

Sonali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3784 OF 2021**

David G Samuel ...Petitioner
Versus
Collector/District Magistrate, Pune & Ors ...Respondents

Mr Sahil Mahajan, for the Petitioner.
Mr RP Kadam, AGP, for the Respondent-State.
Mr Markas Deshmukh, with Shankar Deshmukh, for the Respondent
Nos. 3 to 6.
Mr Sandeep Waghmare, i/b Legis Associates for the Respondent No.8.

**CORAM G.S. Patel &
Madhav J. Jamdar, JJ.**
DATED: 30th November 2021

PC:-

1. Heard.
2. The matter is listed for dismissal today since the Petitioner and his Advocate were absent on the last occasion. However, Mr Mahajan is present on behalf of the Petitioner today. He is agreeable to the petition being taken up immediately, as are the opposing Counsel. We have accordingly taken up the Petition.

3. The Petitioner is (or until earlier in 2021 was) the President of the Governing Board of Trustees of 3rd Respondent, Union Biblical Seminary. This is a public charitable Trust under the Maharashtra Public Trusts Act, 1950.

4. The 7th Respondent, who has been joined by an amendment was an employee of the 3rd Respondent. She made a complaint in writing against the Petitioner under the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“**POSH Act**”). A copy of the complaint is annexed. It is dated 23rd June 2020 at Exhibit-J at page 86. There is a second complaint is by another staff member. It is of 20th November 2020, it is at Exhibit-K at page 87. The second complainant is Respondent No.8 to the Petition.

5. After the first complaint, the Petitioner voluntarily remained out of office temporarily. The Vice President took over as the acting President. There may have been other complaints regarding the finances of the Trust, but we are not concerned with those in the present Petition. On 3rd November 2020, the Annual General Body of the 3rd Respondent-Trust decided to constitute an Internal Complaints Committee of the kind contemplated in Section 4 of the POSH Act. Dr WS Annie was appointed the Presiding Officer of the Internal Complaints Committee or ICC. It is after this was done on 11th November 2020 that the complaint of the 8th Respondent also came to be filed and placed before this ICC.

6. The Petitioner challenged the constitution of the ICC under the POSH Act. He claimed then, as he does before us today, that, within the meaning of the Act, the Petitioner in his capacity as President of the 3rd Respondent-Trust is the “employer” and, therefore, there cannot be an Internal Complaints Committee under Section 4 of the POSH Act. The submission from Mr Mahajan is that there must be a Local Complaints Committee set up by the “District Officer” notified under Section 5 i.e. a District Magistrate, Additional District Magistrate, Collector or Deputy Collector. He therefore, says that the ICC constituted by the 3rd Respondent-Trust has no jurisdiction and was improperly set up in a manner not contemplated by the POSH Act. The ICC did not take heed of this representation but proceeded with its enquiry. On 20th December 2020, the Petitioner protested yet again. It was his case that an ICC could only investigate into complaints by one employee against the another employee but not into complaints by an employee against an employer.

7. A hearing took place. The ICC recorded the statements of the complainants. The Petitioner kept making representations about the alleged improper constitution of the ICC. Ultimately, on 25th January 2021, the enquiry was closed and the ICC made its report. It found in favour of the complainants and against the Petitioner. On 1st February 2021, the Petitioner was terminated from membership and from his position as President of the Trust in question. In February 2021, the Petitioner filed Writ Petition No. 1028 of 2021. This was, however, withdrawn in view of subsequent developments and the present Petition has been filed.

8. We have outlined Mr Mahajan's submissions. To appreciate these, a few provisions of the POSH Act must be noted. Section 2(g) in its entirety reads thus:-

“2(g) “employer” means—

- (i) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;
- (ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.

Explanation. —For the purposes of this sub-clause “management” includes the person or board or committee responsible for formulation and administration of policies for such organisation;

- (iii) in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;
- (iv) in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker.”

9. The definition of employee in Section 2(f) is as follows:

“2(f) “employee” means a person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name.”

10. Chapter II deals with the constitution of the ICC. It contains a single section, which reads as follows:

“4. Constitution of Internal Complaints Committee.—

(1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the “Internal Complaints Committee”:

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

(2) The Internal Committees shall consist of the following members to be nominated by the employer, namely: —

(a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:

Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section(1):

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer

shall be nominated from any other workplace of the same employer or other department or organisation;

- (b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;
- (c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

Provided that at least one-half of the total Members so nominated shall be women.

(3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

(4) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

(5) Where the Presiding Officer or any Member of the Internal Committee, —

- (a) contravenes the provisions of section 16; or
- (b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
- (c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
- (d) has so abused his position as to render his continuance in office prejudicial to the public interest,

such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.”

11. Chapter III then distinctly deals with the constitution of a Local Complaints Committee. Sections 5, 6 and 7 read thus:

“5. Notification of District Officer.—The appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act.

6. Constitution and jurisdiction of Local Committee.

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(1) Every District Officer shall constitute in the district concerned, a committee to be known as the “Local Committee” to receive complaints of sexual harassment from establishments where the Internal Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.

(2) The District Officer shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned Local Committee within a period of seven days.

(3) The jurisdiction of the Local Committee shall extend to the areas of the district where it is constituted.

7. Composition, tenure and other terms and conditions of Local Complaints Committee.—

(1) The Local Complaints Committee shall consist of the following members to be nominated by the District Officer, namely: —

- (a) a Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women;
- (b) one Member to be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district;
- (c) two Members, of whom at least one shall be a woman, to be nominated from amongst such non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, which may be prescribed:

Provided that at least one of the nominees should, preferably, have a background in law or legal knowledge:

Provided further that at least one of the nominees shall be a woman belonging to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or minority community notified by the Central Government, from time to time;

- (d) the concerned officer dealing with the social welfare or women and child development in the district, shall be a member ex officio.

(2) The Chairperson and every Member of the Local Committee shall hold office for such period, not exceeding three years, from the date of their appointment as may be specified by the District Officer.

(3) Where the Chairperson or any Member of the Local Complaints Committee—

- (a) contravenes the provisions of section 16; or

- (b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
- (c) has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
- (d) has so abused his position as to render his continuance in office prejudicial to the public interest, such Chairperson or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

(4) The Chairperson or Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) shall be entitled to such fees or allowances for holding the proceedings of the Local Committee as may be prescribed.”

12. For completeness, we turn to Section 18 which is the appellate provision. This is how it reads:

“18. Appeal.—

(1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or subsection (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being

in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations.”

13. Clearly the ICC and the LCC operate in distinct spheres. Chapter III, under which the LCC is constituted, is comprised of a District Officer appointed under Section 5. He or she in turn designates a Nodal Officer. The composition of the Committee is set out in Section 7. According to Mr Mahajan, the definition of “employer” in Section 2(g)(i) extracted above shows that no ICC can inquire against any head of department, organization, undertaking, establishment, enterprise, institution, office, branch or unit. Since the Petitioner was the President of the Trust, the submission is, he is the employer and therefore, there cannot be an enquiry by ICC against him but only by the LCC.

14. The submission is misconceived. It appears to us that correctly read Section 2(g)(i) relates to various departments, organizations, undertakings etc. of an appropriate Government or a local authority. Section 2(g)(ii) and its explanation may, however, be material. Here, any person “responsible for the management, supervision and control” of the workplace is held to be an employer. The Explanation defines ‘management’ to include a person or a Board or a Committee responsible for formulation and administration of policies for such organizations. We are concerned here with the words “the person”. In short, the Petitioner must show that as the President of the Trust, he and he alone was ‘the

person' responsible for the management, supervision and control of the workplace.

15. A copy of the constitution of the Trust is annexed to the Petition. From this, we find that the Trust is also registered as a society under the Societies Registration Act, 1860. It is for this reason that it has members including institutional members and therefore, the provision for an Annual General Meeting. It is the General Body that lays down general policies for the fulfilment of its aims and objects under Clause 5 of its Rules and Regulations. Amongst the powers of the General Body is the power to elect the President, Vice-President, Treasurer and seven members to a Governing Board. Membership of the Governing Board is set out in Clause 6. This tells us in Clause 6.1 that the business affairs of the society are carried on and managed by the Governing Board, which consists of 11 members. The four officers are the President, Vice-President, Honorary Secretary of Principal of Seminary and the Treasury. Then there are two institutional members on rotational basis and five members of the society elected by ballot at an AGM every three years. Membership of Governing Body ceases on the occurrence of any of the conditions in Clause 6.2.

16. The powers and functions of the Board are set out in Clause 8 and it is the Board that is responsible for the governance of its institution. That is to say, it is no individual who is solely responsible for the governance of the institution. Even the bank accounts are to be maintained by the Governing Board. Clause 9 then deals with the powers and duties of the office bearers. The President is, under Clause 9.1.1, to preside over all meetings of the

society and Governing Board. He is an ex-officio member of all Board Committees under Clause 9.1.2. Importantly, under Clause 9.1.3, he exercises only such powers and performs such duties as may be ‘imposed’ by the Rules and Regulations or determined by the Governing Board or the society. In other words, the President is not, by virtue of his office, solely in charge of the management, supervision and control of the working place. The complaints in question are not against the Board or the Committee. It is the Board and Committee that are in charge of the management, supervision and control of the workplace, not the individual president in his capacity as such.

17. The attempts by the Petitioner to curtail the Internal Complaints Committee’s enquiry and to somehow shift this to a Local Complaints Committee is not an endeavour that we are at all inclined to support. The complaints are found to be of a serious nature.

18. The rationale of the statute for the distinction between Sections 4 and 6 is to ensure that the person who is “the employer” properly so-called does not influence the Internal Complaints Committee so as to reduce its functioning and efficacy to a meaningless level. The Act is not intended to protect the person accused of harassment in the workplace. It seeks to redress gender imbalances, inequalities and to prevent and prohibit women from being sexually harassed in the workplace. This is why the definition of sexual harassment is so broad. These problems are of societal historicity, which the Act recognizes, and seeks to correct as a forward-looking measure intended to fulfil a Constitutional purpose

of gender equality. It is meant to ensure that the women at the workplace are not subjected to sexual harassment of the kind prohibited by the POSH Act.

19. This purpose is not achieved by accepting submissions of the kind advanced before us by Mr Mahajan. For that would result in negation of the work done by the ICC of the 3rd Respondent-Trust. That ICC has functioned independently and impartially. It has rendered a finding against the President and it has done so, evidently, in a bold, fair, neutral and impartial manner. To accept the Petitioner's submission would be to set all this at naught; and that, too, at the instance of the accused, one found guilty of the sexual harassment charge brought against him. Worse, it would require the two complainants to once again undergo a trauma of having to re-agitate their complaints before a Local Complaints Committee under Section 6 and 7 of the Act. This is certainly not what the POSH Act contemplates.

20. Indeed, we find no logical basis for the argument. It seems to us to advocate a procedural formality simply to somehow or the other escape the consequences of the Petitioner's actions. We may view it thus. If Mr Mahajan is correct, then the statutory purpose is only to prevent the ICC being unduly influenced or hobbled by a person in authority, viz., the President of the Society, the Petitioner. Surely the Petitioner cannot be suggesting that he could, or in fact did, influence the Society's ICC. If the ICC conducted itself with probity, and cannot be faulted, and if it is clear that it did not in the least let itself be influenced by the Petitioner, then there is simply no reason at all to jettison its report and findings and subject the two

complainants to the additional trauma of having to relive their experiences before yet another committee. The ICC has been mindful of its task and responsibilities and has discharged its burden as required by law.

21. In our view, nothing could be further from the statutory intent than what the Petitioner commends. The prayers in the Petition include a prayer for a stay of the inquiry report. There is also a prayer for a writ of certiorari to quash the inquiry reports and the communication to the Petitioner dated 11th November 2020. Prayer clause (c) is for a mandamus directing the Collector and the District Officer, Pune to act on the Petitioner's representations. We note incidentally that while there is no formal averment that the Petitioner demanded justice but this was denied to him, we will accept the Petitioner's various representations as fulfilling that requirement for the purposes of this relief of mandamus. But it is yet not shown that the Petitioner has a legal right to this relief or that the ICC had a legal duty vis-à-vis the Petitioner that it failed to discharge. This is necessary before any relief of mandamus can be granted.¹

22. In our view, it is not possible to grant the Petitioner this kind of relief not only in view of the factual background but on a reasonable interpretation of the statutory provisions. Further, Section 18 gives the Petitioner an appellate remedy, which he has not availed of.

¹ See: *Rajasthan State Industrial Development Investment Corporation v Diamond & Gen Development Corporation Ltd*, (2013) 5 SCC 470; *Warsi CHS (Proposed) v Mumbai Municipal Corporation*, 2016 SCC OnLine Bom 4811; *DN Jeevaraj v State of Karnataka*, (2016) 2 SCC 653

23. The Writ Petition is rejected. There will be no order as to costs.

24. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)