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

*Date of Decision: 27<sup>th</sup> January, 2023*

+ **W.P.(C) 13018/2018 and CM APPL. 50531/2018, 37151/2019**

**DAMODAR VALLEY CORPORATION** ..... Petitioner

Through: Mr. Vijay Hansaria, Sr. Adv. with  
Ms. Madhumita Bhattacharjee and  
Mr. Srija Choudhary and Ms. Kavya  
Jhavar, Advs. (M: 9811785211).

versus

**UNION OF INDIA & ORS** ..... Respondents

Through: Ms. Monika Arora, CGSC with Mr.  
Subhrodeep Saha, Advocate for UOI.  
Mr. Paras Jain and Mr. Ashotosh  
Chaturvedi, Advocates for R-2.  
Mr. K.C. Dubey, Mr. Mahender  
Kumar Bharadwaj and Mr. Vatan  
Kumar Attri, Advocates for R-3.

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner- Damodar Valley Corporation (*hereinafter 'DVC'*) challenging the impugned order passed by the CIC dated 16<sup>th</sup> October, 2018. The matter arises out of RTI application filed by Respondent No.2- [REDACTED] dated 26<sup>th</sup> June, 2016 to Respondent No.3- National Commission for Women (NCW) seeking information to the following effect:

*“(1) How many prevention of sexual harassment cases for lady employees at workplace in Damodar Valley Corporation (DVC) are intimated as per records to NCW since 2012 to till date? Yearwise details required.*

(2) How many cases are solved in DVC as mentioned above till date as per guidelines of NCW? Yearwise details required.

(3) How many cases are pending as mentioned above and why? Yearwise details required.

(4) [REDACTED]  
Communication dept, DVC, Maithon

Vs

[REDACTED] This case was filed on 16/03/2012. Is this case recorded in NCW from report submitted yearly by DVC?

(5) What are the procedures maintained and implemented in the above case (as in Q.4) as in records of DVC intimated to NCW as per records?

(6) What is the present status of the case in Q.no. 4 do in DVC intimated to NCW?"

3. The NCW vide e-mail dated 30<sup>th</sup> May, 2017 forwarded the same to DVC. The DVC vide its reply dated 23<sup>rd</sup> June, 2017 informed the status of the sexual harassment complaint filed by Respondent No. 2's wife against one of the engineers at DVC. The said reply also annexed therewith 30 pages of documents and other details in relation to the said complaint.

4. Thereafter, vide another letter dated 16<sup>th</sup> June, 2017 in respect of the remaining queries, the response was given by DVC. However, the RTI Applicant was not satisfied and he, accordingly, approached the Appellate Authority and thereafter, the Central Information Commission.

5. A notice dated 23<sup>rd</sup> March, 2018 was received by the DVC for a scheduled hearing on 17<sup>th</sup> April, 2018. DVC through the CPIO submitted a reply dated 12<sup>th</sup> April, 2018 stating that the DVC has already provided the information that was sought.

6. The Central Information Commission has, vide the impugned order

dated 16<sup>th</sup> October, 2018, passed an order imposing cost of Rs.1,00,000/- on DVC. A penalty to the tune of Rs.25,000/- has also been imposed on the CPIO. The operative portion of the CIC's order reads as under:

**“7. Upon perusal of the records and submission made by the parties, the Commission finds that information has been provided only after the intervention of this Commission and order of the Commission has been complied with.** *The National Commission for Women claimed that it has promptly transferred the RTI application to the Damodar Valley Corporation and that it had no power to monitor the action taken on such complaints of sexual harassment. It is sad to hear such contention from the apex body that is expected to secure the rights of women by goading offices and officers act at least on complaints. The NCW cannot shirk its responsibility in such cases. The NCW is not a post office to simply forward the complaints to concerned accused office and wash off hands. The Officers should consult the Chairperson and members before making such claims. As sexual harassment cases emerging from the Indian entertainment and media, industry under the "MeToo" movement, the NCW on October 10, 2018 appealed to the affected women to lodge written complaints and assured of all possible help. It said: "The National Commission for Women (NCW) has noticed that in many such cases, victims do not want to go beyond naming and shaming the alleged offenders and lodge formal complaints. In such cases, the commission urges them to lodge written complaints with authorities concerned, including with, the NCW." The NCW said that it has taken a serious note of sexual harassment cases reported in the media and strongly condemns any act of invasion of private space of women, adding that it is committed to ensure the safety and dignity of women, including at workplaces. This is the most required measure. This Commission also advise the victim-women to boldly file genuine written complaints.*

8. *We need to examine what happened in this case, where the victim complained, but she was further victimized, then she filed an RTI Application to NCW, which was simply-forwarded to the organization which was harassing her with inaction, on her complaint. If this is the plight of giving written complaint, how any woman will come forward to complain?*

9. **The Commission feels that the NCW should use its powers to consider the media statements of sexual harassment as complaints, as an extra-courage is required to speak to media which gives huge publicity than to write a complaint which silently reaches to NCW without anybody noticing it.** *The publicity will make the issue noticeable and authorities get alerted, and, if they are sensible might take measures.*

10. The commission and Ministry of WCD should, act on the lapses such as public authorities, private bodies and organizations like, association of producers or actors might not have any mechanism to receive the complaints of sexual harassment, or internal complaints committees to readily take up the complaints for inquiry. Hence the women like Ms. Tanushree Dutta find it difficult to get complaints inquired into. It's on record that Artist Association apologized for not addressing the complaint of Tanushree Dutta. Not having complaint-inquiry system is a serious lacuna than the lack of courage in victims to complain. The lack of system discourages even courageous victims to complain. Whether NCW issued notice to Cine & TV Artistes Association CINTAA for sitting over the complaint of Tanushree Dutta for decades, and whether CINTAA takes up now at least? The CINTAA stated: "After going through Ms. Tanushree Dutta's complaint, which was filed with the then Executive Committee of CINTAA in March 2008, we feel that the decision taken in the Joint Dispute Settlement Committee of CINTAA & IFTPC (then known as AMPTPP) in July 2008 was not appropriate, as the chief grievance of sexual harassment wasn't even addressed." This is the tragedy of lack of system. The

*fact that victim in this case left the career itself shows how right to work and right to life of women is violated totally and the Association does not do anything for that member. In April 2018, a TV presenter-turned-actress Sri Reddy, making sensational allegations against the casting couch menace in the Telugu film industry, registered a protest by stripping in the street of Hyderabad city. Sri Reddy alleged that she was sexually exploited by many producers and directors and was asked to send inappropriate pictures and videos to get a chance in Telugu films. She told: "They see the videos and, give no roles. They have even asked for live nude videos from me. That is the extent to which they go to take advantage of women who seek roles." She was not even given membership in Movie Artists Association; hence they do not receive her complaint.*

*11. Indian Penal Code Section 376 C is significant. It's relatively new offence, added to crime of Rape in 1983 after Mathura Rape case, where police accused were exonerated by most unreasonable interpretation of consent by the Supreme Court. This new-Section 376C penalizes even a consensual sexual intercourse involving a person in authority.*

*Xxxxxxxxxx*

*12. Explanation 3 clearly brings these celebrities in their place of work, into the purview, of 'superintendent' and they should have been prosecuted for using their authority to induce the women working under them to surrender/submit to their sexual desires. The Government is under a duty to tell people whether any complaint is filed and anybody was prosecuted under this section. The IVCW should examine why complaints are not filed under this section by women. They are bold enough to expose the celebrities, then why not their statements be taken as complaints against commission of cognizable offences and state prosecute them?*

*13. This means amended law is not made to work and there are no systems in various organizations like Film Industry including regional industries like Telugu*

Film Industry, Journalists Organizations, to receive complaints of sexual exploitation or harassment. Such lacunae will create a sort of immunity to accused celebrities such as Film/ TV Stars, Sports persons, CEOs, top Scientists or Journalists, and dominant personalities occupying public offices like Ministers and Senior Officers or Chairmen etc. These big men come with battery of attorneys to slap defamation cases which naturally silence the voices.

14. In this case the DVC was alleged to have breaching all rights and norms prescribed by 2013 Act and Guidelines of Department of WCD. **This is where the NCW has to come to the rescue of victims and take steps to create systems. It has a duty of ensuring the systems to be in place to receive and act on complaints. The constitutional bodies like NCW should not ignore such worst violations of human rights of women around.**

15. The Commission is surprised why the NCW or Ministry of Women and Child Development did not consider that even among the media organizations or associations there is no system in place to receive and act on sexual harassment complaints. If celebrity senior journalists are accused of such conduct, where the junior woman journalists have to go? Whether Press Council has ICC to receive such complaints? Whether National Journalists Association has such system to receive and act? It's a shame that the directions, of honourable Supreme Court in Visakha case (AIR 1997 SC 3011 dated August 13) and Apparel Export Promotion Council v AK Chopra (AIR 1999 SC 625) are not implemented by the Union, government for 16 years till law is made in 2013, while some organizations did not constitute ICCs till now. **The metoo storm that is being witnessed now is due to non-implementation of these directions and Sexual Harassment of Women at Workplace (Prevention, ' Prohibition and Redressal)-Act '2013' besides ignoring Convention on the Elimination of all Forms of Discrimination Against Women, which was ratified by India on June**

25, 1993. Question is not just about Tanushree Dutta, whether film industry at Mumbai and regional film industries in their regions has any organization to receive the complaints from victims?

16. The Commission strongly recommends the NCW and Ministry of Women and Child Development to study and examine whether systems to receive and inquire into complaints were put in place at various organizations, councils, associations, federations, courts, companies and corporations, if not why, and why not they submit annual reports etc. and take necessary steps to enforce the 2013 law and prosecute offenders under Section 376C of IPC.

17. Another major reason for the culture of silent suffering by the women victims is the further victimization of victim of sexual harassment. Example on hand is physical attack, on the car of Tanushree Dutta and wife of appellant in this case. With, the unified strength all the officers and employees protect the accused officer, who will enjoy all privileges without any impunity, while all of them harass the victim. **The Ministry of Women and Child Development has duty to prevent this and the NCW, has to review how the applicant before them could be secured from this kind harassment of victims.** The NCW should take note on their own and question authorities in such incidents.

This case stands out as an example. The woman, who complain to NCW or ICC of organization or to the head of the organization should be considered as whistle blower and should be given protection from harassment by authorities or superiors. The victim or witness women if they are on contract employment or from the outsourced organization, the public authority or organization do not extend their term of employment. This also should be considered as victimization of victim-complainant and the State or NCW should come to their rescue.

18. The Commission considers that the Government has to seriously think about actions on alleged perpetrators of sexual harassment during the pendency

of inquiry. Such accused persons should not be allowed to hold on to positions in power in order to prevent abuse of their power to deter the witnesses or slapping law suits to stop them from complaining. Unless allegation is substantially disproved, those accused persons should not be allowed to continue in their office. There is a phenomenon that a strategic lawsuit against public participation (SLAPP) will be filed. SLAPP is a lawsuit intended to censor, intimidate, and silence critics by burdening them with the cost of a legal defense until they abandon their criticism or opposition.

19. The Commission directs the respondent authority DVC in this case not to resort to victimization, of this victim, wife of applicant, and restore her rights, place of work and her dignity, which she should not lose simply because she complained against sexual harassment allegedly by a powerful officer in their public authority and filed RTI applications. The Commission recommends the NCW to take necessary measures to prevent such victimization of victims, and also seek explanation from DVC in this case.

20. The Commission records appreciation for the Ministry of Women and Child Development for contemplating to set up a committee of senior judicial and legal persons to look into the issues that are coming out of the #MeToo movement. This committee is expected to look into the legal and institutional framework which is in place for handling complaints of sexual harassment at work including some of the complaints if required and advise the WCD Ministry on how to strengthen these frameworks. The Commission recommends the Ministry of WCD and the prospective Committee to be constituted to consider the above points to strengthen the system or introducing it if not, of receiving and acting on, complaints within fixed time frame and to prevent further harassment of victim.

21. The NCW and Ministry of Women and Child Development have a role, they cannot abdicate this constitutional responsibility of protecting the rights of



women from being violated because of non-conducive atmosphere which prevent victims from even reporting and lack of system that facilitates criminal celebrities to enjoy undue immunity.

**For such wrongful claims, and not giving any useful information to the victim complainant in this case, penalty should be imposed. But in this case poor PIO will be subjected to penalty because taking action was not within his hands and under RTI it is not possible to punish top officers for their inaction. Hence penalty proceedings against PIO of NCW are dropped.**

22. Appellant's wife was victimised for complaining, against. The powerful lobby promoted the accused and harassed the victim by transferring her to different places, while there are scores of employees settled in one place for decades. To consider the role of the officers of the Damodar Valley Corporation, the following paragraph of appellant's submission needs to be repeated.

Lastly, my wife has been debarred from her promotion this year unduly due to the biased lobby again and [REDACTED] had not only being promoted unduly in 2013 as EE (Commn), even though the case was pending since 2012 he has been posted in his favourite place of posting since 2015 and going to get another promotion shortly. The biased lobby is in full action to declare the case null and void and harass my wife in all aspects throughout her service life and pay the price of complaining against her superior bosses and biased lobby.

For years there is no inquiry, and she was victimised for complaining, she sought help from NCW, which simply forwarded. This is how a victim is silenced by system, inaction, lethargy and victimization. When constitutional organizations like NCW fail, legal systems do not start its course, the victims have to resort to media including social media. Result is metoo storm.

23. The Commission also finds that the DVC neither gave any written explanations nor given any justified oral submissions with regard to the compensation, notice Issued to them. The appellant and his wife were harassed for complaining against sexual harassment and also for filing RTI application/ appeal. They were denied the information and still they got only incomplete information. DVC is as lethargic as possible in acting on her complaint and giving information while they were overactive in victimising the appellant's wife and enthusiastic in protecting the accused. **The appellant couple were suffering loss and detriment to her rights. Under Section 19(8) (b) the Commission has power to require the public authority to compensate the complainant for "any loss or detriment suffered". Invoking this provision the Commission directs the public authority of Damoder Valley Corporation, to provide a compensation of Rs. 1,00,000/- (one lakh) for the harassment caused to the appellant causing loss of her peace, troubling her with transfers, and causing her to suffer detriment of right to work and right to life by its lethargy in not acting on her complaint besides victimising her for complaining and filing RTI requests through her husband, before October 31.**

24. The Commission also imposes penalty on the CPIO Mr. Anshuman Mandal, under Section 20 of the RTI Act. The penalty amount of Rs. 25,000/- (twenty five thousand) shall be deducted by the Public Authority from the salary of the CPIO Mr. Anshuman Mandal by way of demand draft drawn in favour of "PAO CAT", New Delhi in 5 equal monthly instalments and forward the demand drafts addressed to Deputy Registrar (CR-II), email: dyregcr2- [cic@qgov.in](mailto:cic@qgov.in) Room No. 106, First Floor, Central Information Commission, Baba Gangnath Marg, Munirka, New Delhi-110067. The first instalment should reach the Commission by 20.12.2018 and the last instalment should reach by 20.05.2019.

25. The Commission recommends the NCW to take appropriate measures to ensure establishment of a

**functional system in such a big organization like the DVC to receive and act on complaints of sexual harassment in prescribed time frame and take necessary action if it fails. Disposed of.**

7. The submission of Mr. Hansaria, Id. Sr. Counsel is that the decision of the CIC goes much beyond the RTI application itself. The Ld. Commission has also taken into consideration various factors that are extraneous and have no bearing on the case that was before the CIC. As part of this order, the CIC has made several sweeping observations in respect of victimisation and has also made comments about various other authorities including the NCW. The findings of victimisation are also completely unconnected to the RTI complaint, inasmuch as the case before the CIC was not in respect of the sexual harassment complaint but only as to whether the information which was sought was submitted or not.

8. Mr. Hansaria, Id. Sr. Counsel further submits that various observations have also been made in respect of the amendments to Section 376, film industry, regional organisations, the NCW and the Ministry of Women and Child Development. There are observations in the impugned order in respect of the #MeToo movement also. The final observations of the CIC are also in respect of the complainant's wife and not in respect of the RTI information which was sought. He submits that the imposition of costs of Rs.1,00,000/- by considering all these extraneous issues is a wrong approach which is adopted by the CIC and contrary to the provisions of the RTI Act. In addition, he submits that Rs.25,000/- have been imposed on the concerned CPIO.

9. On behalf of Respondent No. 2, the RTI applicant, Id. Counsel submits that DVC has not acted in a fair manner and it took almost six years

before the sexual harassment complaint was disposed of. That is the reason why the husband of the complainant had filed the present RTI application. The Id. Counsel further submits that DVC cannot file an appeal under the provisions of the RTI Act challenging the penalty that has been imposed upon the CPIO in his individual capacity. He places reliance upon the judgment of this Court in:

- ***Rakesh Kumar Gupta (Erstwhile CPIO), Union Bank of India v. Central Information Commission [W.P.(C) 900/2021, 22<sup>nd</sup> January, 2021]***
- ***Jyoti Trivedi v. Central Information Commission 2022/DHC/005493***

10. Mr. Hansaria, Id. Sr. Counsel, on the other hand submits that the record of the Internal Complaint Committee (ICC) would show that the delay in disposing of the sexual harassment complaint was not due to DVC alone but even the complainant had raised certain allegations against the members of the ICC.

11. Heard. In the present petition, the Court is not dealing with the sexual harassment allegations of the RTI applicant's wife, but with the RTI application filed by the Respondent no.2. The Court has perused the CIC's order. It is clear from a reading of the impugned order from paragraphs 7 till paragraphs 25 that the CIC has gone into various other extraneous issues including harassment in the film industry, measures taken by the Ministry of Women and Child Development, amendments to Section 376 IPC and other issues relating to sexual harassment including the *Visakha* case. While the observations are general in nature about sexual harassment and its effect etc., in the opinion of the Court, none of these observations which have been made by the CIC in the impugned order were called for in the present

proceedings which arose out of a RTI application where Respondent No. 2 was primarily seeking the status of the case which was filed by his wife.

12. The order dated 20<sup>th</sup> May, 2019 with respect to the sexual harassment complaint filed by the wife of Respondent No.2 as also a copy of the inquiry report has already been provided as per the counter affidavit of Respondent No.2.

13. Under such circumstances, this Court is of the opinion that insofar as the observations made in CIC's order is concerned, the grievances of DVC are not without merit.

14. Insofar as the argument put forth by Id. Counsel for Respondent No.2 that BVC cannot challenge the penalty imposed on the CPIO is concerned, the same is without merit. The judgments sought to be relied upon by Id. Counsel for Respondent No.2, do not deal with the argument raised by the Id. Counsel. Specific reliance is placed by Id. Counsel on para 11 of judgment passed by this Court in ***Sh. Rakesh Kumar Gupta (erstwhile CPIO), Union Bank of India (supra)***, which reads as under:

*“11. Heard ld. counsels for the parties. The ld. Division bench of this court in R.K Jain v. Union of India (LPA 369/2018, decided on 29th August, 2019) has recognised that the CPIO, being the custodian of information or documents sought for, is primarily responsible under the scheme of the RTI Act to supply the information, and in cases of default, the penal action is to be invoked against the CPIO only.”*

15. The said judgement does not in any way prohibit the public authority from challenging the order of penalty passed against the CPIO. Moreover, by way of the impugned order penalty has also been imposed on DVC. The CPIO is merely an officer who acts on behalf of the Corporation. A CPIO is

not acting in his individual capacity. He was issued notice by the CIC and a written statement has been filed. DVC has defended itself before the CIC. Under such circumstances, the submission that the penalty imposed on the CPIO cannot be challenged by the Corporation is without merit.

16. Section 20 of the RTI Act provides the power to the CIC to impose penalties on PIOs. The said section reads as under:

**“20. Penalties.—(1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:**

*Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:*

*Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.”*

17. Thus, the penalty can be imposed on the CPIO, if the CIC is of the view that any of the grounds laid down in section 20 is made out. However, in the case at hand, the CIC has not given any finding *qua* the CPIO. The

relevant paragraph of the said order reads as under:

*“23. The Commission also finds that the DVC neither gave any written explanations nor given any justified oral submissions with regard to the compensation, notice Issued to them. The appellant and his wife were harassed, for complaining against sexual harassment and also for filing RTI application/ appeal. They were denied the information and still- they got only incomplete Information. DVC is as lethargic as possible in acting on her complaint and giving information while they were overactive in victimising the appellant's wife and enthusiastic in protecting the accused. The appellant couple were suffering loss and detriment to her rights. Under Section 19(8) (b) the Commission has, power to require the public authority to compensate the complainant for "any loss or detriment suffered". Invoking this provision the Commission directs the public authority of Damoder Valley Corporation, to provide a compensation of Rs. 1,00,000/- (one lakh) for the harassment caused to the appellant causing loss of her peace, troubling her with transfers, and causing her to suffer detriment of right to work and right to life by its lethargy in not acting on her complaint besides victimising her for complaining and filing RTI requests through her husband, before October 31.*

***24. The Commission also imposes penalty on the CPIO Mr. Anshuman Mandal, under Section 20 of the RTI Act. The penalty amount of Rs. 25,000/- (twenty five thousand) shall be deducted by the Public Authority from the salary of the CPIO Mr. Anshuman Mandal by way of demand draft drawn in favour of "PAO CAT", New Delhi in 5 equal monthly instalments and forward the demand drafts addressed to Deputy Registrar (CR-II), email: [dyregcr2-cic@gov.in](mailto:dyregcr2-cic@gov.in) Room No. 106, First Floor, Central Information Commission, Baba Gangnath Marg, Munirka, New Delhi-110057. The first instalment should reach the Commission by 20.12.2018 and the last instalment should reach by 20.05.2019.***

18. In the overall facts and circumstances of this case, the Court is of the opinion that the penalty of Rs.25,000/- on the CPIO is not sustainable.

19. The only issue that now remains is whether Respondent No. 2 who has been litigating since 2016 has to be awarded any litigation costs in the matter. In the opinion of the Court, while disagreeing with the approach of the CIC of making sweeping observations, in view of the long-drawn battle that the Respondent had to undertake, the ends of justice would be met by awarding costs of Rs.75,000/- to Respondent No.2.

20. Accordingly, in the facts and circumstances of this case, the information sought for having been provided and the DVC being aggrieved by the observations made against it, the CIC's order insofar as it makes observations against the DVC are set aside. The penalty imposed on the CPIO is also set aside. The costs of Rs.75,000/- shall be paid by the Petitioner- DVC to the Respondent no.2, within a period of four weeks from today.

21. With these above observations, the present petition with all pending applications, if any, is disposed of.

भारतमेव जयते

**PRATHIBA M. SINGH**  
**JUDGE**

**JANUARY 27, 2023/MR/Sk**