

**CWP-2991-2020 (O&M)****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****103****CWP-2991-2020 (O&M)****Date of Decision : January 14, 2025****VIPIN WATTAL****-PETITIONER****V/S****INTERNAL COMPLAINTS COMMITTEE, SAINSBURY'S ARGOS
ASIA LTD. AND ORS.****-RESPONDENTS****CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI****Present:** Ms. Tanu Bedi, Advocate
for the petitioner.Mrs. Manisha Gandhi, Sr. Advocate with
Ms. Salina Chalana, Advocate
Mr. Samiron Borkataky, Advocate and
Mr. Arjun Kundra, Advocate
for the respondents No.1 and 2.

Mr. Bhupender Singh, D.A.G., Haryana.

*********KULDEEP TIWARI, J. (ORAL)**

1. The petitioner, against whom an inquiry is being conducted by the Internal Complaints Committee (hereinafter referred to as the 'I.C.C.') constituted by the respondent No.1, claims infringement of his fundamental rights in the said inquiry. Therefore, by instituting the instant writ petition cast under Article 226/227 of the Constitution of India, the petitioner yearns for issuance of directions upon the respondent No.1 to seize the complaint (Annexures P-2 and P-8).

2. When the instant writ petition came up for initial hearing on

**CWP-2991-2020 (O&M)**

06.02.2020, the Co-ordinate Bench of this Court passed the hereinafter extracted order:-

“It is, inter alia, submitted that against the notice/orders passed by Internal Complaints Committee constituted under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, a writ petition is maintainable. The petitioner, it is submitted, is not being provided the list of witnesses, their statements or even a copy of the petitioner's own statement.

Notice of motion for 04.03.2020.

Dasti only.

The petitioner is further permitted to serve the respondents additionally through e-mail.

The question of maintainability of the writ petition is, however, left open. Final order be not passed till the next date of hearing.”

CIRCUMSTANCES LEADING TO FILING OF THE INSTANT WRIT PETITION

3. The circumstances leading to institution of the instant writ petition are that, Ms. A (name withheld in order to conceal the identity of victim) made complaint against the petitioner, which was referred by the authority concerned to the I.C.C. Upon receipt of the complaint, the I.C.C. initially provided some part thereof to the petitioner and subsequently the complete complaint was also supplied to him. While conducting inquiry, the I.C.C. adopted the procedure of not divulging the information of witnesses, who were examined in support of the complaint made by Ms. A. The reason [as informed to this Court during the course of arguments] for adopting such a procedure by the I.C.C. stemmed from the petitioner being, at the relevant time, holding the position of Country Head in the respondent No.2-

**CWP-2991-2020 (O&M)**

Company, and as such, he was in a position to influence the witnesses. Apart from non furnishing of information of witnesses, the petitioner's request to conduct cross-examination of witnesses was also not acceded to, rather he was advised to inform his questions to the I.C.C., whereupon, the latter would get response thereon from the witnesses.

4. In this way, fetching grievance from the procedure (supra) adopted by the I.C.C., the petitioner is triggered to institute the instant writ petition.

5. Before gauging the merits/demerits of the instant writ petition and consequently penning down any decision, it would be apt to record at this juncture that, in view of the statutory obligation imposed by The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as the 'Act of 2013'), and, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (hereinafter referred to as the 'Rules of 2013'), the respondent No.2 constituted the I.C.C. It is also not under dispute that, the respondent No.2 is not an agency or instrumentality of the government, rather it is a private company and not discharging any public function.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

6. The learned counsel representing the petitioner pitched arguments at length regarding maintainability of the instant writ petition against a private company. She also drew attention of this Court towards the mandate enclosed in Section 16 of the Act of 2013, and, in Rule 7 of the Rules of 2013, to lend vigour to her argument that, the I.C.C. is not only

**CWP-2991-2020 (O&M)**

required to supply the supporting documents filed by the complainant but is also required to disclose to the petitioner the complete information of the witnesses. However, in the instant case, the I.C.C. has neither supplied the complete documents, nor disclosed the information of witnesses to the petitioner, therefore, it is clear violation of the statutory provisions engrafted in the Act and Rules (supra), and, of the principles of natural justice.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE RESPONDENTS NO.1 AND 2

7. The learned senior counsel representing the respondents No.1 and 2 also advanced arguments at length to the effect that, the instant writ petition is not maintainable against the respondents No.1 and 2 inasmuch as they are private individuals. She argues that, although the I.C.C. was constituted by the respondent No.2 in terms of the statutory obligation imposed by the Act and Rules (supra), however, the respondent No.2 is not an agency or instrumentality of the government, rather it is a private company and not discharging any public function.

8. In her defending the procedure (supra) adopted by the I.C.C., the learned senior counsel submitted that, since the petitioner was, at the relevant time, holding the position of Country Head of the respondent No.2-Company, therefore, he was in a position to influence the witnesses supporting the complainant. Consequently, in order to ensure that the object behind initiation of inquiry is achieved, the apt procedure was adopted by the I.C.C., where through not only became ensured fairness and transparency, but, adequate opportunity was also given to the petitioner to represent himself.

**CWP-2991-2020 (O&M)**

9. Lastly, the learned senior counsel argued that, the institution of the instant writ petition is nothing but a sheer dilatory tactic and the petitioner has, to some extent, succeeded in achieving his objective, inasmuch as, during pendency of the instant writ petition, he resigned from the respondent No.2- Company. Now, he is no more working or under the control of the respondent No.2- Company, therefore, the latter is unable to take any disciplinary action against him.

REASONS FOR DISMISSING THE INSTANT WRIT PETITION

10. This Court has heard the rival submissions made by the learned counsels for the contesting litigants. For the reasons to be assigned hereinafter, this Court is of the opinion that, the instant writ petition is a misconceived motion.

11. The supervening events, which require consideration at this juncture are that, a preliminary inquiry in terms of the mandate encapsulated in Section 11 of the Act of 2013 has already been conducted, however, the final report of finding *qua* inquiry is still pending.

12. Section 11 of the Act of 2013 mandates the supply of findings of preliminary inquiry to both the parties for enabling them to make representation against the findings before the Committee itself. In the instant case, post conclusion of the preliminary inquiry, report thereof has already been supplied by the I.C.C. to the petitioner and the same is annexed as Annexure P-12 with the instant writ petition. In such circumstances, when the petitioner is seized of the preliminary inquiry report, therefore, the apposite remedy for him is to, instead of instituting the instant writ petition,

**CWP-2991-2020 (O&M)**

make a representation before the I.C.C. against the findings recorded in the said report. In the said representation, the petitioner is at liberty to question the procedure (supra) adopted by not divulging the information of the witnesses and not supplying their statements.

13. In summa, this Court is of the opinion that, since the petitioner is endowed with the statutory remedy (supra), hence the instant writ petition is a premature and misconceived motion. Consequently, the instant writ petition is **dismissed**. However, the petitioner is at liberty to make a representation in terms of the mandate enclosed in Section 11 of the Act of 2013 by canvassing therein his objections, as raised before this Court. In the event of any such representation becoming filed, it is expected that the I.C.C. would make decision thereon by taking into account the changed circumstances that the petitioner has resigned from the respondent No.2- Company and is no longer holding the position of Country Head, hence not in a position to influence the witnesses.

14. In view of the above, the issue appertaining to maintainability of writ petitions alike the one at hand is purely academic, which this Court would decide in an apt *lis*.

15. Pending application(s) stand disposed of accordingly.

January 14, 2025
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No