

HIGH COURT OF DELHI

Bench: Hon'ble Mr. Justice Subramonium Prasad

Date of Decision: 24th May 2024

WRIT PETITION (CIVIL) NO. 4063 OF 2023

PETITIONER/AGGRIEVED WOMAN ... Petitioner

VERSUS

STATE OF DELHI & ANR. ... Respondents

Legislation:

Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act)

Section 16 of the POSH Act

Subject: Writ Petition seeking directions to ensure compliance with the POSH Act by forming an Internal Complaints Committee (ICC) where the petitioner can file her complaint. Subsequent applications filed for the implementation of the court's order, protection of the petitioner's identity, and to implead additional respondents involved in the harassment case.

Headnotes:

Sexual Harassment at Workplace – Implementation of POSH Act – Writ Petition seeking directions to ensure compliance with POSH Act by constituting ICC – Court directs Respondent No.1 to take action as per POSH Act – ICC constituted, proceedings initiated but delayed – Petitioner's identity to be protected – Directions issued for further proceedings despite winding up of the Respondent company – Applicability of Vishaka guidelines reaffirmed. [Paras 1-14]

Direction to Authorities – POSH Act – Court emphasizes the duty of authorities to ensure proper functioning of ICC in companies – Transfers case to appropriate jurisdiction for effective redressal – Failure of company to constitute ICC is no ground to leave complaints unaddressed – Orders issued to proceed with the complaint even if the company is wound up – Complainant's protection under POSH Act ensured. [Paras 10-12]

Decision: Court directs Respondent No.1 to take action per the POSH Act and ensures ICC constitution. Application to implead additional respondent (CFO) allowed. Further proceedings directed with protection of petitioner's identity. No merits addressed on the case. [Paras 12-14]

Referred Cases:

- Vishaka v. State of Rajasthan, (1997) 6 SCC 241

Representing Advocates:

Mr. Amit Sharma, Ms. Pallavi Barva, and Ms. Aparna Singh for the petitioner
Mr. Yatendra Sharma, Mr. Prateek Sharma, and Mr. Manish Kumar Singh for R-3

JUDGMENT

CM APPL. 44056/2023 CM APPL. 58234/2023 CM APPL. 8726/2024

1. Petitioner had filed the instant Writ Petition seeking directions to Respondent No.1 to ensure compliance of the Sexual Harassment at Workplace (Prevention Prohibition and Redressal) Act, 2013 (*hereinafter referred to as 'the POSH Act'*).
2. This Court disposed of the Writ Petition vide Order dated 29.03.2023 by observing as under:
"3. In view of Section 16 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter „POSH Act“), the name of the Petitioner shall be kept confidential and redacted. She would be referred to as the “Petitioner/aggrieved woman”.
4. *The present petitioner has been filed seeking a direction to be issued to Respondent No. 1 to ensure compliance with the POSH Act and form an Internal Complaints Committee, where the Petitioner can file her complaint.*
5. *The grievance of the Petitioner is that she used to work in M/s Enlive Solutions (India) Pvt. Ltd. and that she had made a complaint on 24th November, 2022 to the Police Commissioner, NOIDA that the sexual harassment complaint made by the aggrieved woman was not being considered by the management and no ICC was constituted. The Petitioner is also aggrieved that no action had taken by the police in her complaint.*
6. *The aggrieved person, thereafter, approached the District Magistrate (DM), IP extension, Delhi on 24, February, 2023, however, it has*

been contended that no action has been taken by the concerned DM. Hence, the prayer is for directions to the DM to ensure that a proper ICC is constituted in the Respondent No.2/company.

7. *Ld. counsel appearing for the DM submits that the details of the complaints are not available with the DM. The same have now been filed as Annexure P-2 and P-3. Ld. counsel submits that the DM would take action in accordance with law within a period of one month from today.*

8. *Ordered accordingly.*

9. *The present petition, along with all pending applications, is disposed of."*

3. CM APPL. 44056/2023 has been filed by the Petitioner for implementation of the Order dated 29.03.2023. The said application came up for hearing on 25.08.2023. In the said application, it was contended by the Petitioner that after the Order dated 29.09.2023 was passed there was no communication from the Respondent and only on 03.05.2023 the first intimation was given to the Petitioner to appear before the Respondent No.1 on 10.05.2023 at 02:00 PM. It is stated that the Petitioner appeared before the Respondent No.1 on 10.05.2023 at 02:00 PM and the statement of the Petitioner was recorded by the Internal Complaint Committee (ICC) formed by the Respondent No.1. It is stated that the Petitioner was called again on 18.05.2023 and the Petitioner was informed that the Respondent would be called for investigation and a final report would be shared with her. It was contended by the Petitioner that even after a substantial amount of time has passed, no further proceedings have taken place in the matter. This Court issued notice in the said application on 25.08.2023. A short reply has been filed on behalf of the Revenue Department, GNCTD, stating that the registered office of Respondent No.2/Company at 304 Dharma Apartment Plot No.2, IP Extension, Delhi, was found not functioning. It is further stated in the said reply that the Petitioner was working in the Noida office of the Respondent No.2 company, which is beyond the jurisdiction of District Magistrate, East Delhi and, therefore, it has been recommended that the Petitioner's complaint be forwarded to District Magistrate (Gautam Buddha Nagar).

4. CM APPL. 58234/2023 has been filed by the Petitioner seeking a direction to the District Magistrate not to reveal her identity. In the said application the Petitioner had also prayed that the letter dated 01.09.2023, received from the

Office of the District Magistrate, by which the complaint of the Petitioner has been transferred to District Magistrate (Gautam Buddha Nagar), be declared as null and void. This Court *vide* Order dated 29.09.2023 directed Respondent No.1 to take action in accordance with law. Since the working office of the Respondent No.2 Company is in Noida, the complaint of the Petitioner was referred to the District Magistrate, Gautam Buddha Nagar for constitution of a LLC under the POSH Act. The LLC has been constituted.

5. CM APPL. 8726/2024 has been filed by the Petitioner seeking permission to implead Mr. Rajat Bansal, who is the CFO of Respondent No.2/Enlive Solutions India Private Limited and also one of the delinquents in the complaint filed under the POSH Act. It is stated in the application that Mr. Rajat Bansal is one of three Directors of Respondent No.2/Company who are accused of harassment under the POSH Act. Amended Memo of Parties was filed. The application came up for hearing on 13.02.2024 on which date this Court issued notice in the application and directed for service on Mr. Rajat Bansal through local Police Station.
6. Mr. Rajat Bansal filed a reply contending that there is no prayer in the Writ Petition against him. It is also contended by Mr. Rajat Bansal that CM APPL. 8726/2024 in a disposed of matter is no maintainable and the proceedings before the LCC pursuant to this Court's order is a separate cause of action. It is also contended by Mr. Rajat Bansal that he is neither an employee of Respondent No.2 nor does he hold any managerial position in the said company. He has also taken objection regarding limitation on the initiation of the proceedings under the Act.
7. The LLC report indicates that in terms of the POSH Act there is no ICC in Respondent No.2.
8. The contention of the learned Counsel appearing for Mr. Rajat Bansal that CM APPL. 8726/2024 is not maintainable in a disposed of matter as the Writ Petition has worked itself out, is not tenable. The purpose of the POSH Act is that no lady is harassed at workplace. It was the duty of the Respondents No.2 & 3 to ensure that there is a proper ICC in Respondent No.2 Company. The fact that Respondent No.2 has wound up does not mean that the complainants would be left remedy less.
9. The POSH Act was brought up after the Apex Court in Vishaka v. State of Rajasthan, (1997) 6 SCC 241, has held as under:

"16. In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more

particularly against sexual harassment at workplaces, we lay down the guidelines and norms specified hereinafter for due observance at all workplaces or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution."

10. The object of the POSH Act is to provide protection against sexual harassment of women at workplace as well as for prevention and redressal of complaints of sexual harassment.
11. As stated above, the fact that Respondent No.2 has wound up is no ground not to proceed further with the complaint of the Petitioner. In any event, the fact that Mr. Rajat Bansal, was not impleaded in the Writ Petition earlier is of no consequence because the newly constituted LLC will look into the complaint of the Petitioner to give a meaningful implementation to the Orders passed by the Apex Court in Vishaka (supra), the POSH Act and the Order passed by this Court on 29.03.2023.
12. Accordingly, CM APPL. 8726/2024 is allowed. Mr. Rajat Bansal is directed to appear before LCC on 03.06.2024 at 11:00 AM. The LCC is directed to proceed further under the provisions of the POSH Act and if necessary, proceedings against other Directors of Respondent No.2 be also initiated. Mr. Rajat Bansal is directed to cooperate in the proceedings and give details of other Directors of Respondent No.2 company. The LCC is also directed to mask the name of the Petitioner keeping in view the Judgments passed by the Apex Court.
13. With these directions and observations, CM APPL. 44056/2023, CM APPL. 58234/2023 and CM APPL. 8726/2024 are disposed of.
14. It is made clear that this Court has not made any observations on the merits of the case.

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