

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 17230 OF 2024

Vinod Narayan Kachave

... **Petitioner**

Versus

The Presiding Officer (ICC) and Anr

... **Respondents**

Ms. Sana Raees Khan *a/w Juhi Kadu and Ms. Sanskriti Yagnik*
for the Petitioner.

CORAM : SANDEEP V. MARNE, J.

DATE : 18 MARCH 2025.

P.C. :

1) The Petition challenges judgment and order dated 1 July 2024 passed by Member Industrial Court, Pune dismissing Appeal (IESO) No. 1 of 2023 filed under provisions of Section 18 Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (**POSH Act**). Petitioner had challenged the report dated 30 September 2022 passed by the Internal Complaints Committee of Respondent No.2-Employer.

2) I have heard Ms. Sana Khan, the learned counsel appearing for Petitioner. Despite service of notice, none has appeared on behalf of Respondent Nos. 1 and 2.

3) In its report dated 30 September 2022, the Internal Complaints Committee (**ICC**) has reproduced three broad allegations against the Petitioner as under:

Incident 1

She mentioned that Vinod Kachave has passed a comment on her hair looking at the length and volume that, “you must be using JCB to manage your hair”. Also, he started singing a song related to her hair.

Incident 2

Tanya Sharma further narrated an incident where, Vinod Kachave had passed a sexual remark on a male employee's private part. Pravin Kedar, in a common forum where other female employees were present. He checked with the male employee about his girlfriend. When the employee answered that he does not have any girlfriend, Vinod Kachave said ‘Kyun tera machine kharab hai’.

Incident 3

Tanya Sharma, also raised the complaint against her Reporting Manager, Madhavi Pawar. She stated that Madhavi use to check her out and use to casually discuss her attire with other male colleagues.

4) After reproducing the three incidents narrated by the complainant, the ICC has recorded following findings after conduct of enquiry:

1. It was observed by the ICC that Vinod Kachave, though agreed to some of the charges, was not willing to accept the others, inspite of informing him that ICC has multiple witnesses who have confirmed all the allegations.
2. All serious allegations were confirmed by multiple witnesses that were interviewed by the committee. The same was recorded by the committee.
3. ICC also felt that during the course of the meeting Vinod Kachave was reluctant in agreeing to the fact that his behavior is completely unprofessional and he has created work environment which is not conducive to female employees and amounts to harassment at workplace. He was in complete state of denial on the most of the serious charges.
4. Vinod Kachave also tried to interfere with the investigation and acknowledged that he had met Madhavi Pawar and Pravin Kedar on 21 morning before ICC could commence the meeting. In fact, he was again in a state of denial and said that as per him it was completely acceptable that he has met both the employees.

5) I proceed on a footing that all the three incidents can be held to be proved on the basis of evidence led before the ICC.

6) So far as the first incident is concerned, the same relates to passing of comment by the Petitioner with regard to length and volume of the complainant's hair and he singing a song relating to her hair. Considering the nature of comment allegedly made by the Petitioner towards the complainant it becomes difficult to believe that the same was made with an intent of causing any sexual harassment to the complainant. She herself never perceived the comment as sexual harassment when the comment was made. The comment was made on 11 June 2022. However the WhatsApp conversation between the Petitioner and the complainant post 11 June 2022 would indicate that the Petitioner was in fact motivating the complainant with regard to performance of her work and the complainant had expressed gratitude towards the efforts of the Petitioner. Therefore even if the allegations *qua* Incident No.1 is accepted as proved, it becomes difficult to hold that the Petitioner has committed any act of sexual harassment.

7) So far as the second incident is concerned, the same relates to making of remarks by the Petitioner in respect of another male employee when other female employees were present. The allegations does not indicate presence of the complainant when the alleged remark was made. The remark was admittedly not directed against the complainant. Both the remarks reflected in the second incident are admittedly against another male employee. Therefore it becomes difficult to believe that the conduct described in second incident would cause any sexual harassment personally to the complainant.

8) So far as the third incident is concerned, the same relates to allegations against Ms. Madhavi Pawar, Reporting

Manager, who herself is a female employee. The allegation is not directed against the Petitioner in any manner. Thus the allegation in third incident does not pertain to the Petitioner.

9) Thus though the first two incidents relate to allegations against the Petitioner and even if the allegations are taken to be proved, concrete inference of cause of sexual harassment to the complainant cannot be drawn.

10) Perusal of the findings recorded by the ICC would indicate that the same are vague in nature. The Committee has not discussed each article of charge in relation to the evidence appearing on the record. The ICC has merely made vague recommendations by recording a general finding that *'all serious allegations were confirmed by multiple witnesses that were interviewed by the committee'*. Beyond this finding, there is no discussion in the report of the ICC about the evidence appearing on record in respect of each article of charge.

11) In my view, therefore the report of the ICC is clearly vague as the same is drawn without discussing the evidence on record. Most importantly, the ICC has not considered the issue whether the allegations levelled against the Petitioner in first two incidents really constitute sexual harassment to the complainant. The allegation involved in third incident had nothing to do with Petitioner's actions. Still said incident was unnecessarily incorporated in the report of the ICC. As observed above, the exchange of text messages after occurrence of the alleged incidents between the Petitioner and complainant would cast serious doubt as to whether the complainant was really offended by any particular

conduct of the Petitioner. Ms. Khan would in fact suggest that the complaint of sexual harassment was made immediately after tendering of resignation by the complainant. Otherwise the relationship between the Petitioner and the Complainant appear to be quite cordial till she tendered her resignation.

12) Considering the overall conspectus of the case, I am of the view that the findings recorded by the Industrial Court are clearly perverse. The Industrial Court has failed to take into consideration the exact nature and gravity of allegations levelled against the Petitioner. It has completely ignored the fact that even if the allegations are taken as proved, no case of sexual harassment of the complainant was made out in the light of peculiar facts and circumstances of the present case. In my therefore, the impugned judgment and order passed by the Industrial Court is indefensible and liable to be set aside.

13) The Petition accordingly succeeds. Judgment and order dated 1 July 2024 passed by the Member Industrial Court, Pune is Appeal (IESO) No. 1 of 2023 as well as the report of the ICC dated 30 September 2022 are set aside.

14) The Petition is **allowed** in above terms. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]