

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

% *Date of decision : August 06, 2015*

+ **LPA 145/2015**

GAURAV JAIN

..... Appellant

Represented by: Mr.Anirudha Choudhury, Adv.

versus

HINDUSTAN LATEX FAMILY

PLANNING PROMOTION TRUST & ORS

..... Respondent

Represented by: Mr.Dayan Krishnan,
Sr.Advocate instructed by
Mr.Arvind Ray, Adv.for R-1.
Mr.S.Srivastava, Ms.Neelmani
Pant, Advs.for UOI/R-2&3.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CAVEAT 258/2015

Counsel as above appears for caveator. Caveat is discharged.

LPA 145/2015

1. Aggrieved by the order dated January 07, 2015 dismissing the writ petition filed by the appellant Gaurav Jain, inter alia, challenging the termination order dated November 20, 2014, seeking quashing of the enquiry report and reinstatement, the appellant prefers the present appeal.
2. Gaurav Jain was employed as Regional Operation Manager for Technical Support Group (TSG) of the National AIDS Control Organization (NACO) to render his services as Team Leader on April 22, 2008 with

Hindustan Latex Family Planning Promotion Trust (in short HLPPT). On December 31, 2013 the complainant was employed as Operation Analyst TSG, NACO with HLPPT for a period of 9 months on contract basis. From 22nd to 25th July, 2014 Gaurav Jain as Team Leader along with the other team members including the complainant went for an official visit to Hyderabad. A complaint was made by the complainant on September 24, 2014 when her 9 months period came to an end to the HR Department against Gaurav Jain regarding sexual harassment which was referred to the Internal Complaints Committee (ICC). It is the case of Gaurav Jain that despite expressing the apprehension of bias for the reason that 4 out of 5 members of ICC were employees of HLPPT it was not heeded to and on the ICC submitting its enquiry report recommending the termination of Gaurav Jain, he was terminated vide letter dated November 20, 2014. It is his case that no opportunity to make any representation against findings and recommendations of the ICC was given to him nor any opportunity to cross-examine the witnesses. Hence there was violation of principles of natural justice.

3. The relevant portion of the complaint dated September 26, 2014 are as under:

“Then Mr.Gaurav Jain made the plan for Hyderabad visit and as per the tour plan I only I was to accompany him to Hyderabad for exposure visit with Mr.Gaurav Jain. On 22nd July, 2014, evening, upon reaching Hyderabad, I found that I was booked in the same hotel and in the same floor as of Mr.Gaurav Jain but my other colleagues Mr.Joseph, RMM, TSG & Mr.Narasiman, SMM, TSG were booked in some other Hotel despite the both colleagues are senior than me in the rank. I also noted that the room booked was a double sharing

(202) and it was next to Gaurav Jain's room (204, and the fact that the tariff of the room booked was much beyond my entitlement. Although I brought the issue to his notice immediately, he mentioned that's okay, if there is some extra amount, you have to pay from your pocket. But even then he was not given an option to shift to a room with lesser tariff or a hotel with my entitlement.

On 23rd July, 2014, I was in the field with other colleagues and SMO team, till 4 pm. Then was feeling very hungry and asked my colleague M. Joseph if we could break for lunch. He agreed and talked to Mr. Gaurav Jain and the SMO team for lunch, after which we had lunch around 4.30 pm, and returned to hotel by 7.30 – 8.00 pm, Being tired from the exhausting day's and not feeling the need for any dinner I went off to sleep, Suddenly, in night around 9.30 pm, Mr. Gaurav Jain called me in the intercom phone to his room asking me to accompany me for dinner. I clearly conveyed that I was not hungry and did not wish to have dinner more than once, But he pressurised me to come over and share Biryani with him for dinner in his room. Since he is very senior and the team leader, I could not refuse and finally went to his room. When I entered his room, he asked me to take a big plate of Biryani, to which I again politely refused since I was not hungry. I sat there not understanding why he is pressurising me for the Biryani. He then suddenly asked to see my room key, telling that His room key is not working and so he wants to use my room key.

Without realising his intention I handed my room key to him. He immediately got up and kept that key inside his bedside table and sat in front of the table in such a manner that I was no more able to reach the table to access my room key. I was very scared suddenly and felt nervous. He sat on the Chair just opposite to my Chair and then I noticed that he was drunk.

As soon as I gave my room key to him he told me that I have to finish the whole of ½ kg rice biryani, and unless until I finish it he will not hand over my room key. He looked very threatening. And vicious at that time, and said "you have two options, either you finish this entire biryani or spend entire

night in this room. You make a choice.” However it took me one minute time to comprehend the gravity of the situation. I could only request him many times to let me go to my room, and also begged him that I cannot eat this briyani. To all my requests he asked me = “do you know what is Shoshan (EXPLOITATION)? and I am going to do it with you” AND HE SAID = “THIS IS CALLED SOSHAN” He was smoking at that time, throwing the smoke on my face, degrading me and my dignity, threatening my woman hood and looked very very intense and spiteful. He also shouted at me telling – “Why you wanted to have food from my BLOODY Juniors? You have insulted me, and you have to pay for it”. I could not understand what he was referring to, and then he explained that the fact that at 4 pm that day I said to my colleagues in the field that I am hungry and want to have lunch, was not like by him.

At that time I was very very vulnerable, threatened, scared insulted and confused. I could somehow, gather my courage and pulled my common sense, and pushed the plate of briyani on the table and with all my strength pushed him aside and could run out of his room. I was running in the corridor, it was around 10 pm, panting, feeling dizzy, and nauseated, sick. I thought I would be falling down and vomiting,

I could go to the reception area, in a panic stage, an requested the hotel to issue me another room key, and went back to my room and locked it from inside. I was so scared and helpless that I started to cry on my own in my room. After a few minutes Mr. Gaurav Jain, knocked my room and rang my room bell again. Not knowing who is knocking, I just partly opened the door and I saw Mr. Gaurav was standing there. He asked – “are you comfortable”. I said I am ok and locked the door again. I cried entire night. And awake with panic ..

On the next day, I was on field visit again as part of my work, and returned to the hotel by late evening and locked myself. During the field visit, Mr. Gaurav Jain directed me that – ‘YOU HAVE TO LEARN THE TRAVEL ETIQUETTE’ and when I asked what is the etiquette, he said – ‘YOU HAVE TO ACCOMPANY YOUR COLLEAGUES’.

Again around 8.30 pm there was an call in my room, this time by Mr. Narsimha, SMM, TSG telling me that – “Gaurav Sir is waiting for you in his room for dinner, please come to his room quickly.” He mentioned that apart from Mr. Gaurav Jain, he and Mr. Joseph Savvey and Mr. Deepak Solanki are also in his room and they are waiting for me to join for dinner. I was in a dilemma to answer his back as to whether I should go there or no, and told that I will see and did not go. Again after some time he called and said – “Madam, kitna time lagega, Sir is waiting for you”. Since I did not want my other male colleague to know my last night incident, and more over since many colleagues were there in the room, I gathered my courage to go to Mr. Gaurav Jain’s room again, I knew that I was getting pressurised again my his new trick, but was helpless and not in a position to negotiate, and had to go. I was very panicky and was breathing hard as I had to walk to him room again for the second time. Once I reached there I saw that all the male colleagues were drinking and smoking. There was so much smoke in the room that it was nauseous. In fact they had to call the hotel authority to open on of the secured window’s and sign a undertaking with the hotel management for doing so. They all kept on having snacks and drink, while I was made to sit there alone for a long time. Till 11.30 at night I could not leave, as I would had to make a scene in front of others, which I could not do without hurting my dignity.

At 11.30 pm, there was a issue of non functional AC in Mr. Deepak Solanki’s room, which was booked in the same hotel. There was big commotion created by Mr. Gaurav Jain over this, he called the hotel manager and wanted the entire dinner to be compensated for the non working AC. His behaviour was rude, violent and aggressive at that time with the hotel staffs. This was all the more scaring me, and he was very very drunk at that time. Following this he said to me infront of all my male colleagues, = “Since there was no alternative room available for Deepak, Deepak can shift to your room since your room has a double sharing”.

His derogatory comment on my womanhood was an sever assault. I retorted by saying – OK, I will give my room and

shift to reception and spend my night there. To this, in front of everybody, he loudly said – “MUJHE TUMPE TRUST NEHI HAI. BUT I TRUST HIM (DEEPAK) A LOT”. This was in the context of pushing a male colleague to spend the night in my room.”

4. Out of 7 charges 5 were held in favour of the complainant and against Gaurav Jain and the 2nd and 7th charge was not decided against Gaurav Jain. The recommendations of the 5 members of the ICC vide its report dated November 17, 2014 are as under:

“VI. Recommendation

Considering the serious nature of misconduct of the Respondent, ICC recommends the following to the Employer i.e., HLFPPPT:

(a) The Respondent, Mr. Gaurav Jain be terminated with immediate effect in view of the findings of the ICC and the service rules of HLFPPPT.

(b) Warning to Deepak Solanki, Joseph Savy and Narsimhan for their gender insensitive conduct towards a female colleague during outstation travel by inviting her to a hotel room at night and drinking & smoking by 4 male members in front of a female colleague till the midnight. ICC also recommends counseling them on gender sensitivity.

(c) Undertake regular gender sensitization program including training with regard to Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 in all units of HLFPPPT irrespective of governance structure.

5. In the writ petition three grounds urged as noted by the learned Single Judge in Para 5 of the impugned order are:

“5. The following arguments have been urged on behalf of the petitioner:-

(i) The ICC of the respondent No.1/employer had no jurisdiction to enquire into the complaint inasmuch as the complaint had to be enquired into only by respondent No.3/National AIDS Control Organization (NACO) with whom the petitioner was posted.

(ii) ICC has recommended punishment of removal of the petitioner from services which is against the rules of the employer-organization.

(iii) The complaint made by the complainant was motivated and malafide and which becomes clear from the fact that it was made after around two months of the trip at Hyderabad and at the stage when the contract of the complainant with the respondent No.1 was to expire.”

6. The learned Single Judge dealt with all the three grounds. In relation to the first ground it was held that employer of Gaurav Jain being HLFPTT i.e. respondent No.1, it alone was entitled to take action against Gaurav Jain. The learned Single Judge noted that as per Section 2(g) of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 (in short the Act) it is the management at work place which controls the work place and only the said management has the power to take action on a complaint of sexual harassment. Referring to Section 13(3)(i) of the Act the learned Single Judge held that on the recommendation of ICC it was for the employer to take action against the employee in accordance with the service rules and no service rule has been pointed out by learned counsel for Gaurav Jain which provides that an employee who is guilty of sexual harassment cannot be terminated from service.

7. The Court noted the relevant portion of the finding of the ICC in this regard and also the statements of the witnesses Deepak Solanki and Rahul

Ram who proved that outstation trip to Hyderabad for the complainant was not required and her trip to some field to Delhi NCR would have sufficed. The Court also noted the evidence that Gaurav Jain himself confirmed in his statement that he had done the booking of Hotel Sarovar Aditya Hometel for himself and complainant for 22nd July to 25th July and for Deepak for 24th July, 2014. He also did the web checking for the complainant and himself for on-going flight to Hyderabad from Delhi, the statement of Gaurav Jain also confirms that the room booked for complainant was over and above the hotel entitlement in terms of tariff for the complainant and Gaurav Jain had no satisfactory explanation thereof. The Court also noted the finding of the ICC that the complainant was allotted superior room No. 202 on the second floor in Hotel on checking in on 22nd July and Gaurav Jain was allotted superior room No.115 but within 14 minutes he changed his room to Suite No.204 on the same floor next to the complainant's room. Further Joseph Savy who had checked in the same hotel Aditya Hometel on October 22, 2014 at 7.00 AM was directed to check in at another hotel next to Hotel Aditya Hometel, which was done by Deepak on instructions from Gaurav Jain. Thus from the evidence on record as noted in the enquiry report the learned Single Judge rejected the contention of learned counsel for the appellant that this was a case of no evidence and the complaint was motivated and malafide and made after around two months of the trip at Hyderabad at the stage when the contract of the complainant was to expire.

8. As regards delay in making the complaint the learned Single Judge noted that merely for delay the complaint could not be thrown out and the allegations of the complainant were supported by the statements of number of other witnesses from the staff of respondent No.1 who stated about a

similar trend of game plan adopted by Gaurav Jain and that after the complainant came back from the trip she was found distressed and tense.

9. The relevant portions of the findings of the ICC are as under:

“From the Statement of Latha Kumari, Nitin Sharma, Purujit, Sudarshan, Bhupendra, it is apparent that this was the trend with all women staff who had joined and left TSG, that they would be taken for an outstation trip the Respondent, where the booking of hotel and web check in for flights will be all done by the Respondent or on his instructions, and that after the visit there would be visible change in relation between Respondent and the female teams member and has also seen girls looking distressed and tensed after coming back from outstation visits.

It has also come to light that the Complainant was warned repeatedly by other female colleagues before they left the organization, that overnight travel and stay with the Respondent is not at all safe and will be very dangerous for her, and that complainant was very scared to undertake overnight stays with the Respondent. It has also come in evidence that Latha Kumari had accompanied Complainant in a review meeting held at Stellar Hotel which included overnight stay, since Complainant was very scared to go alone as there was no other female staff in the review meeting.

Respondent also misbehaved with women staff in the past as narrated by them to Latha Kumari, She has further stated that Respondent has forced all women staff to state to the HR that they had no problem in TSG (reference to Vibhanini's exit reason), otherwise he would have made life miserable for her. It is evident that the Respondent's looks and behaviour had often made women's staff feel uncomfortable and that he had been continuously misbehaving with all female staff and passing personal humiliating comments within the office in front of other male colleagues and external stakeholders. From the statement of Latha Kumari, Deepak Sati and Sudarshan Negi, it is obvious that TSG Staff was scared of raising voice against

the Respondent since if the Respondent comes to know would definitely make life miserable for them. From the statement of Sudarshan Negi and Nitin Sharma's, it is apparent that women staff working in TSG that were not of senior level, and not matured and did not have any support system, they are not able to handle harassment by the Respondent Nitin Kumar Sharma has even gone to the extent by saying that all female members in TSG work for very short span because this place is "HELL FOR WOMEN". In fact, it has also come into evidence that that perceived threat to female staff was so high that Latha had even called Joseph Savy, the Regional Manager for South before the Hyderabad trip mentioned above to request him (Joseph) to take care of the Complainant, on a personal note. The Respondents objection that why Latha had to call only Joseph to take care of the Complainant cannot be the sole basis to discard her statement.

Deepak Sati has also state before the ICC that the Respondent use to pass objectionable remarks and always narrates instances related to sex & rape case among other headlines of newspapers/current affairs in presence of all team members including female staff during the lunch time. He further added that despite the fact team members detest these lunch time stories however, they do not have the courage to protest him.

ICC has also recorded statements of some of the staff of TSG. From their statements, it is clear that TSG staff observed the women to be distressed, depressed, agitated after coming back from outstation visits with the Respondent, and some of them have openly expressed what they have experienced with some of their trusted and supportive colleagues. More than one woman colleague has reached out to the complainant and warned her of Respondent's behaviour while outstation trip, and asked the complainant to be very careful to maintain her dignity. Some of TSG Staff have even gone on the extent of saying, "There is no humanity left", "it is completely male dominated", "Respondent has "ensured that there is no ambience that any staff can provide professional /emotional support/protest

against exploitation to any female staff, since the respondent will spil the peace and reputation of that staff”, “the indecency, torture, and domination over even male and that too very senior staff by the respondent is so severe, that god only knows the plight of these very junior, low in hierarchy naive, young vulnerable women staff”.

It has also come to light that the Respondent had been habitually cracking obscene Sexual jokes, shares stories of rapes, - “ladki uthake program kar lia”(referring to incidents of rape), how women enjoy rape and then as and when required complain on rape, comments on body and body parts of women during common lunch hours are detestable/protest (As per statements of Sudarshan Negi, Latha Kumari, Nitin Kumar Sharma, Deepak Sati, Purujit Praharaj).

More than one witnesses above have narrated before the ICC that Respondent has number of times insisted the need for recruiting female employees in Delhi TSG office, and not taking the opinion of the reporting supervisor in account. More than one witnesses also narrated before the ICC that this Hyderabad incident, is not a single incident, but this is a known trend in TSG, whereby young, new, junior, inexperienced, vulnerable woman employee had to undertake outstations trips with the Respondent and in all these occasions, Respondent is the only person to decide who will go where, with whom, how and when. More than one witnesses also mentioned that after these (outstation) trips, either the Respondent Jain will start extending extra favour and suggest promotion for the woman employee, or start harassing and crafting a “GAME-PLAN” (as quoted by more than one team member), pressurizing few of his close associates, to put pressure and harass the woman employee to leave TSG.

The Respondent has argued that, if some female colleague had informed them about their apprehension about travelling with Respondent then Latha should have either shared with Senior Management of HLPPT or HLL Lifecare without informing

Respondent or she could have suggested Complainant to inform or write mail to share her apprehension with HR for easy redressal. He questioned as to why Latha had kept quiet for about 6 yrs and now suddenly she realized everything. The Respondent has also stated that if Mr. Sudarshan Negi being a senior manager in TSG has noticed historical trends in behaviour of female staff then why did he not share it with HLFPT senior member of HR team who are quite easy statement of other witnesses. However, ICC cannot lose sight of the fact that the TSG staff has come out in support of the Complainant because it is for the first time that a victim has raised voice against the Respondent. A victim of sexual harassment needs lot of courage and support to raise voice against the culprit, who has assaulted a women's dignity, especially in the male dominated Indian society. The ICC noted that the complainant is young and unmarried. The father committee also understands her vulnerability in the context that very recently she has lost her father and staying with her working mother and a younger sister without much support of the male member in her family. The committee found her emotionally drained and noted her determination to bring justice to her dignity. The committee with 3 women members could also bring out her fear, doubts and lever of stigma that she has inflicted on herself following the incidents on 23rd and 24th July, and bearing its consequences till the date of complaint, at her workplace. The facts that several staff have supported the case of the Petitioner, despite being acquainted with the misdeeds of the Respondent and not having raised objections earlier, further fortifies the fact that such staff got courage to speak against the Respondent due to the courage and boldness shown by the complainant. Merely because, no grievance has been raised against the Respondent in the past cannot be a ground to absolve the Respondent. Hence, the ICC does not find much force in the Respondent's objections to reject the evidence tendered by the TSG staff regarding the past misbehaviour by the Respondent.

10. Before this Court learned counsel for the appellant urges that he was

not given any opportunity to cross-examine the witnesses and thus there was denial of principles of natural justice. This point has not been urged before the learned Single Judge. But we deal with the same.

11. As noted above, Gaurav Jain was directed to attend the hearing on October 15, 2015 which he failed to do so, and thus the Committee immediately gave statements as is evident from Annexure P-10 to the writ petition, to which Gaurav Jain responded by detailed reply on October 21, 2014 running into 10 pages. The main request in the response was the right to verbally cross-examine the witnesses. It is well settled that in enquiry proceedings strict rules of evidence are not required to be followed and the enquiry committee can adopt its own procedure in conformity with the principles of natural justice and especially in a case of sexual harrassment. In the present case principles of natural justice has been adhered as the response of Gaurav Jain was sought for, tendered by him, which version was duly considered.

12. In the decision reported as (1977) 2 SCC 491 State of Haryana and Anr. Vs. Rattan Singh the Supreme Court held:

“4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both

sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground."

13. Since after supplying the statements of the witnesses response was sought from Gaurav Jain which he tendered, there is no denial of principles of natural justice. Further this is not a case of no evidence and as laid down by the Supreme Court sufficiency of evidence is beyond the scrutiny of this Court which does not sit as an appellate authority to the inquiry proceedings. On the facts and circumstances of the case as noted above we find no error in the impugned order of the learned Single Judge dismissing the writ petition and upholding the order of termination of Gaurav Jain. The appeal

is dismissed.

CM 4724/2015 (stay)

Dismissed as infructuous.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

AUGUST 06, 2015
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