

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

+ **W.P(C) No. 139/2015 & CM No.218/2015 (stay)**

% **7th January, 2015**

GAURAV JAIN

.....Petitioner

Through: Ms. Ginny J. Rautray, Ms. Sumitha
S. and Ms. Harsha, Advocates.

VERSUS

**HINDUSTAN LATEX FAMILY PLANNING PROMOTION TRUST
(HLFPPT) & ORS.**

..... Respondents

Through: Mr. Mohit Abraham, Mr. Arvind Ray
and Ms. Shruti Dutt, Advocates for R-
1.

Ms. Suparna Srivastava, CGSC with
Mr. Kumar Harsh, Advocates for R-2
and 3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner, who was an employee of the respondent no.1/employer/Hindustan Latex Family Planning Promotion Trust (HLFPPT), impugning the order of the employer dated 20.11.2014 by which

the services of the petitioner were terminated pursuant to the report dated 17.11.2014 of the Internal Complaints Committee (ICC) which indicted the petitioner for sexual harassment of one lady employee Ms. Nidhi Guha/complainant. In the present case, at this stage itself, I must note that the ICC which has given its report dated 17.11.2014 has given a very detailed report running into about 27 pages and which report very thoroughly and exhaustively discusses all the facts, evidences and the issues and thereafter arrives at the necessary conclusions. The report of the ICC is lucid and very well written as if it is a judgment of a court. There were a total of five members of ICC who have given the report dated 17.11.2014, and which concludes with the following recommendations:-

“VI. Recommendation

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

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

Sd/-	Sd/-	Sd/-	Sd/-	Sd/-
Dr. Anasua Bagchi	Dr. Madhu Sharma	Renu Sharma	D Sreenivas Rao	Shoumen Paul, Member, ICC”
Presiding Officer, ICC	Member, ICC	Member, ICC	Member, ICC	

2. There were a total of 7 charges against the petitioner on the aspect of harassment of the complainant. Five out of the seven issues have been held in favour of the complainant and against the petitioner, with the second issue and the seventh issue not being decided against the petitioner.

3. The facts of the case are that the complainant Ms. Nidhi Guha made a complaint of her sexual harassment by the petitioner and which complaint pertains to two basic set of facts. The first set of facts pertains to the trip/tour to Hyderabad from 22.7.2014 to 25.7.2014. The second set of facts pertains to harassment of the complainant by the petitioner after coming back from the tour/trip at Hyderabad and which is said to be on account of the complainant not bowing to the illegal actions of the petitioner.

4. The law with respect to hearing of a challenge against orders passed by departmental authorities is that this Court does not sit as an appellate court over the findings and conclusions of departmental

authorities; being the ICC in the present case. ICC was constituted by the respondent no.1/employer in terms of the relevant provisions of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as 'the Act') and the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Rules, 2014. ICC issued notice to the petitioner. Petitioner filed his reply to the charges. Evidence was led by both the parties. Department examined 11 witnesses in support of the charges besides filing documentary evidence. Once detailed findings and conclusions are given by the departmental authority/ICC based on the evidence led before the ICC, unless the findings are perverse, this Court cannot interfere with the findings of facts and conclusions given by the ICC. A Court interferes with the orders passed by the departmental authorities only if the same are in violation of the principles of natural justice or are in violation of rules of the organization/ the law or the findings and conclusions of the departmental authorities are perverse and which no reasonable man could have arrived at or if the punishment is shockingly disproportionate. In the present case, the two aspects argued before this Court are the aspects pertaining to the alleged violation of the rules and that the findings arrived at are perverse ie evidence led does not justify the findings and conclusions of the ICC.

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. Let us take each of the arguments as urged on behalf of the petitioner and deal with the same.

(i) So far as the first argument that not the respondent no.1/employer through its ICC, but the respondent no.3/NACO had the necessary jurisdiction to enquire into the complaint, the argument is *ex facie* misconceived because it is not disputed that the employer of the petitioner is

indubitably the respondent no.1. Surely the employer is entitled to look into the complaints made against its employees and more so because the Act specifically talks of the employer and the ICC of the employer taking action against the employee with respect to a complaint made by an employee of the employer-organization. Reliance placed by the petitioner upon the provision of Section 2(g) (ii) of the Act that it is the management at the work place which controls the work place only has the power to take action on complaint of sexual harassment, is a misconceived argument because employer is exhaustively defined by Section 2(g) of the Act and the provision of Section 2(g) of the Act contains four sub-clauses and employer can fall into any of the four sub-clauses. More importantly, once the employer is covered under Section 2(g)(i) of the Act, the provision of Section 2(g)(ii) of the Act does not apply as this latter provision itself states that the same will apply only if the employer is not one already covered under Section 2(g)(i) of the Act. The object of Section 2(g)(ii) of the Act is to elucidate and enlarge the scope of employer and not narrow the scope of Section 2(g)(i) of the Act ie in case an employer is not covered under Section 2(g)(i) of the Act, the employer can fall under Section 2(g)(ii) of the Act. This is clarified by Section 2(g)(iii) of the Act which provides that the person who performs the contractual obligations to the employee ie payment

of salary etc, would be the employer. I therefore do not find anything in the provision of sub-clause 2(g) (ii) of the Act relied upon by the petitioner which states that an actual employer cannot take action against the employee once there are allegations of sexual harassment alleged against the employee. The first argument urged on behalf of the petitioner is therefore rejected.

(ii) The second argument urged on behalf of the petitioner that ICC had no power to make recommendation for termination of services of the petitioner, is once again a misconceived argument and in fact the provision of Section 13(3)(i) of the Act which is relied upon by the petitioner goes against the petitioner because this provision specifically states that ICC shall recommend to the employer the action which is to be taken against the employee, of course which action has to be in accordance with service rules. Before me no service rules are filed or pointed out or referred to which say that in spite of a complaint having been proved of sexual harassment of an employee, the service rules provide that an employee who is guilty of sexual harassment cannot be terminated from services. The second argument urged on behalf of the petitioner is also equally misconceived and is therefore rejected.

(iii) The third argument raised of the first charge/issue being held against the petitioner without any evidence is now to be examined. Let me therefore at this stage reproduce the first charge against the petitioner and the findings of the ICC in this regard. The findings are detailed and lengthy, but I have no option but to reproduce the same in its entirety because such portion of the ICC report has to be examined to decide for correct appreciation of evidence by the ICC, and in case out of the two views possible one view has been taken by the ICC, then this Court cannot interfere with the findings of the ICC because it cannot be held that the findings and conclusions are perverse. This relevant portion of the report reads as under:-

- “(a) The first issue which arises for consideration by the ICC, is in relation to the incident which happened on 23rd July 2014. It is alleged that the Respondent pressurized the complainant to come over to the Respondent’s room at night *using his power of seniority*. The Respondent is alleged to have used *sexually tainted threats* to the complainant, such as “*do you know what is ‘Shoshan’ (Exploitation) This is ‘Shoshan’, ‘why did you ask for food from my BLOODY juniors?’*” It is alleged that the Respondent abused the complainant using his hierarchy as a pretext while she was alone and confined to his room at night. It is alleged that the Respondent was in a drunk status and threw cigarette smoke in her face, and forced option of spending the night in his room, if she is not able to finish the ½ kg of Biriyani, Forceful unwelcome physical conduct of sexual nature by coning her into hand over her room key, creating pressure and forcing her to eat Biriyani against her will to the extent that

she was physically harmed and fell ill, creating a serious sexual and physical threat to her by refusing to hand over key and thereby preventing her to seek the security and privacy of her room at late night, Knocking the door of the complainant's room and coning her to open the room door at late night on the pretext of enquiring her well-being.

Findings of the ICC on the above Issue

The Issue No.1 is proved against the Respondent and in favour of the Complainant. ICC finds it a matter of fact that the trip to Hyderabad was planned and designed by the Respondent with a definite motive, with support of his reporting team members.

Although the 23rd July night incident happened between only the Respondent and the Complainant, there is sufficient circumstantial evidence to believe that the incident had taken place, with the Respondent himself confirming the timings and the fact of sharing time within closed doors in his room for considerable time, the fact that the complainant left the room in obvious physical discomfort, and that he physically had gone and knocked at her room at late night. There is also confirmation by her colleagues that she had reached out to them immediately after the visit with the exact narration of the incident as mentioned in the complaint.

ICC also finds that the Respondent used his hierarchy as a senior male Team Leader to pressurize her into such a traumatic situation. ICC believes that the complainant did not have much option to deny the directives including the travel plan and spending time with the Respondent as per his wish.

The ICC also believes, that the complainant had no reason to frame him due to vested interest in the organization, and has not put the complaint to extend her service, since she had not even worked long enough in TSG to develop rapport with any of the HLFPT senior management and neither had any understanding of the TSG governance Model. In addition, the ICC also recognizes that the contracting of TSG as an institute is only up to March 2015, and it is highly unlikely for a dignified woman to stake her

stigma to be associated with the sexual harassment for a job extension of 5 more months.

The statement of witness-Deepak Solanki and Rahul Ram proves that the outstation trip to Hyderabad for the complainant was not required, and her trip to some field of Delhi NCR would have sufficed. It is also clear that it was the Respondent who finally decided that the complainant should be accompanying the Respondent for Hyderabad visit and also, that Deepak Solanki (complainant's direct supervisor) had no say in deciding where the complainant would be taken for field visit. As per statement of Mr. Deepak Solanki, and Ms. Latha Kumari, it is evident that travel plan of Hyderabad including travel arrangement were made by the Respondent and that the Respondent had done the web check in for the complainant and himself for the flight as well. In fact, the Respondent also confirmed in his statement 9th October 2014 that he only had done booking of Hotel Sarovar Aditya Hometel for himself and complainant for 22nd July to 25th July, and for Deepak for 24th July 2014. He has also confirmed that he only had done the web check in for the complainant and himself for ongoing flight to Hyderabad (From Delhi). The statement of the Respondent also confirms that the room booked for the complainant was over and above her official entitlement for the hotel tariff. It has also come to light that the flight approval for the complainant was approved by Deepak Solanki but final decision and approval was given by the Respondent, since Deepak Solanki was not authorized to do so as per Employer's travel rules.

The Respondent's contention that the visit to Hyderabad was a planned decision of the Respondent, the Complainant and Mr. Solanki is not of much force. It is pertinent to note that it was the Respondent who had booked the accommodation in the hotel. The Respondent could not give any satisfactory explanation as to why he had booked high tariff room for the complainant, which was also beyond her entitlement. There could be no concern for safety of the Complainant, as contented by the Respondent, because the Respondent and Mr. Solanki were staying in the same hotel. Further, the Respondent claims that the Complainant used the words "As discussed" in her

email to Deepak seeking travel approval implies that the decision was taken with her consent. ICC is of the view that the complainant had not complained that she was pressurized to go, and further the reference of a discussion does not imply that the decision was a participatory or taken with the consent of the complainant, it may also mean the directive that was discussed.

The Respondent has also raised the defense that he had booked Deepak Solanki in the same hotel, which proves that he did not have any malicious intention. The said contention is countered by the fact that travel was planned in such a way that Deepak was to check in the hotel only on 24th July, while the Respondent and complainant was booked from 22nd July onwards.

Further, Respondent's contention is that if complainant was apprehensive of accompanying with Respondent then she had almost a week's time to refuse to travel to Hyderabad but she did not do so at all which means that she travel willingly without any pressure. ICC is of the view that the Complainant being a junior employee had no choice but to go to Hyderabad. She went ahead with the Hyderabad visit as she could not have said a categorical 'NO' to the Respondent (a senior employee) as it would have severely reflected on her performance on the job. Further this was a case of an official trip, directed by two seniors of the Complainant, there was no scope for a junior employee to say no on the pretext of insecurity. ICC is of the view that this is a case where the male hierarchy has used his power to create apprehension and at the same time used that power to abide by his plan. Further, it has also come into evidence no staff as TSG had the courage to raise voice against the Respondent.

ICC has also perused the Statement of Hotel Aditya Hometel dated 20th October, which has confirmed that they (The Hotel) got the reservation request from Respondent for 3 Superior rooms on 17th July 2014 at 14.50 hrs (Respondent & Complainant) for 3 nights (from 22th to 25th 2014). Mr. Deepak Solanki one night 24th and 25th and the confirmation number for the same was 49918. The Respondent had

requested for reservation of Superior rooms, which was superior room no. 115 in 1st Floor and the complaint was allotted Superior Room no. 202 in second floor, by the Hotel Aditya Hometel, during their check in on 22nd July, but within 14 minutes the Respondent had changed his booked Superior room 115, to Suite room 204 which was in the same floor and next to the complainant's room(202). The Respondent's contention that the room allotted to him was very uncomfortable & cramped to him therefore as he saw that room, he immediately requested hotel for a change which they did and the next room allotted to him by hotel was a suite room within his entitlement as well as he opted for that. The said contention is liable to be rejected as the Respondent has himself booked superior rooms and further he has stated that he used to stay in the same hotel during Hyderabad visit. This implies that the Respondent was very familiar with the rooms and the facilities in the Hotel and the intent behind shifting to a room next to the Complainant's room was not bona fide and could not be explained satisfactorily by the Respondent. Further it is difficult to believe that the hotel staff allotted a higher category room next to the allotted superior room of the complainant by mere asking by the Respondent. This gives enough circumstantial evidence to the ICC to believe that the Respondent had intentionally changed the room with definite purpose of being close to the Complainant during the stay. Respondent's contention that he was not aware that what room has been allotted to Complainant is also without any merit as both the Complainant and the Respondent had checked in the hotel at the same time. And this implies that the Respondent was aware what room has been allotted to the complainant.

From the Statement of Latha Kumari, and Deepak Solanki dated 8th October, 2014, Statement of Joseph Savy dated 9th October, Statement of Deepak Solanki dated 22nd September, it is evident that Joseph Savy (RMM, TSG) had checked in the same Hotel Aditya Hometel on 22nd October 2014 at 7 am, and then he was directed by Deepak to move out of the hotel by 7 pm to check in another hotel which next to Hotel Aditya Hometel. The reason for moving out of the hotel was that the

Respondent would not like Joseph to be staying in the same hotel where Respondent & Complainant were booked. Although the Respondent has taken a stand that he did not instruct Deepak to ask Joseph to check out of the Hotel, the said stand is falsified by the fact that Joseph did check out of the hotel and further, Joseph has also confirmed receiving a call from Deepak. Deepak's statement in addition states that he was instructed by the Respondent to ensure that Joseph Savy moves out of the hotel before the Respondent check in. Further, Latha has also confirmed that Joseph informed her that he would not be of much help to the Complainant as he had checked out of the hotel due to the instructions of the Respondent. Email from Hotel Aditya Hometel dated 20th October 2014 also confirmed that 3 guests who checked in to their hotel were Mr. Gaurav, Complainant and Mr. Joseph on 22nd July 2014, and that Mr. Joseph checked in around 9.05 hrs and checked out 18.26 hrs on same day (22nd July 2014).

As per statement of Respondent dated 9th October, and 7th November, it is evident that the Respondent and the complainant were together from 9.30 pm onwards in closed door in the Respondent's room for Dinner of Biryani, and had dinner together. The Respondent admitted that the complainant left the room complaining of physical illness, and also confirmed that he had knocked at her room post dinner, and that she had opened the door of her room and had asked her of her well-being. The Respondent has claimed that he knocked at the door of the Complainant's room to inquire about her health. ICC is of the view that this explanation of the Respondent does not appear to be logical and reasonable as the Respondent instead of knocking at the door late in the night, could have easily communicated with the Complainant through the intercom facility or mobile phone. There was no reason for the Respondent to disturb the Complainant by knocking on the door already knowing that she was not well also as per the Statement of Respondent.

From the statement of Nitin, Bhupendra, dated 8th October 2014, it is evident that the complainant, after her return from Hyderabad had immediately confided the incident of 23rd July

2014 night, including the fact that the Respondent had detained her in his hotel room forced her to take Biryani or otherwise spend the night in his room that her hotel room key was taken away by Respondent. From the statement of Sudarshan Negi and Latha Kumari, it is evident that there was change in the behaviour of the complainant after return from Hyderabad and that she was agitated and disturbed. There is nothing on record to disprove the statements made by the witnesses in relation to the present issue. The entire circumstances go against the Respondent and hence, the present issue stands proved against the Respondent.” (underlining added)

7. A reading of the aforesaid portion of the report of the ICC shows that it is an admitted fact that the complainant was in the hotel room of the petitioner. The fact with respect to the complainant having to eat *biryani* is also borne out from the statements of the complainant and the petitioner. The fact that the petitioner thereafter went to the room of the complainant, of course allegedly on the pretext of health, is also an admitted fact. The aspect is that whose version should be believed ie viz of the complainant or of the petitioner. I have already reproduced detailed findings with respect to the issue no.1 above and some of the relevant aspects given by the ICC to hold the first issue/charge against the petitioner are rightly as under:-

(i) Complainant immediately after the trip to Hyderabad narrated the incident to her colleagues.

(ii) The Hyderabad trip of the complainant was in fact not required and it was sufficient if the complainant would have got experience within the Delhi NCR itself and which is also confirmed by the statements of the witnesses Sh. Deepak Solanki and Sh. Rahul Ram.

(iii) The petitioner himself had done the booking of the complainant at the concerned Hotel Sarovar Aditya Hometel and that too beyond the financial entitlement of the complainant.

(iv) The trip at Hyderabad was planned in such a way that the petitioner and the complainant would be alone in the hotel for three out of the four days at the Hyderabad trip because booking at the hotel for the rooms of the complainant and the petitioner was from 22nd July, 2014 to 25th July, 2014 whereas the booking for the other employee was only for 24th July, 2014.

(v) Petitioner was given a different room on the different floor being the first floor being the room no.115 but within about 14 minutes of check-in in the hotel, the petitioner changed his room from 115 to suite no. 204 which was adjacent to the room no. 202 on the second floor which was booked for the complainant.

(vi) Another employee Mr. Joseph Savy (RMM, TSG) had checked into the same Hotel Aditya Hometel on 22.10.2014, and then he was directed by Sh. Deepak Solanki on the instructions of the petitioner to move out of hotel by 7 pm and to check-in to another hotel which is next to Hotel Aditya Hometel.

8. The aforesaid aspects show that the findings and conclusions with respect to first issue/charge against the petitioner are not without any evidence as argued on behalf of the petitioner. In fact, at this stage itself I must note that when the report is read as a whole, it becomes clear that trips to Hyderabad were planned by the petitioner in which female staff used to be taken alongwith him and many of such female staff had appeared harried and worried on returning back from the Hyderabad trips. It has also come on record that only and only the petitioner had complete liberty and discretion to decide as to who will go to the outstation trip at Hyderabad, with whom, how and when. The detailed report shows that it was a game plan and the usual *modus operandi* of the petitioner. Once two views of the situation are possible, and the conclusions of the ICC cannot be said to be perverse, this court cannot interfere with the findings and conclusions of the ICC. Also, it is again important to note that even for the sake of argument if we take away

the aspect with respect to first issue/charge, there are four other charges which are duly proved against the petitioner by means of evidence led before the ICC, and which proved charges were sufficient in themselves to give findings of sexual harassment against the petitioner and the consequent recommendation of termination of his services. This argument urged on behalf of the petitioner is also therefore rejected.

9. The last argument which is urged on behalf of the petitioner is that of the complaint lacking merits, having been made after two months and in around the period when the contract of the complainant was to expire with the respondent no.1/employer. This aspect at the first blush required deeper consideration, and therefore, I have gone through the impugned ICC report dated 17.11.2014 in detail. I have clearly reproduced above the reasons given by ICC for rejecting the arguments with respect to the complaint not having merits because it was made after about two months and in around the period when the contract of the complainant was to expire and which portion is the fourth sub-para of the findings of ICC qua issue no.1 and which is sufficient to reject this argument. It also needs to be noted that ICC has held that petitioner being the only male member in the senior position, and the female employees being in the junior position, it was difficult for the female

employees to stand up to the petitioner. Also, statements were recorded of the witnesses namely Ms. Latha Kumari, Mr. Nitin Kumar Sharma, Mr. Purujit Praharaj, Mr. Sudarshan Negi and Mr. Bhupendra Pratap Singh which showed that the trend with respect to other women staff was similar to the game plan adopted with respect to the complainant of taking them to outstation trips and the female staff looking distressed and tensed after coming back from the outstation visits. Also, the ICC notes that merely because a complaint is delayed does not mean that on merits the complaint should not be examined because it is the first time when a victim had found courage to raise her voice against the petitioner with respect to sexual harassment and complainant required lot of courage to do so because not only she was young and unmarried but that she had lost her father and was staying with her working mother and a younger sister ie without support of a male member in her family. ICC also notes that complainant was a female member and it is only after much courage that she was able to raise her voice against the petitioner. ICC rightly in my opinion also notes that there is no reason why the complainant would want to adversely affect her reputation at her young age by making such a complaint. Various other aspects are also noted in the report and since as already stated above, ICC has done a very thorough job, let me reproduce the language of the other portion of the

report in this regard instead of adding my own words and which relevant portion of the report reads as under:-

Findings of the ICC on the above issue

ICC noted the material evidences given in the regard, and after interacting with the witness at length has sufficient reason to conclude that the respondent has created hostile and oppressive work environment for her and at least of another woman employee who has given her statements.

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 Hotal 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 HLPPT 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.

The Respondent has also contended that his junior from TSG could have reached the Board of trustees and the CEO, if the Respondent had done anything wrong. However, no one had approached the Board of Trustees or the CEO for the redressal of grievances. The ICC took into the TSG Governance model to examine his contention of the Respondent. ICC found that the TSG governance model does not allow any direct communication with HLPPT Management and that all communications are as per the model and are routed through the Team Leader. Since the Respondent was himself the Team Leader, none of the juniors could have mustered the courage to communicate with the CEO or the Board of Trustees in relation to any issue, in which the Respondent was himself interested. Further, it is highly improbable that junior team member will have an easy access to the Board of Trustees and senior management or have a level of personalized communication scope for discussing behavioural issues of their team leader with them.

Respondent has also raised objection that some witnesses such as Latha and Bhupendra are very close to CEO or have worked in the organisation for long and hence they have good connection with the senior management of HLPPT. The Respondent's contention that these witnesses have testified against him due to vested interest in the organisation. The ICC is of the view that merely because people are close to the CEO or other senior personnel or have worked in the organisation for long time does not make the evidence of such witness doubtful. The Respondent has also not produced any evidence to show that the witnesses have falsely testified against him. On the other hand, almost all the witnesses have stated that the Respondent used to have objectionable behaviour with female staff.

In view of the above unchallenged evidence and the entire facts and circumstances of the case, the allegations against the Respondent stands proved.”
(underlining added)

10. It is therefore clear that there is no violation of principles of natural justice or violation of rules of the employer- organization or violation of any law or that there is any perversity in the findings of the report of the ICC in the present case. The writ petition is therefore without any merit whatsoever.

11. Dismissed.

JANUARY 07, 2015
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VALMIKI J. MEHTA, J.