
(2014) 06 BOM CK 0165

In the Bombay High Court

Case No : Writ Petition Nos. 3449, 3450 & 3451 of 2013

Jaya Kodate

APPELLANT

Vs

Rashtrasant Tukdoji Maharaj Nagpur University

RESPONDENT

Date of Decision : 13-06-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 397

Penal Code, 1860 (IPC) — Section 506

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 — Section 10, 11, 11(3), 13, 15

Citation : (2014) 06 BOM CK 0165

Hon'ble Judges : Z.A. Haq, J; B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : S.P. Bhandarkar, Advocate for the Appellant; P.B. Patil, Advocate, N.P. Mehta, Asstt. Govt. Pleader, C.S. Kaptan, Senior Advocate, Abhay Sambre and T.D. Khade, Advocate for the Respondent

Judgement

B.P. Dharmadhikari, J.—All these petitions raise identical challenges. Petitioner in Writ Petition No. 3449/2013 is working as an Assistant Professor in Geology in Shri Shivaji Science College, Congress Nagar, Nagpur. Her prayer is to quash and set aside the order of transfer dated 25.06.2013, and to direct the respondent no. 4 - Principal of that College and Respondent no. 5 - Principal in-person to initiate departmental enquiry against the respondent no. 6, who happens to be the Head of the Department of Geology. Enquiry is sought on the ground of her "sexual harassment". Prayer clause (ii) in the petition is to direct the respondent nos. 1 to 3 to constitute Internal Complaints Committee u/s 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as "the 2013 Act" for short). This Court has granted interim orders of status-quo, but according to the employer the petitioner was already relieved. Respondent no. 1 in the petition is the University to which the respondent no. 3 College is affiliated. While respondent no. 2 is the Joint Director of Higher and Technical Education of State of Maharashtra.

Writ Petition No. 3450/2013 is against very same employer by a different lady working as Assistant Professor in the department of Physical Education. She has joined wife of the Principal by name as respondent no. 6. Said wife also works as Assistant Professor in the department of Chemistry in very same college. Prayers made by this petitioner are identical.

Writ Petition No. 3451/2013, is by third lady who is working as Assistant Professor in Mathematics. First five respondents in the earlier two petitions are the respondents in this petition. Prayers made therein are again identical.

2. Parties have completed their arguments on the preliminary points on 25.02.2014. After hearing the respective Counsel on that date, this Court has passed the following order.

The parties have addressed Court on issues relating to composition of Internal Complaints Committee, Procedure followed by it, the propriety or validity of submissions of two reports; one by Presiding Officer and second by other three members, and on question whether President, Secretary of the Society administering the college and Principal of the College can be subjected to jurisdiction of Internal Complaints Committee as according to these respondents they are covered by definition of phrase "Employer" in the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Accordingly, we close the matter for considering this issue and for passing suitable orders in three Writ Petitions thereafter.

Needless to mention that question of perversity of findings recorded in Enquiry Reports or then, whether allegations constitute sexual harassment are kept open and can be looked into after these orders are passed.

3. To understand why this course of splitting of the hearing became necessary, the fact that this Court has to consider the report of Internal Complaints Committee on grievance of petitioners about sexual harassment, that the Presiding Officer and Chairman of the said Committee Smt. Madhugiri has submitted a separate report in a sealed envelope, while its other three members submitted their joint report and that there is also a challenge to procedure adopted by it, need to be kept in mind. N.G.O. member Smt. Pankule, has submitted her report along with these two Members.

4. In all these Writ Petitions, on 18.12.2013, after hearing the respective Counsel, this Court has passed the following order :-

Heard Shri R. Deo and Shri S.P. Bhandarkar, learned Counsel for respective petitioners, Shri C.S. Kaptan, Senior Counsel with Shri A.R. Sambre, learned Counsel for respondent nos. 4 and 5, Ms. T. Khan, learned Counsel for respondent University, learned A.G.P. for respondent Joint Director Higher and Technical Education and Mrs. T.D. Khade, learned Counsel for Dr. Shah, Head of Department (in W.P. No. 3449/2013).

Three petitioners assail orders of transfer, all dated 25.06.2013 basically on the ground of harassment and gender discrimination. At this stage, we do not wish to go into the merits of those allegations. This Court has issued notice in the matter on 02.07.2013 and the parties were directed to maintain status quo.

The Management claims that petitioners are already relieved and therefore, petitioners are not in a position to work anywhere.

Effort of petitioners earlier was to show that the grievances made by them, since prior to transfer and even apprehension expressed in some matters about such victimization were not looked into at all. There was no Committee constituted as per the judgment of Hon"ble Apex Court in case of Vishaka and others Vs. State of Rajasthan and Others, and hence, the petitioners do not receive necessary justice. Ultimately as a outcome of their complaints they have been victimized and transferred.

The Management is strongly opposing the line of arguments. According to them, the transfers are purely on administrative ground.

An additional affidavit has been filed on behalf of the Principal (Respondent no. 4) on 09.12.2013 vide Stamp No. 12733/2013. In it a notice dated 08.07.2013 informing the employees about formation of Internal Complaint Committee u/s 4 of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 has been pointed out. It is also stated that any complaint in this respect can be lodged with the Presiding Officer. One Professor M.J. Madhugiri, has been mentioned as Presiding Officer.

The Committee as per the judgment of Hon"ble Apex Court in Vishaka's case (supra), ought to have been constituted long back. It appears that after 2013 Enactment and for the first time on 08.07.2013 a proper Committee has been constituted.

In this situation we find that interest of justice can be met with by directing the said Committee to look into the complaints already made. Learned Senior Counsel appearing on behalf of the respondents and the respective counsel appearing for petitioners do not oppose holding of such inquiry. Shri Kaptan, learned Senior Counsel however, pointed out that the complaints are prior to formation of the Committee and hence, a technical objection in that respect may be raised by aggrieved party in future. We find the contention misconceived. If the complaints are correct and transfer is outcome of those complaints, the alleged harassment continues even today.

In this situation, we direct the petitioners to appear before the said Committee on 24.12.2013. Shri Deo, learned counsel appearing for petitioner in Writ Petition No. 3451/2013 has pointed out a contingency in which the petitioner in advance stage of pregnancy may not be in a position to appear before the Committee. He states that in that situation, said petitioner may be permitted to appear through her representative.

We find that in such contingency, other two complaints can be looked into by the Committee.

The petitioners are permitted to file additional representation if any, before the Presiding Officer by 23.12.2013. Those representations and earlier complaints shall then be enquired into by the Committee as early as possible and its report shall then be made available to this Court on next date of hearing.

List the matters for further consideration on 08.01.2014.

Needless to mention that all rival contentions about the validity or otherwise of the transfer orders are kept open and can be looked into after receipt of said report.

Copy of this order be furnished to learned counsel for the parties.

5. The sealed envelope along with the two inquiry reports were then received by this Court and opened as per its directions. Presiding Officer Smt. Madhugiri, has forwarded another envelope containing a confidential letter separately. On 21.01.2014, this Court after hearing the respective Counsel, found it proper not to open that envelope till perusal of reports. Accordingly, we have heard the respective Counsel on issues like challenge to composition of said Committee; Whether the President and Secretary of the Institution (Society/Trust) and Principal of the College can be subjected to its jurisdiction; Whether the procedure followed by the Committee in submitting separate reports or then in not compelling the respondents to enter witness box is proper and on 25.02.2014 by passing orders (supra), we closed the arguments for deciding these issues. Thus questions whether findings recorded in inquiry reports are perverse or not or then, whether allegations, per-se constitute sexual harassment as defined in Section 2(n) of the 2013 Act, have been left open for its due evaluation after and as per outcome of the said hearing.

6. Shri S.P. Bhandarkar, learned Counsel appearing on behalf of the petitioners submitted that the provisions of Section 13 of the 2013 Act envisage a single inquiry report i.e. Joint Enquiry Report by all Committee Members constituting Internal Committee. Submission of two separate reports i.e. one by the Presiding Officer Smt. Madhugiri and the other by other three members, is therefore, unsustainable and not acceptable. He further points out that the NGO Member Smt. Pankule, never attended the sittings of the inquiry committee fully and she always reported late, because of her late reporting, many developments and most of the hearings were in her absence and as such she should not have authored the other report. He states that the report has been written by Smt. Pankule, not on behalf of other two members and other two members have mechanically signed it without even recording their express agreement with her findings. He emphasises the fact that entire report submitted by Smt. Pankule, shows her individual satisfaction and no line therein speaks of satisfaction similarly reached by other two members namely - Dr. Bramhankar and Dr. Ghatole. Thus, there is no joint application of mind even by these three members.

7. Placing reliance upon Section 4 of the 2013 Act, he submits that Dr. Ghatole could not have been selected and appointed as Member of the Internal Complaints Committee (ICC). Sub-Section (5) of Section 4 is relied upon by him to urge that a Presiding Officer or Member of such Committee who has been convicted for an offence or against whom an inquiry for commission of any offence under any law is pending, is liable to be removed from the Committee and thus, such person is disqualified to function as Member of ICC. He states that one lady employee has filed a complaint u/s 506 of the Indian Penal Code against said Ghatole, and the grievance of that lady employee is now being looked into by the Sessions Court in Revision u/s 397 of Criminal Procedure Code, filed by that lady. He therefore, submits that as an inquiry against Shri Ghatole is pending, his nomination as such was not valid.

8. He has also invited attention of Court to various other provisions to show the important and responsible task expected to be discharged by Member of ICC. He contends that another Member, Dr. Bramhankar happens to be a Shikshan Sevak in junior college of same management. Employment of shikshan sevak is as probationer, at the mercy of management and shikshan sevak can be removed on the ground of unsatisfactory performance at any time. It is contended that by appointing such person who has no voice against the management, a freedom or power available to ICC was drastically eclipsed or reduced. Management thus made ICC to lean in its favour. He further contends that sexual harassment is in relation to workplace which is Senior college and not a junior college. Bramhankar happens to be an employee of junior college and therefore, not connected with the workplace i.e. Senior College. He has invited courts attention to the proviso to Section 4(1) of the 2013 Act to urge that when the office or administrative units are subdivided and are different, separate ICC must be constituted at the level of such lowest or basic unit or office. He contends that thus, separate ICC should be provided in junior college which is a distinct workplace, while senior college should have its own ICC in which no employee of junior College should have any representation.

9. He points out that this objection to composition of ICC was raised before the ICC itself by pointing out disqualification incurred by Shri Ghatole and absence of competency in Smt. Brahamankar. However, the ICC rejected this objection on the ground of absence of jurisdiction in it to adjudicate upon it.

10. He has taken the Court through the proceedings of ICC as evident from the reports to urge that the NGO Smt. Pankule has arrived late for proceedings on 5 dates and was absent on 10.01.2014. Thus, he submits that out of total 9 sittings of ICC, on most of dates either this NGO representative arrived late or was absent. He also points out that her arrival was late on few dates by several hours after the committee started its proceedings. He submits that on 9th and 10th January, the Committee members put question to the petitioners who were complainants before it. The respondents did not appear before the Committee and did not examine themselves either in chief or did not make themselves

available for cross-examination by the complainants. In this situation, according to him merely because there was quorum, the meetings of ICC and business transacted therein cannot be said to be valid and as per law. In this background, the majority report needed to be authored by any other member and could not have been authored by the NGO representative Smt. Pankule.

11. He has invited attention to the provisions of Section 11(3) of the 2013 Act to show that the inquiry committee (ICC) or local committee (LCC) have been given the powers of Civil Court under Code of Civil Procedure, 1908 for the purpose of such inquiry. The Committee therefore, could have enforced attendance of any person and examined him on oath, required him to discover and produce documents or sought his assistance for such other purpose, in the interest of justice, as the committee felt necessary. The Committee never exercised these powers and did not compel the President or the Secretary or the Principal or his wife to give any statement or to remain present for cross-examination. Committee also did not put to these persons any questions as it put to the complainants. He therefore, argues that the three members were biased in favour of the management and for not performing the duties properly, the entire business transacted by ICC need to be declared as invalid. He contends that in any case report submitted by the Presiding Officer Smt. Madhugiri, which shows all possible efforts made by her to coordinate the functioning of all members in consonance with the provisions of the 2013 Act, must be accepted and must be given effect by this Court.

12. By placing reliance upon judgment of Hon''ble Apex Court in case of Vidya Vikas Mandal and Another Vs. The Education Officer and Another, he submits that Section 13 specifically contemplates a single report by ICC and the purpose behind it is need of joint deliberation by all committee members. Here though the Presiding Officer Smt. Madhugiri made that attempt by circulating common points for consideration and also called for individual reports of members, the other three members including Smt. Pankule, did not cooperate. Therefore, separate report submitted by three committee members has no legal existence and cannot be relied upon. He has invited attention of the Court to relevant paras of the report submitted by Professor Madhugiri to urge that 4 reports of earlier enquiries have been looked into by her, while the other report totally ignores those reports. He further points out that on 10.01.2014, though the respondents were not present and did not produce any witness, committee members recorded say of petitioners/complainants on defence of respondents and put them various questions.

13. To point out relative scope of inquiry to be conducted by ICC u/s 4 and Local Complaints Committee (LCC) u/s 7 of the 2013 Act, Shri Bhandarkar, learned counsel for the petitioners relies upon various provisions like definition clause Section 2, Section 11, Section 13 etc. along with Section 19 of the 2013 Act. He contends that the provisions of 2013 Act need to be understood in the background of mischief noted by the Hon''ble Apex Court in judgment in case of

Vishaka and others Vs. State of Rajasthan and Others, and the solution evolved by the Hon"ble Apex Court therein. He contends that the procedure prescribed by the Hon"ble Apex Court in this judgment is binding and the 2013 enactment cannot be construed in a mode and manner either derogating from or diluting those directives. He argues that the concepts like Employee or Employer are very widely worded deliberately to leave no wrongdoer unpunished or no workplace unregulated or un-catered. He points out aggrieved women need not always be the employee at a workplace where the incidence takes place. He contends that these phrases, therefore, need to be construed to advance the object and to suppress the mischief and too technical approach of respondents cannot be accepted. The President or Secretary and also Principal cannot seek exemption from the inquiry on the ground that being employer, they cannot be subjected to jurisdiction of ICC. The gender free or neutral language of the provisions is pressed into service to buttress these submissions.

14. Shri C.S. Kaptan, learned Senior Counsel with Shri Abhay Sambre, learned Counsel for respondent nos. 3 to 6/3 to 5, strongly oppose the arguments of Shri Bhandarkar, learned counsel for petitioners. He relies upon provisions of Section 13 of the 2013 Act to urge that said provision nowhere expressly bars submission of separate or independent inquiry reports by the Committee Members. He invites attention to the fact that the Presiding Officer Smt. Madhugiri, herself invited separate report from each member. He contends that Smt. Pankule, has prepared her report after due deliberations with other two members viz. Shri Ghatole and Smt. Bramhankar. He contends that the reported judgment relied upon by Shri Bhandarkar, learned counsel does not prohibit such a course of action.

15. He relies upon the definition of word "workplace" in Section 2(o) to urge that College of respondent no. 3 at Nagpur is located in one compound and respondent no. 3 is Principal of both Senior as also Junior college. He is therefore, competent to regulate functioning and discipline in both the colleges. He further submits that as employees of junior college and of senior college share the same facilities and premises, in a hypothetical case a senior college lady employee may complain of harassment by an employee of junior college and vice-versa. He contends that thus, constitution of one committee for such an establishment is in accordance with the provisions of Section 4 of the 2013 Act, as it is single/one workplace.

16. He further submits that the inquiry report submitted by the Presiding Officer, Professor Madhugiri is not supported by majority, and hence, it cannot be relied upon. Report submitted by Smt. Pankule along with Smt. Brahmankar and Shri Ghatole shows majority view and therefore, must be accepted.

17. He has also invited attention to various provisions, particularly Section 6 of the 2013 Act to urge that when complaint of sexual harassment is against an employer, the ICC cannot enquire into it. He also relies upon the definition of phrase "employer" as contained in Section 2(g) of the 2013 Act, to show that the

Head of the Department, Principal, Secretary or President are covered thereunder and hence, complaint against them must be made to LCC u/s 6(1) of the 2013 Act. The respondents accordingly have claimed exemption before ICC pointing out absence of jurisdiction and therefore, did not appear before the ICC.

18. On the basis of very reasons pressed into service to show that the junior college and senior college constituted a single workplace, he contends that Smt. Brahmarkar, a qualified teacher working in junior college has been rightly nominated on ICC as there has to be only one ICC for senior and junior college. He contends that though petitioners initially objected to the composition of the Committee, after it was turned down, they did not challenge that rejection further and thus, acquiesced in said composition by participating in the proceedings.

19. He states that in so far as Shri Ghatole is concerned, a lady employee working in his department lodged a complaint u/s 506 with the Magistrate. Magistrate in turn asked the police to enquire and accepting police report u/s 202 of Criminal Procedure Code, the Magistrate dropped the proceedings against Shri Ghatole. No notice was even issued by the Magistrate to him. This exoneration of Shri Ghatole is questioned by that lady in revision u/s 397 Cr.P.C. As such, according to him Shri Ghatole, cannot be said to be disqualified u/s 4(5)(b) of the 2013 Act.

20. He reiterates that objection to inclusion of Shri Ghatole and Smt. Brahmarkar was overruled by the Committee on 30.12.2013, and that order has attained finality. He further submits that in present facts, Principal of the College was not competent to change the composition of the Committee.

21. He further contends that though NGO representative Smt. Pankule, attended the proceedings belatedly on some occasions, quorum was always there and hence, proceedings are not vitiated at all. The Committee followed the procedure which it thought best in its own judgment and generally questioned the petitioners. The procedure adopted by the Committee is fair, transparent and it has not resulted in any prejudice to the petitioners. He also attempted to contend that validity of procedure followed by the Committee is a question which must be looked into by this Court while deciding merits of the controversy.

22. He has thereafter invited attention to reports submitted by the three Members in an attempt to show that it is joint report by the majority of ICC. He also read out findings to urge that same have been properly drawn by these three Committee Members.

23. He contends that judgment delivered in case of Vishakha vrs. State of Rajasthan (supra), lost its relevance after coming into force of the 2013 Act and provisions contained therein need to be read ignoring the said judgment. Exclusion of Head of the Department and Principal of the College or then President and Secretary of the Trust managing the educational institutions from the jurisdiction of ICC is with some purpose and must be therefore honoured. He

has also taken the Court through various provisions to demonstrate how grievance against an employer as defined in Section 2(g) of the 2013 Act cannot be looked into by the ICC and it must be looked into by the LCC.

24. He has during the course of arguments invited attention to provisions of Rule 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (hereinafter referred to as "the 2013 Rules" for short). According to the learned Senior Counsel, the scheme therein also shows that when action is proposed to be taken against an employer, the recommendation of the Committee needs to be to the District Officer.

25. Without prejudice to his right to demonstrate later on that facts urged by the petitioners do not constitute Sexual Harassment as defined in Section 2(n), learned Senior Counsel states that here ICC did not verify the basic facts to find out whether it has got necessary jurisdiction to embark upon the inquiry and hence very approach of ICC is bad. He draws support from judgment of Hon'ble Apex Court in case of Addanki Tiruvenkata Thata Desika Charyulu (Since deceased) and after him his legal representatives Vs. State of Andhra Pradesh and Another, to buttress this contention.

26. In facts before us it is not in dispute that the Act has come into force from 09.12.2013. The ICC accordingly has proceeded in terms of the 2013 Act to enquire into the matter. Records also show that the complainant no. 1 i.e. petitioner in Writ Petition No. 3449/2013 examined 4 witnesses before the ICC; while the complainant 2 i.e. Petitioner in Writ Petition No. 3450/2013 examined two witnesses. Third petitioner, on account of her pregnancy and delivery of a child, could not participate in the inquiry.

27. During arguments both the learned Counsel have invited attention to the definition of phrase "aggrieved women" as contained in Section 2(a) to show that such women need not always be the employee of a workplace. Similarly they also relied upon definition of respondent in Section 2(m) to show that the respondent need not necessarily be an employer or employee. Various hypothetical cases were pressed into service by them to show that a female employee may be required to visit workplace of another employer and may be subjected to harassment at such other workplace by an employee of that workplace. Shri Bhandarkar, learned counsel has also submitted that house wife not in employment or not earning anything may visit a workplace (as defined) to purchase grocery or vegetables and may be subjected to ill-treatment by an employee at that workplace. Effort has also been made to show that such female, whether employed or not, may be traveling by public transport and that public transport may be a workplace for respondent who misbehaves. Illustration of a lady employee sweeping public road or of a gardener in public garden were also taken. Attempt of respective counsel was to further their arguments about the scope of jurisdiction available to ICC or LCC (as the case may be), in such matters. Petitioners by taking such examples, attempted to urge that the ICC in present matter possessed jurisdiction to proceed against Head of the

Department, Principal, Wife of the Principal, who also happens to be an employee of the College, and also against the President and Secretary of the parent Public Trust. On the other hand, effort of Shri Kaptan, learned Senior Counsel was to demonstrate that Head of the Department, Principal, President and Secretary, being "Employers" cannot be subjected to jurisdiction of ICC.

28. Here the status of petitioners before this Court as women receiving wages and therefore, in employment of respondent no. 3 College is not in dispute. The fact that respondent no. 4 is the Principal of that college, one of the respondent is Head of Department of Geology in said college, while other respondent is wife of said Principal and an Employee of very same college, are not in dispute. Hence, basic question which needs to be addressed by this Court is about validity of treatment extended to junior college and senior college, as a single workplace. The question needs to be addressed in the background of the Scheme of 2013 Act, and also these admitted facts. The illustrations taken hypothetically by the respective Counsel may require a scrutiny only if occasion therefor arise. It is settled principle that otherwise there is no need to undertake an academic exercise. This question of recognition as a single workplace also takes into its fold the challenge to nomination of Professor Brahamankar, as member of ICC.

29. Various hypothetical illustrations relevant to comprehend the sweep of the 2013 Act were used by learned Counsel to buttress their respective view-points. Instead of again mentioning all those examples, we find it appropriate to summarize some questions which may require scrutiny in such matters. Such questions may be :--

Whether the Act deals with sexual harassment of employed woman only?

Whether the Act deals with only instances of sexual harassment having some nexus with service conditions of aggrieved woman?

Whether the Act deals with sexual harassment at workplaces only?

Whether the Act deals with sexual harassment at any workplace or at workplace where aggrieved woman or respondent works?

Whether aggrieved woman or respondent must have some connection with the workplace where the sexual harassment takes place?

Whether respondent employer who satisfies ingredients of "employee" can be dealt with by ICC? Whether ICC can not inquire against employer who is not employee?

Whose service conditions or rules i.e. of workplace of incident or of aggrieved woman or of respondent are relevant?

Which is relevant ICC i.e. committee - one at workplace where sexual harassment takes place or one formed by employer of respondent or of aggrieved woman?

Whether elected office bearers, officers employed by the artificial employers (legal persons) like cooperative society and its consultants all are "employees"?

30. Before construing the phrases employed by Parliament in Definition section, one has to note that the same are very wide and do not necessarily call for reading them down to curtail natural their sweep or to reduce the area of the field ordinarily covered by the 2013 Act. In facts before us, the petitioners are in the employment of an artificial person i.e., a Society registered under the provisions of Societies Registration Act which is also a public trust registered as such under the Bombay Public Trust Act. The respondents claim exemption from the purview of ICC for the Principal of College as also for Secretary and President of the Public Trust which administers that College. Facts show that the Principal is in fact in employment of the College and is recognized as an employee for the purposes of Maharashtra Universities Act. Exemption for these persons is being claimed by pointing out that they are "employers" and hence, cognizance of such grievance against them can be taken by LCC only and not by ICC. Petitioners challenge constitution of the ICC by urging that an employee like Dr. Bramhankar on roll of junior college could not have been nominated on it. Their effort is to demonstrate that senior college in which Petitioners, Principal, wife of Principal or Head of the Department work constitute a workplace which is separate and distinct as compared to junior college, hence both establishments must have their separate ICCs. Thus, we are called upon to construe only the terms "employee", "employer" and "workplace" in this matter.

31. We find the following definitions relevant for this purpose :-

Section 2. Definitions

In this Act, unless the context otherwise requires,--

(a) "aggrieved woman" means--

(i) in relation to a workplace, a woman, of any age, whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;

(ii) in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house;

This definition can be conveniently examined together with Section 2(m) which defines "respondent".

(e) "domestic worker" means a woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or full time basis, but does not include any member of the family of the employer;

(f) "employee" means a person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer,

whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name;

(g) "employer" means--

(i) in relation to any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organization, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;

(ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace; Explanation.--For the purposes of this sub-clause "management" includes the person or board or committee responsible for formulation and administration of policies for such organization; (iii) in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees; (iv) in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker;

When word "employed" is used while defining a "domestic worker" or in relation to a dwelling place or house, while referring to aggrieved women, phrase used is "whether employed or not". Thus, the 2013 Act does not envisage an "Aggrieved Woman" to be a woman always under a contract of employment with the workplace. Definition of "employee" is very wide, not gender specific and shows that there must exist a contract of employment with the workplace and terms or conditions thereof or wages are not very relevant. It also covers HOD or employer who has a contract with the management and regulates or exercises supervision over the workplace. A helper brought by such an employee to a workplace to help him in completing the assignment with the employer is also included as "knowledge" to employer is irrelevant. Act defines "employer" in equally wide terms. Inclusion of HOD qua a workplace of Government or Local Authority therein appears to be in consonance with provisions of labour and industrial legislation. Qua other workplaces, any person responsible for the management, supervision and control of the workplace; is recognized under Clause (ii) which deals with workplaces not covered under Clause (i). But Clause (iii) in contrast envisages workplaces "covered" by clauses (i) and (ii) both. Inclusion of a person taking policy decisions or even a contractor discharging obligations of employer qua an employee of all workplaces vide clause (iii) supports the legislative intent to give wide sweep to the phrase "employee" and the workplace. Thus rather loose or liberal concept of employer seen in the 2013 Act is an attempt to reach women at as many workplaces as possible which again

is consistent with very broad concept of "employee".

32. Parliament has enacted an Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto. It notes "And whereas it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace;" Section 3 prohibits Sexual Harassment absolutely at a workplace. At-least expressly, it does not restrict itself to any particular workplace either of Aggrieved Woman or of respondent However, in present facts we can presume that the 2013 Act restricts itself to workplace of either Respondent or Aggrieved Woman as here it is a common workplace. Aggrieved Woman and Respondents are the fundamental concepts in the scheme of Enactment. Section 2(a) defining an aggrieved woman though uses the words "in relation to a workplace", at the cost of repetition, it must be remembered that the Parliament, by putting words "whether employed or not", emphatically rules out any need of master-servant relationship between such Aggrieved Woman and the respondents as far as its clause (i) is concerned. In clause (ii) for a domestic worker, the need of such relationship is expressly mentioned. Other important provision in this connection is Section 2(n) which defines "respondent" in a gender free/neutral manner again without restricting it to either employment of such respondent or to a workplace. Does this mean that Sexual Harassment has to be at some workplace where either Aggrieved Woman or Respondent is working or then it may be at some third place which may qualify to be a "workplace" though neither Aggrieved Woman nor Respondent is "employee" thereat? These issues do not squarely arise for determination before us. But then the basic object of the Parliament is to provide security to the woman. The mode and manner in which the basic concepts are exploited by it, leave no manner of doubt that design of the Parliament is to provide safety and security to women at all workplaces. This satisfaction or finding is sufficient in this case. When the intention of the Parliament is very clear, it can not be curtailed by viewing the legislation through the judgment of Hon'ble Apex Court in the matter of Vishaka vs. State of Rajasthan (supra). Judgment of Hon'ble Apex Court in case of Dayaram Vs. Sudhir Batham and Others, and of the Division Bench of this Court in case of Ajaykumar Yadaorao Nikhar Vs. State of Maharashtra and Others, can be conveniently relied upon here to reject argument of petitioners to construe the legislation in the background of Vishaka vs. State of Rajasthan (supra).

33. Mere look at the definition of words "employee" and "employer" reveals that both occupy the fields which are not mutually exclusive. Some posts or designation shall fall under both. A high ranking lady officer occupying managerial or supervisory post in employment of State or Public Body, Company or an Institution may become victim of Sexual Harassment. She may exercise administrative powers over several subordinates. So long as she is answerable to somebody else, may be an artificial person, she may in that eventuality, qualify to be an employee. A lady head of the department or principal or chief executive

officer may therefore fall under both these definitions Similarly, the "respondent" may also hold these posts and therefore, is covered under both these heads. Normally these concepts are mutually exclusive and will not overlap. But we find that in the 2013 Act these concepts are loosely defined to enable the 2013 Act to reach as many respondents as necessary to advance effectively the object and to curb the mischief. Section 2 itself opens with the qualifying phrase "In this Act, unless the context otherwise requires,". Thus question whether respondent is an employee or employer will call for determination in the context of the facts and situation. We find that various concepts have been defined deliberately widely and also wisely. The entire 2013 Act needs to be viewed as a net cast by the Parliament to cover as many establishments as possible; a net woven by using various concepts as its units giving it spring like qualities. Definition of workplace and unorganized sector leave no manner of doubt about the expanse of net foreseen by the Parliament. Concepts like "Employee" and "Employer" in definition clause before us is like a spring which possess property of both expanding and contracting to meet the situation. One spring or concept may be required to be stretched while the other compressed to further the object of such legislation. Parliament appears to have left it to executive to use this legislation giving it adequate elbow-space or maneuverability looking to the mischief sought to be prevented and to advance the object firmly. Restricting or curtailing the meaning of any one or more of the concepts and/or then expanding the other/s does not cause any damage to the fabric of net but augments its strength or capacity. To us, the "employee" and "employer" appear to be interdependent concepts warranting either narrow or liberal approach in the perspective of the context to preserve the legislative sanctity of definition of "Aggrieved Woman", "Respondent" and to further the object of the 2013 Act. When "Aggrieved Woman" happens to be an employee, concept of "employer" as defined will have to be understood in extremely narrow manner thereby pushing into the fold of "employee" even a high ranking officer or an elected office bearer, whether paid or not but owing some obligation to the superiors or superior body like managing/ executive committee or general body.

34. Respondents before us do not demonstrate that President or Secretary of the Educational Trust are not answerable to either the managing committee or then the Principal of College is similarly not answerable to anybody or any body. Reliance upon Section 6 of the 2013 Act by learned Senior Advocate to show that as complaint here is against either the President or Secretary or the Principal, the Local Complaints Committee (LCC) alone is competent to inquire is therefore uncalled for. Section 2(m) lays down that "respondent" means a person against whom the aggrieved woman has made a complaint u/s 9. This definition of "respondent" is gender free and does not associate "him/her" with any workplace at all. Similarly it also does not specify that such person has to be an "employee". Read in contradistinction with "Aggrieved Woman", it makes clear that grievance of Aggrieved Woman has to be in relation to workplace and she need not be "employee" of that workplace. If for present controversy, the object

of the enactment i.e., the 2013 Act is kept in mind, it can be accepted that the Sexual Harassment must be at a workplace where either the Aggrieved Woman or the Respondent is employee. Thus construed, "employer" appears to be a very small field and all those working in various capacities either managerial, administrative or supervisory, whether they derive some benefit or then work even voluntarily, if are answerable for any lapse or wrong on their part to the management, will be covered under the phrase "employee". Coming back to facts at hand, though Head of the department finds inclusion as employer, still it is not in dispute that he has superiors like principal and management to whom he is answerable. He can not be the authority at top. Here, the Society or Public Trust being the administrator of College, it is obvious that final authority to take any decision or to give finality to any action or decision is with it. Maharashtra Universities Act, 1994 enables an aggrieved employee of a college remedy of approaching either the grievances committee or the college tribunal. The head of department or the principal can thus assail the action of management before these forums. Hence, in appropriate circumstances, they can be recognized as employees. The President of the Society or its Secretary are also not final authorities and are answerable to the executive committee or the board of directors, as the case may be. The General Body of Members has ultimate authority to overrule the executive committee or the board of directors. Thus, president or secretary as such remain subordinate to these two superior bodies. Its extent and scope will be governed by various legal provisions including the scheme or constitution or byelaws of Society/Trust. Hence in this 2013 Act, unless the context otherwise requires, they also need to be treated as employee and ICC had jurisdiction over them. ICC will have jurisdiction on every person who can be placed as "employer", if he/she is a "respondent" and falls under otherwise wider definition of term "employee". Phrase "whether for remuneration or not," in said definition needs to be given its full natural sweep. Concept of either employee or employer as defined must be understood in a way conducive to further the object of enactment and unless otherwise necessitated, in favour of Aggrieved Woman. The concept of Employer, viewed from the perspective of Respondent, shall occupy a very narrow field and will include such of the respondents who do not fit in definition of employee.

35. Question whether a senior college and junior college need to be treated as two distinct workplaces now calls for attention. Section 2(o) which defines "workplace" reads :---

"workplace" includes -

(i) any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;

(ii) any private sector organization or a private venture, undertaking, enterprise,

institution, establishment, society, trust, non-governmental organization, unit or service provider carrying on commercial, professional, vocational, educational, entertain mental, industrial, health services or financial activities including production, supply, sale, distribution or service;

(iii) hospitals or nursing homes;

(iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;

(v) any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;

(vi) a dwelling place or a house;

This definition is inclusive and again deliberately kept wide by the Parliament to ensure that any area where women may be subjected to Sexual Harassment is not left unattended or unprovoked for. Its Clause (v) highlighted by us above shows even an artificial extension thereof and it may include workplace of other employer. Section 2(p) defining "unorganized sector" in relation to a workplace also brings out this intention. This wide canvass brings to fore the intention to provide protection and prevention at all possible workplaces where either Aggrieved Woman works or may be or visit in connection with her duty or the Respondent is at work. Hence any Woman at her workplace can not be disrespected by any body but similarly, she can not also be disrespected when she is at workplace of the Respondent. Section 19 dealing with the duties of employer mandates that every employer has to provide a safe working environment for a woman at the workplace which includes even safety from the third persons coming into contact with her at the workplace. Clause (h) of Section 19 is also conducive to this interpretation.

36. Whether this noble object of the 2013 Act can be allowed to be defeated by the technicalities like need of a separate ICC for each establishment of the Employer. Surprisingly, here the Aggrieved Women urge for such separate ICCs while the Respondents attempt to point out unity and integrity of otherwise two separate establishments. Standards 11th and 12th constitute a Junior College and student thereof is examined by the Maharashtra Higher Secondary and Secondary Board at the end of 12th class. Service conditions of teaching and non-teaching staff therein are regulated by Maharashtra Employees of Private Schools (conditions of service) Regulations Act, 1977 and 1981 Rules framed thereunder. Students passing 12th standard may then take admission in Senior College of same management or go to other Colleges or Streams. It is not necessary for management to run both the types of Colleges. Service conditions of teaching and non-teaching staff in Senior Colleges are regulated by Maharashtra Universities Act and Statutes or Rules framed thereunder as per UGC guide lines. Recruitment process to both theses Colleges is different. Hence, legally Junior

and Senior Colleges form two distinct and independent establishments which have no functional integrality. Thus, even if very same management may run both these type of Colleges, they can never be clubbed together. Hence, ideally there need to be two ICCs for both these establishments. However the problem arises when the staff and students of both these establishments use same classrooms, same playground, library or laboratory and other common facilities like office room, waiting hall or common room or rest rooms. The staff of otherwise distinct establishments must thus be frequently coming in contact with each other and this may lead to frictions or problems like one dealt with in the 2013 Act. A situation where Aggrieved Woman is from Junior College and Respondent is from a Senior College or vice-versa, therefore, may also emerge. It is workplace for all of them. When above definition of workplace is scrutinized in this background, it does not contain a bar against providing a single ICC for such a single or common workplace. It may at the most only desire a separate ICC for distinct workplaces when the same are geographically separate or inconveniently located. This obligation is cast upon the employer for the convenience of Aggrieved Woman. Common or one ICC in a contingency like present one is definitely helpful to all and also to smoothly deal with the allegations of Sexual Harassment at one go avoiding the duplication and other related difficulties.

37. We therefore find the constitution of one/common ICC for a junior college and senior college in this case justified. Even otherwise, Section 4(2)(c) of the 2013 Act itself contemplates association of one member from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment. Thus, when three of the total 4 members on ICC are validly nominated and in all its meetings there was quorum, it follows that merely because one of its member is from junior college, that by itself will not be enough to vitiate its proceedings. The petitioners therefore must additionally plead and prove some prejudice. Petitioners urge that the said member i.e., Dr. Brahamankar is only a Shikshan sevak and being a probationer, at mercy of the management. According to them, Dr. Brahamankar is not free to take an impartial decision. We leave this issue for consideration little later in this judgment. Validity of nomination of Dr. Ghatole on ICC must be examined at this stage. Section 4 sub-Section (5) of the 2013 Act disqualifies a Presiding Officer or Member of such Committee if he is convicted for an offence or against whom an inquiry for commission or any offence under any law is pending and he is liable to be removed from the Committee. One lady employee filed a complaint u/s 506 of the Indian Penal Code against said Dr. Ghatole which was rejected at threshold and the grievance of that lady employee is now being looked into by the Sessions Court in Revision u/s 397 of Cr.P.C. filed by her. Thus, Dr. Ghatole is still not convicted and as revision is pending, it can not mean that an inquiry into any offence or investigation against him is pending. If such revision is allowed, an inquiry into some offence or investigation against him may start. But then, in such sensitive matters, when three lady employees pose

themselves as Aggrieved Women, why could not Management nominate a person with clean slate is the moot question. This becomes material when the inherently weak employee (according to his service status) like Dr. Brahamankar is associated with Dr. Ghatole.

38. Brief scrutiny of procedure followed by the ICC also becomes necessary at this stage. Late arrival of NGO representative Smt. Pankule on more than half of the dates on which ICC sittings were held shows that on said date the presiding officer Prof. Madhugiri was in minority. Two weak members viz. Dr. Ghatole and Dr. Brahamankar constituted majority and they were later reinforced by Smt. Pankule. Questions on the defense of the Respondents were put to petitioners on 9th and 10th January, 2014. On 9th January, Smt. Pankule was late by 3.45 Hrs. and on 10th, January she was absent. In fact, legislative object of providing a NGO member is to keep on ICC an independent and impartial person in position to command respect and compliance from influential management. Instead of making any comments, we will note what the two inquiry reports on records reveal.

39. After receipt of report from the Presiding Officer of the ICC-Professor Mrs. Madhugiri, and separate report from other three members, respondent no. 4 Principal has filed an additional affidavit vide St. No. 1398/2014. He has attempted to explain the adverse findings against him in the report of the Presiding Officer. He has also stated that on 06.01.2014 he was given say of two petitioners at 4.30 p.m. and asked to read it. He got another say at about 6.45 p.m. and was called upon to cross-examine one of the petitioner, without giving any opportunity to read it. He mentions that petitioners were taunting and insulting the Members of the Committee and also respondent no. 4. He explained that in this situation, he expressed desire to avoid face to face cross examination. He further says that his examination in chief was recorded on 07.01.2014. He has then stated that on 10.01.2014 at about 2 p.m. he submitted application to ICC demanding copies of the statements of complainants (Petitioners), and their witnesses in order to enable him to produce his witness. At 10.30 p.m. he was asked whether he would like to examine any witness and close his case. As till then no statements were supplied to him, he closed his case. At 10.45 p.m. he was handed over fresh documents which mention that it was cross examination of petitioners by ICC Members. He went home and read those papers and found it necessary to rebut the contents. Hence, on 11.01.2014 he sent an e-mail seeking permission to lead evidence. He further states that one Member of ICC (Smt. Pankule) found substance in his request and hence, had requested the Presiding Officer to hold meeting of ICC to give him (respondent no. 4) an opportunity.

40. It is in this background, when the report submitted by three members is perused, the NGO Member Smt. Pankule, has mentioned that behaviour of petitioners during inquiry was arrogant, intimidating and they had "shown scant disregard to do so", the Presiding Officer did not record this mis-demeanor,

though she was requested to do so and the proceedings were abruptly closed after meeting dated 10.01.2014. She then mentions that as she found it necessary to obtain clarification from respondent no. 4, she sought further meeting of ICC, but the Presiding Officer refused. She also refers to e-mail of respondent no. 4 and request made by him to submit his reply. She states that she accordingly requested the Presiding Officer to hold meeting of ICC, but the Presiding Officer did not respond. The Presiding Officer sent e-mail on 12.01.2014 to ICC Members to prepare their individual reports and submit it to her on 13.01.2014 at 11 a.m. The Presiding Officer had directed the Members to give report on points for consideration mentioned therein. She sought permission from the Presiding Officer to hold the meeting because Presiding Officer had reported ill. But, Presiding Officer did not grant such permission and informed that the meeting would be illegal. She held an informal meeting with two other members, discussed the material on record. She then mentions the reasons in support of her findings in the report. She reiterates that conduct of petitioners during inquiry was arrogant. She mentions that one of the petitioners could not appear before the ICC because she delivered a child during inquiry.

41. In the light of this report, perusal of report submitted by the Presiding Officer, Smt. Madhugiri, reveals that she was not given any appointment order about her nomination on ICC. She has mentioned that when she wrote letter on 19.10.2013 demanding records of old complaints filed by the petitioners, she was informed that those records were not available. She has further mentioned that the respondent nos. 4 and 5 remained absent throughout the proceedings, though they were informed and served with notice repeatedly. She points out that the President did not file any submission and Secretary gave reply running into two pages, mainly mentioning that he cannot be arrayed as "respondent". She has further mentioned that copies of meeting proceedings and summary thereof was handed over to each of the parties. In paragraph no. 10.1.8, she has mentioned that application for engagement of lawyer moved by the petitioners and application for video-graphing/videotaping the proceedings came to be rejected in the light of provisions of Rule 7(6) of the Rules and Section 16 of the 2013 Act. She has then mentioned that the Principal was not ready to come face to face with the petitioners. She mentions that all parties were directed to submit entire record in original, but, entire record was not submitted and only certain documents were made available. She then points out how conciliation in view of mandate of Section 10 could not be attempted or undertaken, as respondents refused to cooperate.

42. In paragraph no. 11 of the report she mentions that points for consideration were communicated by her on 12.01.2014 to the Members of the ICC so that responses in their report could be comparable in case of difference of opinion. She has also mentioned points for consideration suggested by her in said paragraph.

43. She has then mentioned how the evidence of petitioners remained un-

challenged and there was no follow up action on reports/complaints immediately by the management. She has also pointed out non-cooperation of three members of the ICC.

44. It is this material available on record which needs to be perused to find out correctness of the procedure followed by the ICC. But here question whether requirements of Section 13 are satisfied or not needs consideration. Submission of two separate inquiry reports by 4 members of the ICC here gives raise to said issue. One report is submitted by the presiding officer Professor Madhugiri while the other report prepared by NGO representative Smt. Pankule is also signed by Dr. Ghatole and Dr. Brahamankar. The relevant legal provision i.e., Section 13 of the 2013 Act reads :--

13. Inquiry report.--(1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be--

(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of Section 15: Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local Committee may forward the order for 57 recovery of the sum as an arrears of land revenue to the concerned District Officer.

(4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.

45. Petitioners rely upon the judgment of Hon''ble Apex Court in case of Vidya Vikas Mandal and Another Vs. The Education Officer and Another, This judgment considers provisions of Rule 37(6) of the Maharashtra Employees of Private Schools (conditions of service) Rules, 1981 which read as under :--

37. (4) The convenor of the inquiry committee shall forward to the employee or the Head, as the case may be, a summary of the proceedings and copies of statements of witnesses, if any, by registered post acknowledgment due within four days of completion of the above steps and allow him a time of seven days to offer his further explanation, if any.

(5) The employee or the Head, as the case may be, shall submit his further explanation to the convenor of the inquiry committee within a period of seven days from the date of receipt of the summary of proceedings, etc., either personally or by registered post acknowledgment due.

(6) On receipt of such further explanation or if no explanation is offered within the aforesaid time, the inquiry committee shall complete the inquiry and communicate its findings on the charges against the employee and its decision on the basis of these findings to the Management for specific action to be taken against the employee or the Head, as the case may be, within ten days after the date fixed for receipt of further explanation. It shall also forward a copy of the same by registered post acknowledgment due to the employee or the Head, as the case may be. A copy of the findings and decision shall also be endorsed to the Education Officer or the Deputy Director, as the case may be, by registered post acknowledgment due. Thereafter, the decision of the inquiry committee shall be implemented by the Management which shall issue necessary orders within seven days from the date of receipt of decision of the inquiry committee, by registered post acknowledgment due. The Management shall also endorse a copy of its order to the Education Officer or the Deputy Director, as the case may be.

Rule 36 sub-rule (2)(a), dealing with the composition of the inquiry committee reads thus:-

36. (2)(a) in the case of an employee-- (i) one member from amongst the members of the Management to be nominated by the Management, or by the President of the Management if so authorized by the Management, whose name shall be communicated to the Chief Executive Officer within 15 days from the date of the decision of the Management;

(ii) one member to be nominated by the employee from amongst the employees of any private school; (iii) one member chosen by the Chief Executive Officer from the panel of teachers on whom State/National Award has been conferred;

These provisions find appreciation in paragraph 9 of the judgment where the Hon''ble Apex Court observes as under :--

9. As rightly pointed out by the learned counsel for the appellants, Rule 37(6), which is mandatory in nature, has not been strictly complied with. The inquiry

committee comprising of three members, as already noticed, only one member nominated by the Management has submitted his inquiry report within the time stipulated as per Rule 37(6) and admittedly, the other two members nominated by the employee and an independent member have not submitted their report within the time prescribed under Rule 37(6). However, the learned Judges of the Division Bench, though noticed that the two members out of three found the employee not guilty, failed to appreciate that the said findings by the two members of the Committee were submitted after the expiry of the period prescribed under Rule 37(6). In our opinion, the report submitted by individual members is also not in accordance with the Rules. When the Committee of three members is appointed to inquire into a particular matter, all the three members should submit their combined report whether consenting or otherwise. Since the report is not in accordance with the mandatory provisions, the Tribunal and the learned Single Judge and also the Division Bench of the High Court have committed a serious error in accepting the said report and acting on it and thereby ordering the reinstatement with back wages. Since the reinstatement and back wages now ordered are quite contrary to the mandatory provisions of Rule 37(6), we have no hesitation in setting aside the order passed by the Tribunal, and learned Single Judge and also of the Division Bench of the High Court. In addition, we also set aside the order passed by the Management based on the report submitted by the single member of the Committee, which is also quite contrary to the Rules.

46. Thus, when law envisages submission of its findings by the inquiry committee to the school management, an individualistic appreciation has not been found sufficient to meet the legal requirements. Hon'ble Apex Court has found a "combined report" by all the members of the inquiry committee must. It qualifies this requirement by employing the words "whether consenting or otherwise". Thus, every member has a right either to agree or to disagree with the majority. Disagreement is possible when a single or combined report is attempted. The above observations of the Hon'ble Apex Court also hold good qua Section 13 of the 2013 Act. It expressly uses the words like "a report of its findings", "such report" or "arrives at the conclusion," implying a singular number and therefore, a combined single report. Section 13 speaks of a ICC as one entity. When there are total 4 members on ICC, a report or decision by the majority is not ruled out. But when the ICC is a single committee and there is provision for quorum, it is expected to function as a single body. Highlighted part of Section 13 (supra) leaves no manner of doubt that in such a serious matter of public importance, the Parliament expected a collective application of mind and a combined report. When such fact finding body is comprised of more than one member, it is inherent that all hear the controversy together and are benefited by the experience and expertise of each other by sharing/exchanging their views. If every body sits as an individual without any dialogue with the other members and then submits his findings also without deliberations or consultation with the others, very purpose of providing a multi-membered body gets frustrated. Such

separate report then becomes a separate report of the several individuals submitting it and may suffer from individual's prejudices or drawbacks. A joint inquiry committee is prescribed to eliminate such elements specific to every individual and to bestow advantage of the expertise of every individual in his own field. Persons from different walks of life with varied knowledge and experience as also different approaches come together to form one committee. This artificially created person i.e. one committee (here ICC) therefore must get colour of personality of its every constituent and in the process, bias or prejudices of one are bound to be diluted by the character of the others. Such an artificial body acquires its personality only when the several members forming it sit together, share their view points and gain advantage of the perspective of the other members. This exchange may lead to a combined single inquiry report i.e., a unanimous decision by all. In a given case, one of the learned member may not agree with the view of majority but then, he will be electing to disagree after having advantage of the wisdom of others. His disagreement therefore evidences itself or surfaces in joint deliberations and others also get an opportunity to weigh his view-point. Other members therefore get a chance to know the view of minority and to decide to disagree with it by majority. Thus, reasons for agreement or disagreement are not pre-decided and evolve out of process of joint discussion. When an individual on such multi-membered ICC avoids to speak with others, he robs the artificial person of one facet of its character desired by the Parliament and such ICC is therefore never legally complete or born. Thus, report signed and submitted by majority members of such an ICC without undertaking exercise of joint deliberations is void and unacceptable.

47. In these writ petitions, the so called report of majority is authored by NGO member Smt. Pankule who kept herself away from the proceedings of ICC on many as also on important occasions Her report shows her singular effort and does not mention any deliberations with Dr. Ghatole or Dr. Brahamankar. We have already noted above the objections by Petitioners to the inclusion of these two members as part of ICC. There is nothing before us to reveal that these two members have given any thought to the controversy. Merely because they have placed their signatures at the end of personal report of Smt. Pankule, in this situation, Respondents can not be said to have discharged burden cast upon them to demonstrate that Dr. Ghatole or Dr. Brahamankar has applied mind to the material on record. In any case, they have not applied mind to the report submitted by Presiding Officer Professor Madhugiri. Her report shows an effort made by her to call for reports from individual members but then that again is not enough to fill in the lacuna. Material on record shows absence of spirit of cooperation between the ICC members. As the deliberation was never even attempted and there is no effort made collectively either to agree or to disagree, we can not read either of the two reports placed on record which are deprived of its fundamental joint character or nature. Both the reports are therefore discarded. As such, there is no reason to examine the perversity or otherwise of any of such unsustainable reports.

48. Majority report not giving importance to earlier 4 inquiry reports, presiding officer using it as a point against Respondents, dubious nature of role played by Dr. Ghatole and Dr. Brahamankar-the 2 infirm nominations on ICC by management, procedure adopted by the ICC, not compelling the President, Secretary or Principal to enter the witness box, ICC members themselves putting defense of Respondents to Aggrieved Women; are all grave errors sufficient to give rise to a reasonable apprehension in the mind of any Aggrieved Woman and to cast doubt on independence of ICC. In this situation, we do not find it necessary to open the letter forwarded in confidence by presiding officer Prof. Madhugiri preserved in sealed envelop by this Court. The employer has to be genuinely concerned with the safety of woman at workplace under him/it and can not stage a farce of compliance with the obligation cast by the 2013 Act. Here the efforts made by the Respondents show lack of sincerity and earnest desire to really scrutinize the alleged grievances of Petitioners as per law. The importance of an NGO Member on ICC need not be emphasized. Said member must be really concerned with all ICC proceedings and being third party, must make all-out efforts to see that any Respondent as defined in the 2013 Act does not succeed in avoiding the inquiry into his conduct. Such NGO Member must make efforts to coordinate working of various members of ICC and must see that provisions of law are respected and implemented. Such NGO representative has to strive to ensure that healthy and comfortable atmosphere prevails or is restored at the concerned workplace. Here, ICC fails to inspire confidence as also trust in the mind of Aggrieved Women about sanctity of its own proceedings and tends to defeat the spirit of the 2013 Act. It vitiates entire exercise undertaken and completed by present ICC in this matter.

49. Shri C.S. Kaptan, learned senior advocate has also submitted that contents of complaints or grievance made by Petitioners/Aggrieved Women do not constitute sexual harassment as defined in the 2013 Act. This issue should have been answered by the ICC in its report after appreciation of material on record. But as Respondents have serious arguments on jurisdictional facts and as in present matter, a remand back to a proper ICC has become essential, we find it just to allow the learned senior advocate to demonstrate it before us. Petitioners are already "nowhere" and grievance of such nature must be resolved finally as per law in the interest of all. Hence, we permit Respondents an opportunity to show that un-rebutted facts constituting grievances of Petitioners do not satisfy the ingredients of sexual harassment for the purposes of the 2013 Act. List all three writ petitions for said purpose on 28/07/2014.

50. These writ petitions are filed by the petitioners challenging their transfer orders dated 25th June, 2013. These writ petitions are filed in July 2013. Apart from challenging the transfer orders, the petitioners have sought a Writ of Mandamus directing respondent Nos. 3 and 4 to initiate departmental action against respondent No. 6 for the alleged "sexual harassment" to the petitioners. The petitioners have also sought a Writ of Mandamus directing respondent Nos. 1, 2 and 3 to constitute the Internal Complaints Committee, as contemplated by

Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as "Act No. 14 of 2013").

51. This Court by order dated 18th December, 2013 observed that after the Act No. 14 of 2013 is enacted, the Internal Complaints Committee has been constituted. This Court directed that the Internal Complaints Committee should look into the complaints made by the petitioners and that the report of the Internal Complaints Committee should be placed before this Court. Accordingly, the Internal Complaints Committee conducted inquiry and two separate reports were placed on the record as recorded in the order dated 24th January, 2014. The petitions were then taken up for hearing.

52. The learned Advocates for the respective parties made elaborate submissions relying on the various provisions of the Act No. 14 of 2013.

53. Shri Bhandarkar, learned Advocate for the petitioners has raised substantive challenge to the constitution of the Internal Complaints Committee and has submitted that the inquiry made by the Committee is illegal and consequentially the reports submitted by the Members of the Committee cannot be relied upon. Learned Advocate for the petitioners has submitted that the appointment of Professor Bramhankar as Member of the Committee is illegal and not justified as she is working in the institution as "Shikshan Sewak" and has not yet acquired status of confirmed employee. The submission on behalf of the petitioners is that the Members of the Committee are required to make inquiries on the complaints received against the employees including the senior members of the staff and also against the Members of the Management who fall within the purview of the expression "Employer" as defined in Section 2(g) of the Act No. 14 of 2013 and, therefore, the employee, who is appointed as Member of the Committee should be sufficiently strong and protected by the service conditions of permanent employee. It is submitted that the appointment of Mr. Ghatole as Member of the Committee is also illegal and contrary to the provisions of Section 4(5)(b) of the Act No. 14 of 2013. It is submitted that a criminal complaint filed against Mr. Ghatole was dismissed but a Criminal Revision Application is filed by the Complainant in that case challenging the order passed by the learned Magistrate and the said Criminal Revision Application is pending. The learned Advocate for the petitioners has submitted that in view of the pendency of the Criminal Revision Application, Mr. Ghatole is disqualified from being a member of the Committee.

54. Shri Kaptan, learned Senior Advocate appearing for the respondents 4 to 5 has submitted that the appointment of Professor Bramhankar is in consonance with the provisions of Section 4(2)(b) and the definition of "employee" as per Section 2(f) of the Act No. 14 of 2013. It is submitted that Section 4(2)(b) requires that two members should be nominated by the employer from amongst employees and Professor Bramhankar is an employee of the institution as laid down by Section 2(f) of the Act No. 14 of 2013. The learned Senior Advocate has

submitted that the appointment of Mr. Ghatole also cannot be faulted with, as according to the provisions of Section 4(5)(b) of the Act No. 14 of 2013, a person is disqualified from being Member of the Committee only if he has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him. It is submitted that the private complaint which was filed against Mr. Ghatole has been dismissed and, therefore, it cannot be said that he is disqualified from being Member of the Committee.

55. Mr. Patil, learned Advocate for respondent no. 1-University has submitted that the petitioners have not sought relief against it and the lis is purely between the petitioners and other respondents. Mrs. Khade, learned Advocate for respondent no. 6 has denied the allegation made against respondent no. 6.

56. After considering the submissions made on behalf of the petitioners and the respondents, the issue which arises for consideration is whether the constitution of the Internal Complaints Committee is proper and in consonance with the provisions of Section 4 of the Act No. 14 of 2013. The Act No. 14 of 2013 has been enacted to provide safe, secure and enabling environment to every woman, through all forms of sexual harassment by fixing responsibility on the employer as well as the District Magistrate or the Additional District Magistrate or the Collector or the Deputy Collector of every district and for laying down statutory redressal. In conformity with the objects of the Act, Section 4 has been incorporated which provides for constitution of Internal Complaints Committee. Section 4(2)(b) of the Act No. 14 of 2013 reads as follows:-

Section 4. Constitution of Internal Complaints

Committee : (1).....

(2) (a).....

(2) (b) : not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge.

57. The two Members, who are appointed on the Committee from amongst the employees should preferably be committed to the cause of women or should have experience in social work or have legal knowledge.

58. In the present case, the respondent Nos. 3, 4 and 5 have not been able to point out that Professor Bramhankar and Mr. Ghatole comply with the above mentioned requirements. Respondent Nos. 3, 4 and 5 have not placed on record any material to show that Professor Bramhankar and Mr. Ghatole have been committed to the cause of Women or have experience in social work or have legal knowledge. It is also not the case of the respondent nos. 3, 4 and 5 that none of the employees working in the institution fulfilled the above mentioned requirements and, therefore, they had no option but to nominate the above Members of the Committee. The provisions of Section 4(2)(b) of the Act No. 14 of 2013 does not require nomination of two Members amongst the employees

Simpliciter but the selection of the two Members from amongst employees is qualified with the requirement that they should preferably be committed for the cause of women or have experience or have legal knowledge. In view of this, I am of the view that constitution of Internal Complaints Committee itself is illegal and contrary to the provisions of Section 4(2)(b) of the Act No. 14 of 2013. In view of this finding, the submissions made on behalf of the respective parties about illegality of the appointment of Professor Bramhankar on the ground that she is working as "Shikshan Sewak" and has not acquired status of confirmed employee and to the appointment of Mr. Ghatole on the ground that Criminal Revision Application is pending against him, need not be delved into. The other submissions made on behalf of the respective parties relying on the various provisions of Act No. 14 of 2013 are also not required to be considered at this stage in view of my finding that the constitution of the Internal Complaints Committee itself is illegal and the reports submitted by it cannot be relied upon.

59. This Court by order dated 18th December 2013 has already directed that an inquiry should be conducted by the Internal Complaints Committee and the report should be placed before this Court. In view of this order, it is incumbent on the part of respondents 3 to 5 to constitute proper Internal Complaints Committee within ten days and the Committee should conduct inquiry and submit its report to this Court as directed by the order dated 18th December 2013 within 30 days from the date of its constitution.

60. The matter be listed before this Court after receipt of report of the internal Complaints Committee.