

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 690 OF 2019

Ms. Ruchika Kedia,
D/o. Bishnu Kumar Kedia,
aged 24 years, Student,
Presently r/o. Room No.3117,
Hostel 3, Goa Institute of Management,
Near Revindra Bhawan, Poriem,
Sanquelim, Goa 403 505
Permanent resident of
43 Southend Park, Kolkata – 700 029. Petitioner.

Versus.

1) The Internal Complaints,
Goa Institute of Management,
Valpoi, Goa, through its President
Prof. Ms. Annamika Sinha,
Goa Institute of Management,
Near Revindra Bhawan, Poriem,
Sanquelim, Goa 403 505.

2) Mr. Varun Bhagat,
s/o K. Bhagat, age 25 years,
Presently r/o. Room No.5011,
Hostel 5, Goa Institute of Management,
Near Revindra Bhavan, Poriem,
Sanquelim, Goa 403 505.

3) Dr. Ajit Parulekar,
Director,
Goa Institute of Management,
Near Revindra Bhavan, Poriem,

Sanquelim, Goa 403 505.

..... Respondents.

Ms. Maria Caroline Collasso, Advocate for the Petitioner.

Mr. Valmiki Menezes, with Ms. S. Narvekar, Advocates for Respondents No.1 and 3.

Mr. Kaif Noorani, Advocate under Legal Aid Scheme, for Respondent No.2.

***Coram : M.S. Sonak &
Smt. M.S. Jawalkar, JJ.***

Date : 16th January, 2020.

ORAL JUDGMENT : (Per M.S. SONAK, J.)

Heard Ms. Maria Caroline Collasso for the Petitioner, Mr. Valmiki Menezes for Respondents No.1 and 3 and Mr. Kaif Noorani under Legal Aid Scheme for Respondent No.2.

2. Rule. Rule is made returnable forthwith with the consent of and at the request of the learned Counsel for the parties.

3. It is necessary to note that this matter was fully argued on 13th January, 2020, on which date, Ms. Collasso, Mr. Menezes and Mr. Noorani made their submissions. The matter was, however, posted for today, in order to enable Ms. Collasso to take some instructions from the Petitioner, particularly on the issue as to

whether the Petitioner wishes to pursue the matter any further or, whether the Petitioner would be satisfied with the quashing of the inquiry report dated 12th February, 2019 and issuance of directions to Respondents No.1 and 3 to comply with the provisions of the All India Council for Technical Education (Gender Sensitization, Prevention and Prohibition of Sexual Harassment of Women Employees and Students and Redressal of Grievances in Technical Educational Institutions) Regulations, 2016 (said Regulations). Today, Ms. Collasso, on the basis of the instructions from the Petitioner, states that the Petitioner will be satisfied with quashing of the inquiry report and issuance of directions to Respondents No.1 and 3 for implementation of the said Regulations, in future cases.

4. The challenge in this Petition is to the report of the Inquiry Committee of the Internal Complaints Committee, Goa Institute of Management, dated 12th February, 2019 into the complaint made by the Petitioner against Respondent No.2 herein. There is no dispute that such complaints have to be inquired into under the said Regulations by the Grievance Redressal Mechanism, constituted under the said Regulations.

5. Relevant Regulation in relation to the constitution of the Internal Complaints Committee (ICC), is Regulation 4, which reads as follows :

“Grievance Redressal Mechanism- (1) *Every TI shall constitute an Internal Complaints Committee (ICC) with an inbuilt mechanism for gender sensitization against sexual harassment. The ICC shall have the following composition:-*

(a) A Presiding Officer who shall be a woman faculty member employed at a senior level (not below a Professor in case of a university, and not below an Associate Professor or Reader in case of a college) at the educational institution, nominated by the Executive Authority;

(b) Two faculty members and two non-teaching employees, preferably committed to the cause of women or who have had experience in social work or have legal knowledge, nominated by the Executive Authority;

(c) Three students (comprising of atleast one girl student) of Pre-Final/Final year at Undergraduate/Diploma level Institute, as the case may be.

(d) One member from amongst non-government organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, nominated by the Executive Authority.

(2) At least one-half of the total members of the ICC shall be women.

(3) Persons in senior positions such as Chairman, Secretary of the Society & Principal / Director etc. shall not be the members of ICCs in order to ensure autonomy of their functioning.

4) The term of office of the members of the ICC shall be for a period of three years. TIs may also employ a system whereby one –third of the members of the ICC may

change every year.”

6. In the present case, the records indicate that there was full compliance with the provisions of sub-clause (a) of Regulation 4(1) of the said Regulations. In so far as provisions of sub-clause (b) of the said Regulations are concerned, instead of having two non-teaching employees, there was only one non-teaching employee in the ICC. In so far as clause (c) of Regulation 4(1) of the said Regulations is concerned, the record reveals that three students were associated with the ICC. However, we agree with the contention of Ms. Collasso that such association was not as is contemplated by letter and spirit of the provisions in sub-clause (c).

7. In the aforesaid regard, reference is required to be made to contents of paragraphs 7 and 8 of the affidavit filed by Ms. Anamika Sinha, Presiding Officer of the ICC, which read as follows :

“7. I say that in the meeting of the ICC held on 3rd January 2019 the three students on the Committee were of the opinion that since they were inducted onto the Committee for the first time, were inexperienced in conducting an inquiry, moreso in the light of the fact that the inquiry concerned two of their student colleagues, it was decided that the inquiry would proceed with remaining five members of the Committee present under my Chairmanship. Accordingly, all further proceedings in the inquiry were conducted by the five non-student members of the Committee, commencing 3rd January 2009 and

ending on 12/2/2019 when a Report containing the Findings of the Committee were submitted to the Director of the Institution in accordance with the provisions of the Regulation. I state that all members of the ICC including the above referred three student members considered the entire record of the Inquiry Proceedings and all material contained therein and unanimously arrived at Findings which are under challenge.

8. *I state that after receipt of the Petitioner's complaint, attempts to reconstitute the ICC in terms of the aforementioned Regulations were made impossible due to the fact that the students of the college were on leave due to Christmas holidays, consequently the Committee could meet for the first time only on 3rd January 2019. I rely upon minutes of all meetings held, all proceedings recorded, transcripts of all audio recordings, transcript of phone conversations played back to the ICC and all documents submitted to the Committee during the proceedings, which are in possession of the ICC when called upon to produce the same. For reasons that the entire investigation, inquiry and material collected during the proceedings being of confidential nature, and considering the sensitive nature of the proceedings and allegations made therein, the ICC avoids placing the above documents on record, however, the ICC shall place all the above material under sealed cover before this Hon'ble Court for its perusal to arrive at a just decision in the matter."*

8. From the aforesaid, it does appear that the three students were not, strictly speaking, a part of the ICC. In any case, the three students were not involved in the inquiry process. The Regulations

contemplate that the complaint of sexual harassment is inquired into by the Committee. From the contents of the aforesaid paragraphs, we agree with Ms. Collasso that the three students were not involved at all stages of the inquiry. To that extent, there was infirmity in the constitution of the Committee.

9. In so far as clause (d) of Regulation 4(1) of the said Regulations is concerned, it is the case of Respondents No.1 and 3 that Prof. Nila Nayak, Senior HR Professional with 20 years experience (External Member) was made part of the ICC. However, there is nothing on record to indicate that Ms. Nila Nayak was a member of some non-government organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment. Besides, the affidavit states that Ms. Nila Nayak was a Professor at the Institution. According to us, therefore, there is no compliance with sub-clause (d) of Regulation 4(1) of the said Regulations, as well.

10. The importance of having an external member from amongst the non-government organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment has already been highlighted by the Division Bench of Delhi High Court in the case of *Ruchika*

Singh Chhabra vs. M/s. Air France India and another, LPA 237/2018 dated 30th May, 2018. This was, no doubt, in the context of the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. However, according to us, the observations made by the Division Bench of the Delhi High Court will equally apply to the said Regulations, with which we are presently concerned.

11. We, therefore, agree with Ms. Collasso that the constitution of the ICC was not in accordance with Regulation 4 of the said Regulations. On this short ground, the report of the ICC dated 12th February, 2019, is required to be set aside and is, hereby, set aside.

12. Since, the constitution of the ICC was not in accordance with Regulation 4 of the said Regulations, there is no necessity to go into the issue as to whether, in the present case, there was compliance with Regulation 8 of the said Regulations, which deals with the process of conducting an inquiry by the ICC.

13. Ordinarily, upon setting aside the inquiry report, the matter would have to be remanded for consideration by the ICC which, this time, would have to be constituted in terms of Regulation

4 of the said Regulations. However, as noted earlier, Ms. Collasso, on the basis of specific instructions from the Petitioner, states that the Petitioner is not interested in remand or further inquiry into the matter and the Petitioner will be satisfied if, the inquiry report is set aside and the matter is given quietus. Accordingly, it is not necessary for us to go into various contentions raised on behalf of the Respondents, including the contention about participation of the Petitioner in the inquiry without any protest or demure. In view of the statement made on behalf of the Petitioner by her learned Counsel Ms. Collasso, further proceedings in the complaint made by the Petitioner, to stand terminated.

14. Further request made by the Petitioner, through her learned Counsel Ms. Collasso that appropriate directions be issued to Respondents No.1 and 3 to comply with the provisions of the said Regulations, is quite reasonable and deserves to be accepted. In fact, even Mr. Menezes, on instructions, very graciously makes a statement that Respondents No.1 and 3 will ensure full compliance with the provisions of the said Regulations, in future. He points out that Respondents No.1 and 3 have already initiated steps in that direction. Mr. Menezes pointed out the difficulties that were involved in the present matter and submitted that there was every intent to comply with the said Regulations. He submits that in future Respondents

No.1 and 3 will ensure that there are no deficiencies or shortcomings in so far as such compliances are concerned.

15. Accordingly, we record and accept the statement of Mr. Menezes, made on the basis of instructions from Respondents No.1 and 3, that within a reasonable period, the ICC shall be reconstituted, this time, in strict compliance with the provisions of Regulation 4 of the said Regulations. This, to a substantial extent, redresses the grievance raised by the Petitioner in the present Petition.

16. Ms. Collasso then points out Regulation 3, which deals with the Responsibilities of the Technical Institution. Regulation 3.1 reads as follows :

“Responsibilities of the Technical Institution -

3.1 Every TI shall, -

(a) Wherever required, appropriately subsume the spirit of the above definitions in its policy and regulations on prevention and prohibition of sexual harassment against the women employees and the students, and modify its ordinances and rules in consonance with the requirements of the Act;

(b) Publicly notify the provisions against sexual harassment and ensure their wide- dissemination;

(c) Organise Training Programmes or as the case may be, workshops for the officers, functionaries, faculty and students, to sensitize them and ensure knowledge and

awareness of the rights, entitlements and responsibilities enshrined in the Act and under these regulations;

(d) Act decisively against all gender based violence perpetrated against employees and students of all sexes recognising that primarily women employees and students and some male students and students of the third gender are vulnerable to many forms of sexual harassment and humiliation and exploitation;

(e) Publicly commit itself to a zero tolerance policy towards sexual harassment;

(f) Reinforce its commitment to creating its campus free from discrimination, harassment, retaliation or sexual assault at all levels;

(g) Create awareness about what constitutes sexual harassment including hostile environment harassment and quid pro quo harassment;

(h) include in its prospectus and display prominently at conspicuous places or Notice Boards the penalty and consequences of sexual harassment and make all sections of the institutional community aware of the information on the mechanism put in place for redressal of complaints pertaining to sexual harassment, contact details of members of Internal Complaints Committee, complaints procedure and so on. Wherever a Gender Sensitization Committee against Sexual Harassment (GSCASH) already exists it must be brought additionally in consonance with the composition mandated by the Act;

(i) inform employees and students of the recourse available to them if they are victims of sexual harassment;

(j) Organise regular orientation or training programmes for the members of the ICC or GSCASH to deal with complaints, steer the process of settlement or

conciliation, etc., with sensitivity;

(k) Proactively move to curb all forms of harassment of employees and students whether it is from those in a dominant power or hierarchical relationship within TIs or owing to intimate partner violence or from peers or from elements outside of the geographical limits of the TI;

(l) be responsible to bring those guilty of sexual harassment against its employees and students to book and initiate all proceedings as required by law and also put in place mechanisms and redressal systems like the ICC or GSCASH to curb and prevent sexual harassment on its campus.

(m) Treat sexual harassment as misconduct under service rules and initiate action for misconduct if the perpetrator is an employee;

(n) Treat sexual harassment as a violation of the disciplinary rules (leading up to rustication and expulsion) if the perpetrator is a student;

(o) Ensure compliance with the provisions of these regulations, including appointment of ICC, within a period of sixty days from the date of publication of these regulations;

(p) Monitor the timely submission of reports by the ICC or GSCASH;

(q) Prepare an annual status report with details on the number of cases filed and their disposal and submit the same to the Council.”

[emphasis supplied)

17. There is no doubt, as contended by Ms. Collasso, that Respondents No.1 and 3 are duty bound to discharge the responsibilities in terms of the aforesaid Regulation 3 of the said Regulations. As noted earlier, Mr. Menezes, on the basis of the

instructions, also stated that Respondents No.1 and 3 will discharge their responsibilities cast upon them in terms of the said Regulations. Accordingly, we direct Respondents No.1 and 3 to, *inter alia*, discharge their responsibilities in terms of sub-clauses (b), (g), (h) and (i) of clause 3(1) of the said Regulations. We also direct Respondents No.1 and 3 not only to provide for a grievance redressal mechanism and appeal mechanism, consistent with the provisions of the said Regulations, but, further, to inform the students and the employees about the availability of the same again, within a reasonable period.

18. We also recommend that Respondents No.1 and 3 take cognizance of the provisions in Regulation 3(1)(j) and consider organizing regular orientation or training programmes for the members of the ICC to deal with complaints, steer the process of settlement or conciliation, etc., with sensitivity, which such issues demand.

19. Before we conclude, we record the reasonable approach adopted by all the parties and the learned Counsel who represented them. We also acknowledge the assistance rendered by Mr. Kaif Noorani, who was appointed under the Legal Aid Scheme to appear on behalf of Respondent No.2.

20. With the aforesaid directions, we dispose of the Rule in this Petition. There shall be no order as to costs.

Smt. M.S. Jawalkar, J.

M.S. Sonak, J.