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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 455/2018 and CM Nos. 1984/2018, 1985/2018**
& 1998/2018

MS. C (NAME AND ADDRESS CONFIDENTIAL) Petitioner

Through: Ms Vrinda Grover, Ms Ratna
Appnender and Mr Soutik Banerjee,
Advocates.

versus

INDIAN INSTITUTE OF CORPORATE
AFFAIRS AND ORS.

..... Respondents

Through: Mr Bhagvan Swarup Shukla, CGSC
with Mr Kamaldeep, Advocate for R-
2.

Mr R.C. Meena, Ex-Regional
Director (ER) & (NER), Ministry of
Corporate Affairs, Govt. of India.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **23.01.2018**

VIBHU BAKHRU, J

1. The petitioner, whose name is concealed to avoid any ignominy, has filed the present petition, *inter alia*, praying that directions be issued to respondent nos. 5 to 10 - persons constituting the Internal Complaints Committee (hereafter 'the ICC') - to comply with the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereafter 'the Act').

2. The petitioner claims that on 10.11.2017 she was sexually assaulted and groped by respondent no.4. This incident happened within the campus of respondent no.1 at Manesar, Gurgaon, Haryana. She further alleges that

respondent no.4 had been sending unwelcome whatsapp messages and songs of sexual nature to the petitioner. The petitioner states that the complaint in this regard was lodged with respondent no.3 on 13.11.2017 but the same was not immediately referred to the ICC.

3. According to the petitioner, the ICC was constituted on 28.11.2017. The petitioner claims that she has also applied for interim relief to the ICC, however, the same has not been considered as yet.

4. The petitioner claims that the ICC is not following the principles of natural justice and has not provided any statements, deposition, documents or evidence that has been placed before the ICC and, therefore, she has been effectively precluded from responding to the same. She also claims that some of the witnesses in the case are being intimidated and victimised. The petitioner also alleges that respondent no.3 has failed to maintain confidentiality with regard to her identity at the campus and has shared the details of her complaint openly with other persons.

5. At the outset, Mr Shukla, the learned counsel appearing for the respondents states that the Ministry of Corporate Affairs, Government of India had constituted the ICC by an Office Order dated 20.04.2017 and the petitioner's complaint was forwarded to the ICC on 14.11.2017.

6. He states that ICC is currently conducting a preliminary investigation and is not acting as an "Inquiring Authority". The proceedings are only to assist the Disciplinary Authority to form a *prima facie* opinion for constituting an inquiry under Rule 14 of the CCS(CCA) Rules, 1965.

7. Ms Grover, the learned counsel appearing for the petitioner contends that even at the stage of such preliminary investigation, it is necessary that

all material collected by the ICC ought to be provided to the petitioner and she also be given a further opportunity to rebut the same. She submitted that the petitioner has not been provided any material and also has had no opportunity to cross-examine any of the witnesses that may have deposed in favour of respondent no.4 before the ICC.

8. She relied on the decisions of this Court in *Manisha Sharma v. Union of India and Ors.*: 196 (2013) DLT 741; *Pallavi Pandey v. Kendriya Bhandar*: 2013 SCC OnLine Del 3029; and *Sonali Badhe, A.L.A. Directorate of Enforcement, Ahmedabad v. Ashish Chandra Singh DLA, New Delhi & Anr.*: W.P.(C) 6207/2017, decided on 15.12.2017.

9. This Court is not persuaded to accept the contentions advanced on behalf of the petitioner. In terms of the Office Memorandum bearing F. No. 11013/2/2014-Estt (A-III) dated 16.07.2015 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training (hereafter 'DoPT'), the role of an ICC has been explained in the context of Rule 14 of the CCS(CCA) Rules, 1965.

10. It is relevant to refer to Rule 14 of the CCS(CCA) Rules, 1965; the relevant extract of which is set out below:-

“14. PROCEDURE FOR IMPOSING MAJOR PENALTIES:

(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

Provided that where there is a complaint of sexual harassment within the meaning of rule 3 C of the Central Civil Services (Conduct) Rules, 1964, the complaints Committee established in each ministry or Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the complaints committee for holding the inquiry into the complaints of sexual harassments, the inquiry as far as practicable in accordance with the procedure laid down in these rules.”

11. A plain reading of Rule 14 (2) of the CCS(CCA) Rules, 1965 indicates that an inquiry into any misconduct or misbehaviour against a Government servant would commence only where the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation or misconduct or misbehaviour on the part of the Government servant. The proviso to Rule 14 (2) of the said Rules specifies that the ICC would be the Inquiring Authority in cases where the complaint is of sexual harassment within the meaning of Rule 3 (C) of the CCS (Conduct) Rules, 1964.

12. It is not disputed that the ICC would be deemed to be an Inquiring Authority; however, the said inquiry would commence once the Disciplinary Authority forms an opinion as required under Rule 14 of the CCS(CCA)

Rules, 1965. At this stage, the ICC is only conducting a preliminary investigation. The ICC's dual role has been explained in the guide on "*Steps for conduct of Inquiry in complaints of Sexual Harassment*", which was circulated under the cover of the Office Memorandum dated 16.07.2015. The relevant extract of the said OM reads as under:-

"Complaints Committee to be Inquiring Authority

6. As per Proviso to Rule 14(2) of CCS (CCA) Rules 1965, in case of complaints of sexual harassment, the Complaints Committee set up in each Ministry or Department etc. for inquiring into such complaints shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority for the purpose of these rules. Complaints Committee, unless a separate procedure has been prescribed, shall hold the inquiry as far as practicable in accordance with the procedure laid down in the Rule 14.

Need for investigation

7. The Complaints Committees may act on complaints of sexual harassment when they receive them directly or through administrative authorities etc, or when they take cognizance of the same suo-moto. As per Section 9(1) of the Act, the aggrieved woman or complainant is required to make a complaint within three months of the incident and in case there has been a series of incidents, three months of the last incident. The Complaints Committee may however extend the time limit for reasons to be recorded in writing, if it is satisfied that the circumstances were such which prevented the complainant from filing a complaint within the stipulated period.

8. As mentioned above, the complaints of sexual harassment are required to be handled to be verified. This is called preliminary enquiry/ fact finding enquiry or investigation. The Complaints Committee conducts the investigation. They may then try to ascertain the truth of the allegations by collecting the documentary evidence as well as recording

statements of any possible witnesses including the complainant. If it becomes necessary to issue a Charge Sheet, disciplinary authority relies on the investigation for drafting the imputations, as well as for evidence by which the charges are to be proved. Therefore this is a very important part of the investigation.

Dual Role

9. In the light of the Proviso to the Rule 14(2) mentioned above, the Complaints Committee would normally be involved at two stages. The first stage is investigation already discussed in the preceding para. The second stage is when they act as Inquiring Authority. It is necessary that the two roles are clearly understood and the inquiry is conducted as far as practicable as per Rule 14 of CCS(CCA) Rules, 1965. Failure to observe the procedure may result in the inquiry getting vitiated.”

13. As noted above, at this stage, the Disciplinary Authority has not formed an opinion for inquiring into the truth of the allegations made against respondent no.4 and an inquiry against respondent no.4 has not been instituted as yet. The preliminary investigation conducted by the ICC is only to assist the Disciplinary Authority to form such an opinion. The preliminary investigation would also aid the preparation of the imputation of charges for misconduct and misbehaviour, if any.

14. It is also essential that at this stage detailed findings are not returned by the ICC as the matter is only at a preliminary stage. Returning definite findings at this stage would certainly give a cause to the person accused to claim at the subsequent stage that the ICC had already made up its mind even before a copy of the imputation of charges were served on him. This would frustrate the intention of ensuring that the ICC act as an Inquiring Authority.

15. Since it is stated that the ICC is merely conducting a preliminary investigation regarding the complaint of the petitioner, no further interference by this Court is called for at this stage. However, it is necessary to observe that the ICC would be free to obtain any clarification from the petitioner, if considered expedient.

16. The ICC is requested to complete the proceedings as expeditiously as possible after the petitioner returns from the Bharat Darshan Tour.

17. Needless to state that if the petitioner is aggrieved by the Disciplinary Authority not taking an appropriate action at that stage, the petitioner would be at liberty to apply.

18. It is also necessary to observe that the petitioner also has the right even at this stage to approach the concerned authorities for immediate protection that may be required by her. It is seen that the ICC is also empowered to grant initial relief, if the circumstances so warrant.

19. Respondent no.2 shall also consider whether it is necessary to enquire into the role of respondent no.3.

20. The petition is disposed of with the aforesaid observations. The pending applications are also disposed of.

VIBHU BAKHRU, J

JANUARY 23, 2018
RK/pkv