)
Judge**

Approved for reporting : **Yes**
Internet : **Yes**
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