



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 09 July 2024**
Re-heard for clarification : 13 August 2024
Pronounced on: 13 August 2024

+ **CONT.CAS(C) 704/2024 and CM APPL. 25545/2024 (Stay)**
SURENDER SINGHPetitioner
Through: Mr. Sudarshan Rajan, Mr.
Hitain Bajaj, Ms. Resham and
Ms. Tejaswi Rana, Advs.

versus

UNION OF INDIA AND ORS.Respondents
Through: Ms. Pratima N. Lakra, CGSC
with Ms. Jyotsna Bhuchar, GP,
Ms. Yashika Garg and Mr.
Chandan Prajapati, Advs. with
Mr. Avinash (DC CRPF), Mr.
Kartar Kapur Singh (ADC), Mr.
Shiv Kumar Singh (SI CRPF)
for UOI

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. The present petition has been filed by the petitioner under Section 11 of the Contempt of Courts Act, 1971¹ seeking initiation of contempt proceedings against the respondents/contemnors for the alleged wilful disobedience of the directions passed by this Court *vide* consent judgment dated 17.05.2023 in W.P.(C) No. 16373/2022 titled “*Surender Singh vs. Union of India & Ors.*”, which directions, upon

¹ CC Act



filing of a review application, stand modified *vide* judgment dated 20.07.2023 whereby this Court has held as under:

“Accordingly, we hereby dispose of present petition by setting aside the Fact-finding Inquiry Report dated 18.11.2022 and Charge-sheet dated 02.02. 2023 and giving liberty that ICC [Internal Complaints Committee] shall start a fresh inquiry on the complaint against the petitioner, as per law by giving him opportunity to participate in the said proceedings”

2. The brief facts leading to the filing to the present petition are that upon receipt of a Sexual Harassment complaint dated 18.10.2022 filed against the petitioner herein being a Commandant-187 Battalion CRPF, the Directorate General Central Reserve Police Force (DGCRPF) forwarded the same to the Internal Complaints Committee² for investigation and subsequent inquiry into the sexual harassment allegations against the petitioner herein in accordance with Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013³ as well as Rule 14(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965⁴ which provides that the ICC established in each Ministry or Department for inquiring into complaints of sexual harassment shall hold such inquiry as far as practicable in accordance with the procedure laid down in the said Rules.

3. In this context, it would be apposite to note that as per Section 11 of the POSH Act, 2013 read with Rule 14 of the CCS (CCA) Rules, 1965 in coherence with Office Memorandum No. 11013/2/2014-Estt. (A-III) dated 16.07.2015 titled “*Steps for Conduct*

² ICC/Complaints Committee

³ POSH Act, 2013

⁴ CCS(CCA) Rules, 1965



2024:CHD:6144



of Inquiry in Complaints of Sexual Harassment”, upon receipt of any complaint of sexual harassment, the Complaints Committee/ICC would normally be involved at two stages:

STAGE 1 Investigation/ Fact Finding Enquiry/Preliminary Enquiry	STAGE 2 Formal Inquiry by ‘Inquiring Authority’
On receipt of a complaint, the ICC conducts an investigation to ascertain whether there is prima facie substance in the allegations which call for a formal inquiry. This fact-finding enquiry/investigation is carried out by collecting documentary evidence as well as recording statements of any possible witnesses including the complainant. The report of said fact-finding inquiry is then submitted to the ‘Disciplinary Authority’ which decides upon whether a ‘Memorandum of Charges’ (formal chargesheet) is required to be drawn on the basis of the said fact-finding inquiry report. If yes, then after affording the charged officer his right to be heard and considering his defence, the Disciplinary Authority shall decide as to whether a subsequent formal inquiry is required to be issued against the accused employee/charged officer concerned.	If the Disciplinary Authority thinks fit to initiate a formal enquiry against the charged officer, the ICC is mandated to act as an ‘Inquiring Authority’ as per Rule 14(2) of the CCS (CCA) Rules 1965. Thus, the ICC is said to play a dual role- firstly, of an investigator in the ‘Stage 1’ inquiry proceedings; and secondly, of an impartial authority (‘Inquiring Authority’) having the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit. The Inquiring Authority examines the prosecution and defence evidence led before it and accordingly, makes recommendations so as to grant appropriate relief, if any, to the aggrieved woman/ complainant, which marks the formal culmination of the inquiry stage.



4. Reverting back to the instant matter, upon receipt of the complaint of sexual harassment, the ICC was constituted and a fact-finding inquiry proceeding was initiated against the petitioner herein for his alleged commission of sexual harassment in the workplace. Accordingly, a 'Memorandum of Charges' dated 02.02.2023 was served to the petitioner herein. In the interregnum, the petitioner herein instituted a writ petition bearing W.P.(C) No. 16373/2022 seeking the following reliefs:

I. Issue a Writ of Certiorari for quashing of the order dated 21.10.2022 whereby the Internal Complaints Committee was constituted to inquire into the allegations of sexual harassment, any such orders passed in furtherance thereof including the ones that has not even been communicated, order dated 03.11.2022 whereby the Respondents have rejected the representation of the Petitioner, signal dated 03.11.2022 whereby the Respondents have proceeded ahead with the first stage of the inquiry process, order dated 16.11.2022 whereby the Respondents have suspended the Petitioner on ground of contemplated/pending inquiry and of the Standing Order 02/2017 issued by the Respondents to the extent whereby it contravenes the already established statute. being the Central Civil Services (Classification, Control and Appeal) Rules, 1965 as well as Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act & Rules.

II. Issue a Writ of Mandamus directing the Respondents to conduct the inquiry, if need be, in strict terms of Rule 14 (2) of the CCS (CCA) Rules and the relevant provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressed) Act & Rules, independent and free from any kind of biasness as well as in conformity with the observations made by this Hon'ble Court on 29.05.2009 in WP.(C) No. 822 6/2007 titled as Prof Bidyug Chakraborty vs. Delhi University and Ors and 05.09.2016 in WP'(C) No. 453/2 0 15 titled as Union of India and Anr. vs. S K Das."

5. Vide consent judgment dated 17.05.2023, this Court disposed of the above-captioned writ petition in the following manner:



“3. After hearing learned counsel for parties, it is agreed by learned counsel for petitioner on instructions that the present petition may be disposed of, if order dated 02.02.2023, report of Inquiry Officer dated 21.10.2022 and charge- sheet dated 02.02.2023 are set aside and ICC may start fresh inquiry/ proceedings against the petitioner, as per the law by giving him an opportunity to participate in the said proceedings.

4. Leamed CGSC for respondents does not dispute the same.

5. Accordingly, we hereby dispose of present petition by setting aside the order dated 02.02.2023, report of inquiry officer dated 21.10.2022 and charge-sheet dated 02.02.2023 and giving liberty that ICC shall start fresh inquiry against the petitioner, as per law by giving him opportunity to participate in the said proceedings.

6. Needless to say, petitioner shall be entitled to all his rights as provided under Rule 14(2) of Central Civil Services (Classification, Control & Appeal) Rules 1965.”

6. However, a review application was subsequently filed by the respondents herein against the said judgment dated 17.05.2023, whereby the Division Bench of this Court *vide* judgment dated 20.07.2023 held as under:

“21. The facts in the present case are *pari materia* to the case of the Aureliano Fernandes (*supra*) wherein **the respondents have conducted a Fact-Finding Enquiry which was essentially not required while enquiring into the sexual harassment complaint. The Memorandum of Charge is also not required to be framed and served by the Disciplinary Authority. Rather, the issues may be crystallized by the ICC before commencing the evidence. Since the ICC is yet to commence its proceedings and record the evidence, it can frame the issues on its own and does not require Memorandum of Charges from the Department for further enquiry into the complaint. Therefore, there is no infirmity in the impugned order dated 17.05.2023 except the correction that the Order dated 21.10.2022 constituting the Internal Complaint Committee is not set aside but the fact finding report and the charge-sheet dated 02.02.2023 is hereby set aside. The order dated 17.05.2023 may be read accordingly:-**

“Accordingly, we hereby dispose of present petition by setting aside the Fact-finding Inquiry Report dated 18.11.2022 and Charge-sheet dated 02.02.2023 and giving liberty that ICC shall start a fresh inquiry on the



complaint against the petitioner, as per law by giving him opportunity to participate in the said proceedings”

22. No further interference is warranted. Review Petition is accordingly disposed of.” **[Emphasis Supplied]**

7. The respondents however preferred a Special Leave Petition before the Supreme Court assailing the abovesaid judgments dated 17.05.2023 and 20.07.2023. The said petition was dismissed by the Supreme Court *vide* Order dated 09.02.2024 while making the following observations:

“Delay Condoned.

Heard Mr. Sarthak Karol, learned counsel appearing for the petitioners. The counsel would submit that the High Court ought not to have observed that the memorandum of charges in not required to be framed and served by the disciplinary authority, in a case arising out of sexual harassment complaint.

However, we notice that this was a consent order passed by the High Court. Therefore, we are disinclined to entertain the special leave petitions and the same are dismissed. **The Internal Complaint committee; as is expected should carry on with the inquiry, and must proceed on the basis of materials that would be brought before the committee, without being influenced by any of the observations made in the impugned High Court orders.**

With the above, the Special Leave Petitions stand dismissed. Pending application(s), if any, shall stand disposed of.”

[EMPHASIS SUPPLIED]

8. The petitioner now seeks initiation of contempt proceedings against the respondents pursuant to the impugned letter dated 28.03.2024 sent to him thereby proposing to resume the ‘Stage 2’ inquiry proceedings against the petitioner herein, and calling upon him to make a representation to defend the allegations against him. It is contended that respondents herein have wilfully disobeyed the judgments dated 17.05.2023 and 20.07.2023 passed by this Court and



have misinterpreted the order of dismissal dated 09.02.2024 passed by the Supreme Court in the SLP arising out of the above captioned writ petition, in as much as they have made the following observations in the impugned letter dated 28.03.2024:

*“3. As may have seen, **the Hon’ble Supreme Court has unbarred the Internal Complaints Committee to carry on with the 2nd stage enquiry.** Thus, in order to proceed further, you are directed to submit your written statement of defence on Presidential Memorandum No. C.IV-0 1/2022-Vig.8 dated 02.02.2023 served though DIG, GC, Pinjore on 11.02.2023, within 15 days of receipt of this letter. Further, you are also asked to state whether you desire to be heard in person by the DG, CRPF or otherwise so as to process your request accordingly.*

4. With regard to your representation dated 22.02.2024 addressed to the DG, CRPF, it is intimated that the enquiry against you has surpassed the 1st stage and now reached to its 2nd stage wherein consequent upon serving of MoC dated 02.02.2023, you have been afforded opportunity to submit written statement of defence. In the backdrop of these facts, your request is not maintainable.”

[EMPHASIS SUPPLIED]

9. *Per contra*, it is contended by the respondents that they have proceeded with the inquiry against the petitioner upon directions passed the Supreme Court dated 09.02.2024, and therefore, *vide* the impugned letter dated 28.03.2024, the response of the petitioner herein was sought afresh by the respondent department in order to proceed with the second stage of inquiry against the petitioner herein. It is further contended that the intention of the respondent department is to afford an opportunity to being heard to the petitioner by calling upon him to file a reply against the Memorandum of Charges/formal chargesheet served to him on 02.02.2023.

10. In response, it has been reiterated on behalf of the petitioner herein that the Supreme Court had dismissed the SLP preferred by the



respondents *vide* Order dated 09.02.2024, and thus, the judgment dated 20.07.2023 passed by this Court is final and effective. It is also urged that the purport of the order dated 09.02.2024 passed by the Supreme Court is that any factual averments or observations made by this Court *vide* judgment dated 20.07.2023 would not come in the way of the ICC in passing its final order. Reliance has been placed upon the decision of the Supreme Court in the case of **Union of India v. Subedar Deviassy PV**⁵ wherein it has been held that the issue of rightness or wrongness of an order cannot be adjudicated in contempt proceedings and the court having contempt jurisdiction cannot traverse beyond the order of which non-compliance is alleged.

11. The respondents have relied upon the decision passed by this Court in **Jhuggi Jhopri Vikas Samiti, Netaji Nagar vs. Suresh Kumar**⁶, wherein it has been reiterated that if two interpretations of an order are possible and the alleged contemnor's actions align with one of those interpretations, contempt proceedings would not be maintainable. Reliance has also been placed upon **Niaz Mohammad and Ors. vs. State of Haryana and Ors.**⁷ wherein it has been observed by the Supreme Court that contempt jurisdiction should not be exercised by the courts if the action complained of is based on a *bona fide* interpretation of the court's order.

ANALYSIS AND DECISION:

12. I have bestowed my anxious consideration to the submissions advanced by the learned counsels for the rival parties at the Bar and I

⁵ (2006) 1 SCC 613

⁶ 2022 SCC OnLine Del 3668

⁷ (1994) 6 SCC 332



have also gone through the relevant material on record including the case law cited. I have also meticulously perused the original record of the matter with the respondent.

13. At the outset, the present Contempt Petition is a reckless attempt by the petitioner to delay the inquiry proceedings against him and is bereft of any merits. There is no gainsaying that contempt proceedings are *quasi* criminal in nature and require high standard of proof i.e. 'beyond reasonable doubt' to demonstrate wilful disobedience of the directions of the Court by the respondents.

14. Unhesitatingly, this Court finds that although the impugned letter dated 28.03.2024 has called upon the petitioner to submit a written statement of defence in terms of Presidential Memorandum No. C.IV-01/2022-Vig.8 dated 02.02.2023 served through DIG, GC, CRPF, Pinjore on 11.02.2023, which was quashed by this Court, however the said aspect appears to have stemmed from an over-zealous approach of the respondents in the sense of incorporating Rule 14 and 20 of the CCS(CCA) Rules, 1965, so as to bring their action in strict conformity with section 11 of the POSH Act and certain judicial pronouncements on the said issue. It does not in any manner prejudice the petitioner in responding to the allegations against him since the fact-finding inquiry dated 18.11.2022 stands quashed. As was submitted by the learned counsel for the respondents, the said approach has only been adopted so as to cautiously guard the inquiry process against any legal technical objection that might be raised by the petitioner in future. Well, that can't be since the memorandum of charges is evidently worded with legal terminologies *inter alia*



citations of the relevant provisions of the law and accompanied with the imputation of misconduct based on the allegations against the petitioner in the complaint dated 18.10.2022.

15. All said and done, the bottom line is that the learned counsel for the petitioner concedes that he has already been supplied with a copy of the complaint dated 18.10.2022 containing the allegations made by the victim alongwith not only the list of documents relied upon, but also the list of witnesses proposed to be examined by the complainant with the aforesaid memorandum dated 02.02.2023, cognizance of which i.e., the complaint, has already been taken by the ICC. There is no gainsaying that the inquiry into the allegations of sexual harassment has to be conducted in accordance with detailed guidelines in terms of Office Memorandum⁸ dated 16.07.2015 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, as evidently, a formal inquiry has to be conducted as per the prescribed Stage-II.

16. Thus, in view of the abovementioned peculiar facts and circumstances, and as consented by the learned counsel for the petitioner that since the petitioner is aware of the allegations against him, the petitioner shall be at liberty to submit a reply to the ICC in the nature of a written statement of defence, besides submitting list of documents as well as witnesses, if any, that he proposes to put forth in his defence, within 15 days from today.

17. Accordingly, the present Contempt Petition is disposed of with the directions that the inquiry may henceforth proceed at the end of

⁸ F.No. 11013/2/2014-Estt (A-III)



the ICC acting as ‘Inquiry Authority’ in accordance with the relevant guidelines and in accordance with law.

18. Nothing expressed herein shall tantamount to an expression of opinion on the merits of the matter.

19. The instant contempt petition is disposed of accordingly.

DHARMESH SHARMA, J.

AUGUST 13, 2024

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