

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO.52 OF 2013

Priscilla Samuel.

.. Petitioner

Vs

Union of India and Others.

.. Respondents

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Ms.Priscilla Samuel, the Petitioner in person.

Shri D.P. Singh for the Respondent No.1 Union of India.

Shri Rohit Deo. Acting AG a/w Shri J.S. Saluja, AGP for the Respondent No.2 State.

Ms.Swati Sawant i/b S.K. Legal Associates for the Respondent Nos.8 and 9.

Ms. Trupti Puranik for the Respondent No.12.

Shri R.D.Soni and Ms. Nikita Bhansali i/b Wadia Ghandy & Co for the proposed Respondent No.14.

Ms M.A. Adenwalla for the Tata Institute of Social Science.

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CORAM : A.S.OKA &

A.A. SAYED, JJ.

DATED : 16 JUNE 2016

P.C.:

We have heard the Petitioner appearing in person and the learned acting Advocate General for the State. We have perused the affidavit of Shri Manoj Shantaram Patankar, District Women and Child Development Officer, Mumbai Suburban District dated 26 April 2016. In paragraph 2 of the Affidavit, there is an assurance that the Maharashtra Dowry Prohibition Rules, 2003 (for short "the said Rules of 2003") will be put on website of the Commissioner, Women and Child Development Development. We direct

that the necessary action shall be taken within a period of four weeks from today.

2. Paragraph 3 of the said Affidavit reads thus:-

“3. As regards, the appointing of Dowry Prohibition Officers under Section 8-B of the Dowry Prohibition Act is concerned, I say that it has been decided as a policy, to consider and appoint Class-I Officer who would be entrusted additional charge to function as Dowry Prohibition Officer in place of the existing Police Officers also functioning as Dowry Prohibition Officer, to be posted at Mumbai City, Mumbai Suburban and District Level. Similarly, the Class-II Officers from the Child Development and Protection Officer (CDPO) would also be entrusted additional charge to function as Dowry Prohibition Officer at Taluka Level. I say that this entire process would be put into effect within a period of next two months. Since there are large number of vacant posts in the Child Development and Protection Officer (Class-2), we have sent our requisition of MPSC to fill up the vacant posts. In the meantime, the Police Officers will continue to function the role as Dowry Prohibition Officer, until such time these Child Development and Protection Officers (Class-2) are entrusted with the duty and to function as Dowry Prohibition Officers.”

2. In the detailed order passed by this Court on 23 March 2016, this Court has already held that as the Dowry Prohibition Officers discharge important duties and functions under the Dowry Prohibition Act, 1961 (for

short “the said Act”), the State Government will have to take steps for not only appointing independent Dowry Prohibition Officers but also to give adequate publicity to the names, address, telephone numbers, etc. of the Dowry Prohibition Officers. There is already a direction issued to set up a grievance redressal mechanism so that members of the public can make grievances before the Dowry Prohibition Officers.

3. On the last date, the learned AGP stated that the independent posts of the Dowry Prohibition Officer cannot be created, as there is a complete bar on creation of additional posts on the establishment of the State Government due financial constraints. It is for this reason that in the Affidavit of Shri Patankar he has stated that the additional charge of the post of Dowry Prohibition Officers will be given to the Officers whose designation is mentioned in paragraph 3.

4. In the order dated 23 March 2016, this Court has already noted the important duties assigned to the Dowry Prohibition Officer. This Court also noted the fact that the Dowry Prohibition Officers in the State have hardly discharged the duties and functions under the said Act. We may note here that in the said Rules of 2003 and in particular Rule 5, in addition to the duties and functions of the Dowry Prohibition Officers provided in the said

Act, additional functions to be performed by the Dowry Prohibition Officers have been laid down. Rule 5 of the said Rules reads thus:-

“5. Additional functions to be performed by Dowry Prohibition Officer- Every Dowry Prohibition Officer shall perform the following additional functions, namely:-

(i) He shall endeavour to create awareness among the public by organizing camps, publicity through Information and Broadcasting Department, Panchayat Samiti and other media against dowry and to involve local people, for prevention of dowry.

(ii) He shall conduct surprise checks and discreet inquiries to ascertain whether there has been any violation of the provisions of the Act or Rule made thereunder.

(iii) He shall receive complaints for any offence under the Act from the party or person aggrieved on any other person, institution or organisation.

(iv) He shall maintain a register for the purpose of the Act to record all complaints, inquiries and results thereof and other relevant information connected therewith in the prescribed Form No.1 appended to these rules. He shall also maintain separate files with relevant records for each individual case.

(v) He shall act as the member Secretary Convenor of the Advisory Board. He shall maintain regular contact with the members of the Advisory Board for necessary advice and assistance from them. He shall inform the District Magistrate or any other person authorised by

the State Government for the purpose, about all the affairs relating to the operation of the Act, as and when necessary.

(vi) He shall keep in his custody all the lists of presents submitted by the parties to any marriage and make entries relating thereto in a Register to be maintained for the purpose. He shall also examine these lists and ensure compliance of the provisions of the Dowry prohibition (Maintenance of Lists of Presents to the Bride and Bridegroom) Rules, 1985.

(vii) He shall discharge his duties with due care, decorum, privacy and in a manner to uphold the dignity and harmony of family relationship.

(viii) His approach shall be primarily preventive and remedial and prosecution shall be recommended or resorted to only if all other measures and directions are found ineffective or parties fail to comply with the orders or directions within the stipulated period.

(ix) Every such complaint received by he Dowry Prohibition Officer shall be serially numbered and duly registered in a Register in Form No.II appended to these rules.

(x) He shall scrutinize the complaint and if it is found that the nature and the contents of the complaint is prima facie coming within the purview of sections 3,4,4A, 5 or 6 of the Act, he shall immediately conduct an inquiry to collect such evidence from the parties as to the genuineness of the complaint.

(xi) He shall send quarterly report o the Chief Dowry Prohibition Officer as to the number of complaints received by him under the Act and the action taken or the nature of settlement of the issue in Form No.II appended to these rules.

(xii) He shall conduct an, on the spot investigation and can collect such evidence either oral or in writing from the parties or witnesses or he can fix up a hearing of the parties and witnesses in his office or in a place convenient to him without causing much inconvenience or hardship to the parties.

(xiii) He shall intimate or serve notices to the parties and witnesses of the date, time and place of hearing of the complains in Form No.III appended with these rules.

(xiv) Every petition shall be enquired into and heard and come to a finding within a month from the date of its receipt.

(xv) Where on the date fixed for hearing of the complaint or application or on any other date to which such hearing is adjourned, the complainant or the applicant does not appear, the Dowry Prohibition Officer, may in his discretion either dismiss the complaint or application for default or hear and come to a finding as to its merit, which shall be recorded in the case file.

(xvi) He may utilize the services of District Probation Officers of Additional District Probation officers or City Probation Officers of the area for collecting information or conducting enquiries or assisting in any stage of enquiries or proceedings relating to a complaint or application made under the Act.

(xvii) On receipt of requisition from the Dowry Prohibition Officer, the Probation Officer shall conduct necessary enquiries, collect information and furnish such details or report promptly as requested by him.

(xviii) Where any dowry is received by any persons other than the woman and a complaint is received in respect of non-transfer of such dowry to the woman who is entitled to it in accordance with section 6 of the Act, the Dowry Prohibition Officer shall issue directions to the parties to transfer the same within the stipulated time.

(xix) He is empowered to make necessary inquiries regarding non-observance of the provisions of the Act in respect of the marriage held or proposed to be held within his jurisdiction; and may visit the marriages by specifically informing to the concerned persons that he is likely to visit the marriage ceremony along with his staff and police officers to see that the parties are not contravening the provisions of the Act.

(xx) He shall ascertain and confirm by suitable means in respect of as may number of marriages as are held within his jurisdiction as to whether the provisions of the Act are being followed and are not being contravened.

(xxi) He shall while making inquiries under the Act or when he attends any marriage for the purpose of making inquiries, take the assistance of any police officer or other officers to assist him in the performance of his functions and it shall be the duty of the Police Officer to render all assistance required by him.

(xxii) He shall render assistance to the police in investigating the complaint filed under the Act and the Court in the trial of the case.

(xxiii) He shall seek the guidance of Advisory Board in matters relating to his functioning under the Act.

(xxiv) The Dowry Prohibition Officer in the capacity of Member Secretary/Convenor of the Advisory Board shall send a copy of the proceeding of each meeting of the Advisory Board, within a fortnight from the date of meeting to the District Magistrate with a copy to the State Government for information and necessary action.

(xxv) He shall also perform such other duties as may be assigned in this regard by the State Government.

5. If sub-section 2 of Section 8 of the said Act is read with Rule 5 of the said Rules of 2003, it is not necessary to record detailed reasons for coming to the conclusion that the Dowry Prohibition Officer has very important duties to perform and various important functions to discharge. Therefore, the work of a Dowry Prohibition Officer is full time work. Hence,

no other officer can be given additional charge of the post of a Dowry Prohibition Officer. A judicial notice of the fact will have to be taken that still there are large number of cases under the said Act being registered across the State. Only if full Dowry Prohibition Officers are appointed, the provisions of the said Act of 1961 and the said Rules of 2003 can be implemented in its true letter and spirit. Therefore, considering the fact that the large number of cases are being filed complaining about the violation of the said Act, it is the duty of the State Government to ensure that the full time Dowry Officers are appointed.

6. We, therefore, direct the State Government to take appropriate decision on creation of independent posts of the Dowry Prohibition Officer for every District of the State. If necessary, the State Government shall place the issue before the Committee constituted under the Government Resolution dated 2 June 2015. We must record here with some emphasis that unless the Dowry Prohibition Officers are appointed on full time basis without giving them additional work, they will not be able to discharge their duties under the said Act of 1961 and the said Rules of 2003. We direct the State Government to take appropriate decision on creation of posts of the Dowry Prohibition Officers, at least one for each district, within a period of two months from today.

7. In the meanwhile, the State Government will have to ensure that the charge of the post of the Dowry Prohibition Officer is given to the existing Government Officers, preferably the Women and Child Development Officers. The State Government will have to ensure that the independent charge is given in the bigger districts where there are large number of complaints pending. The charge shall be given preferably to the Officers, who have experience of working in the field.

8. Therefore, though we do not approve what is suggested in paragraph 3 of the Affidavit of Shri Patankar, by way of interim measure, we direct that the State Government shall ensure that in the bigger districts where there are large number of cases under the said Act, an independent charge of the posts of Dowry Prohibition Officers is given to the officers, preferably the Class-I officers. After this exercise is completed, the State Government shall take immediate steps for giving the publicity to the availability of the Dowry Prohibition Officers and to create a grievance redressal mechanism, as directed in paragraph 9 of the order dated 23 March 2016.

9. The other issue is of appointing the Advisory Boards. The learned acting Advocate General stated that the Government Resolution dated 3 June 2016 issued in this behalf has been modified by the Government Resolution dated 14 June 2016. On instructions, he states that the

appointment of the Advisory Boards will be made by the State Government. However, the Commissioner of Women and Child Development, Pune will act as a nodal agency, who will take all steps such as giving the advertisement in the newspapers for inviting applications. He states that the constitution of the Advisory Boards will be made by the State. We accept the said statement. We direct the State Government to complete the process of constituting the Advisory Boards in each district within a period of three months from today.

10. There is one more issue, which is noted in paragraph 13 of the order dated 23 March 2016. It is regarding various illegalities associated with the matrimonial websites. We are informed that the appropriate Ministry of the Union of India is in the process of framing the guidelines. In the meanwhile, it will be appropriate that the State Government creates a Grievance Redressal Mechanism for dealing with the grievances of the members of the public and in particular the women as regards the illegalities associated with such websites, so that the aggrieved citizens and in particular women will have a forum, where the complaints can be filed. If there is a substance found in the complaints, criminal law can be set in motion apart from taking other actions against the persons running the websites. As regards creating the Grievance Redressal Mechanism in respect of such websites, the State

Government will respond on the next date.

11. To enable the learned Counsel representing the Union of India to place the draft guidelines/final guidelines, we direct that this PIL shall be listed on 8 July 2016 under the caption of "Direction".

(A.A. SAYED, J.)

(A.S.OKA, J.)