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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 14th October, 2022

+ W.P.(C) 14547/2022
JOHNEY REBERIO

..... Petitioner

Through: Mr. Maninder Singh, Senior Advocate with Mr. Siddhant Asthana, Ms. Aekta Vats, Mr. Chhetarpar Singh & Ms. Anshika Batra, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Monika Arora, CGSC with Mr. Shivam Raghuwanshi & Mr. Yash Tyagi, Advocates for UOI.
Mr. Anil Bhat, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

CM APPL.44487/2022 (seeking exemption)

1. Exemption is granted, subject to all just exceptions.
2. The Petitioner shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.
3. Accordingly, the application stands disposed of.

W.P.(C) 14547/2022 & CM APPL.44486/2022 (stay)

4. The Petitioner is facing an enquiry before the Internal Complaints Committee/Respondent No. 2 [*ICC*] of GIZ India constituted under provisions of the Prevention of Sexual Harassment at Workplace Act, 2013

[‘**POSH Act**’] and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 [‘**Rules**’].

5. Petitioner seeks to be represented in the said enquiry proceedings by a person of legal background. In this regard, he is aggrieved by an e-mail communication dated 23rd September 2022 received from ICC wherein his request to engage an advocate was declined on account of an express bar to legal representation under Rule 7(6) of Rules.

6. At first instance, Petitioner had invoked the jurisdiction of this Court under Article 226 of the Constitution of India, 1950 by filing W.P.(C) 14061/2022, praying for the following reliefs:

“I. Strike down Rule 7(6) of the Sexual harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 as the same is in contravention to the Article 14, 19 and 21 of the Indian Constitution and is also against the principles of natural justice.

II. In alternative Read down the Rule 7(6) of the Sexual harassment of Women at Workplace (Prevention, Prohibition and redressal) Rules, 2013 as the same is in contravention to the Article 14, 19 and 21 of the Indian Constitution and is also against the principles of natural justice.

III. Issue a writ of Mandamus with the directions to the Respondent No.2 to allow the Petitioner to be represented through an advocate/counsel of his choice.

IV. Any other relief deemed fit and proper in the circumstances of the case may be granted in favour of the petitioner.”

[Emphasis Supplied]

7. The above-stated challenge was heard by a Division Bench of this Court, and the case was disposed of *vide* order dated 28th September 2022 in following terms:

“CM APPL. 42947/2022

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C)14061/2022 & CM APPL. 42946/2022

Learned Senior Counsel for the Petitioner prays for withdrawal of the Writ Petition with liberty to file a fresh petition.

Dismissed as withdrawn with the aforesaid Liberty.”

8. The Petitioner has now filed the instant petition, stating it to be in terms of the liberty granted by the Division Bench, and seeks following reliefs:

- (i) *“Pass writ in the nature of Certiorari against the Respondent No. 2 to set aside and quash the order dated 23.09.2022 passed by the Respondent No. 2.*
- (ii) *Issue a writ of Mandamus with the directions to the Respondent No.2 and Respondent No.3 to allow the Petitioner to be represented through an advocate/counsel of his choice.*
- (iii) *Issue a writ of Mandamus with the directions to the Respondent No.1 to not take any action against the Respondent No.2 in case the Respondent No.2 in consequent to the specific direction of this Hon’ble Court allows the Petitioner to be represented through an advocate/counsel of his choice.*
- (iv) *In alternative a writ of Mandamus with the directions to the Respondent No.2 be issued with the directions to the Respondent No.2 to allow the Petitioner to be represented though any other persons of the Petitioners choice other than the legal practitioner.*
- (v) *Any other relief deemed fit and proper in the circumstances of the case may be granted in favour of the petitioner”*

9. At the outset, Mr. Maninder Singh, senior counsel appearing for the Petitioner, on instructions, states that the Petitioner is no longer pressing for prayers (i) to (iii) and confines the relief to prayer (iv) only. Accordingly, Court has heard the counsel for the parties with respect to surviving prayer, i.e., on allowing Petitioner to be represented through a person of his choice, other than a legal practitioner.

10. Before proceeding, it may also be noted that several averments have been made in the petition which turn on merits of the complaint against the Petitioner, enquiry whereof is still ongoing before the ICC. The same shall not be examined by this Court and no opinion is expressed thereon.

11. *Qua* the surviving prayer, it may also be noted that the Petitioner makes no disclosure as to the identity of the person who he is keen to represent him in the proceedings. Mr. Anil Bhat, Advocate, who is himself an external member of the ICC/Respondent No. 2, submits that the Petitioner is a law graduate himself, and that apart, Petitioner has not made a request to the ICC to be represented through a next friend.

12. Mr. Singh argues that notwithstanding the withdrawal of the earlier petition challenging the *vires* of Rule 7(6) of the Rules, Petitioner is entitled to be represented by a next friend before the ICC, at the time of enquiry. He places reliance on Section 11(3) of the POSH Act, to submit that for the purpose of making an enquiry, the ICC is deemed to be vested with powers akin to a civil court under the Code of Civil Procedure, 1908, in respect of matters relating to summoning and examination of the witnesses etc. Thus, the Petitioner should be entitled to be represented by a person who is capable of conducting cross-examination of the complainant to the Petitioner's satisfaction. To press Petitioner's difficulty, he argues that punishment to the Petitioner, if found guilty by the ICC, is that of termination directly, without notice, as per clause 8.2 of the terms of Giz India's policy on 'No-Tolerance of Sexual Harassment at Workplace' read with Annexure 4 of its 'Employment Handbook for National Staff'. With such a harsh consequence, evidencing mechanism thereof should necessarily require that Petitioner should have a right of representation. Reliance is also placed on the judgment of a division bench of this Court dated 27th September, 2022 in W.P.(C) 3074/2019 titled ***Pawan Reley & Anr. v. Union***

of India, which in turn places reliance on the judgment of the Division Bench of Punjab and Haryana High Court in *Paramjeet Kumar Saroya v. Union of India*, AIR 2014 P&H 121. On the basis of afore-noted decisions, it is contended that the Petitioner has a right of representation which cannot be taken away *ipse dixit*.

13. *Per contra*, Ms. Monika Arora, Standing Counsel for Union of India, submits that the instant petition is not maintainable. She submits that having given up his challenge to the *vires* of the Act, before the Division Bench, the Petitioner cannot press for a right of representation, whether through advocate or next friend. She further submits that there is no provision under the Act or Rules which enable the Petitioner to be represented through any next friend, and hence no such relief can be granted. Additionally, she submits that in the absence of any challenge to Giz's policy, it is binding upon the Petitioner. She points out that even the Complainant does not have a right of legal representation or through a friend, and therefore, extending such benefits to the Petitioner-accused would be prejudicial.

14. Having considered the afore-noted submissions, in the opinion of the Court, the present petition is not maintainable. The fulcrum of the dispute revolves around Rule 7(6) of the Rules, which reads as under:

“7. Manner of inquiry into complaint –
 (1) to (5) xx ... xx ... xx
 (6) The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee.”

15. The Petitioner had impugned the *vires* of Rule 7(6) before the

Division Bench. The said challenge, as is apparent from a copy of the earlier petition enclosed, was premised on the same grounds which are being urged today to seek surviving prayer (iv). The only change being that in the previous petition, the main relief was seeking the striking down or reading down of the Rule 7(6), with the consequential relief of Petitioner being allowed to be represented through a legal practitioner; whereas the instant petition seeks the same consequential relief, but without challenging the rule in the first place. This, of course, cannot be allowed, for reasons recorded below.

16. A successful challenge to the *vires* of Rule 7(6), before the Division Bench, would have entitled the Petitioner to be represented through a legal practitioner, or a dilution thereof would have allowed for a next friend. The Division Bench, having contemplated on the interpretation and relevance of Rule 7(6), would have been able to provide the consequential relief as sought for. However, in the instant petition, this court is bound to respect the law as it stands today vis-à-vis Rule 7(6). Petitioner's insistence to be represented through a friend, amounts to a reading down the expression of Rule 7(6), which could only have been done in the earlier proceeding at the stage of examining the *vires* of Rule 7(6). It is not for this court to interpret or dilute the mandate of the statute when no challenge has been made before it.

17. Next, this prayer is being insisted upon as a matter of right, in sheer absence of any enabling provision. The intent of Rule 7(6) is to disallow a legal practitioner from representing the parties at any stage of the

proceedings. It has to be given its due meaning, and cannot be construed in the manner the Petitioner is seeking to do. For this Court to allow such a request, by ignoring the bar under Rule 7(6), it would have to be restrictively interpreted and the word “legal practitioner” would have to be read in such a manner that it only includes an ‘advocate’ registered under the Advocates Act, 1961 and not a law graduate. This construction again amounts to interpretation and dilution of Rule 7(6), which the court can only consider when reading down the provision in a challenge to the *vires* of Rule 7(6), which is not the case before the undersigned. During the course of submissions, on a specific query of the Court, Mr. Singh has stated that although the name of the next friend whom he seeks to represent the Petitioner has not been disclosed, however it would be a person with a legal background or a legal understanding, so that he can conduct cross-examination. It is indeed baffling that the Petitioner, who is himself a law graduate, which in general parlance would mean an ‘advocate’, wants to take assistance of a next friend, who has legal background but is not registered as an advocate.

18. Nevertheless, in the opinion of the court, once the Petitioner gave up the challenge to the provision, he cannot be permitted to seek an alternate prayer in the nature of relief (iv) above in absence of any enabling provision under the Act or Rules which entitles the Petitioner to be represented, as the bar under Rule 7(6) would certainly apply.

19. If the Court would allow such an interpretation, then this provision would become redundant, and a floodgate of law graduates, who may not be

enrolled with the bar councils to become an ‘advocate’ but are still practicing law, would pour in. The purpose of keeping the proceedings fact-based and free expert legal advisory, would be lost. That apart, there is also merit in the observation that this will create a prejudice for the complainant, whose case is also being considered by the internal committee without the aid of the legal practitioner or next friend.

20. This court has also considered the judgments shown by Mr. Singh. The inquiry may have a far-reaching consequence, however, it cannot be lost sight of that it is a domestic enquiry, not akin to proceedings before a court of law, and therefore the standards of proof which are relied upon by the court while allowing a legal representation, as in the judgments relied upon by the Petitioner, cannot be adopted. These were the cases where the proceedings took place before a court of law or a tribunal which has the trappings of a court of law. These judgments, therefore, are distinguishable on facts, and cannot be relied upon to seek a right of legal representation/ advocate before the ICC under the Act, when the Rules specifically prohibit a legal practitioner to appear.

21. For the foregoing reasons the court is not inclined to consider the petitioner’s request.

22. Petition is dismissed along with pending applications.

SANJEEV NARULA, J

OCTOBER 14, 2022/ns