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In the High Court Of Kerala

Case No : W.P.(C). No. 4001 of 2016 (A)

L.S. Sibu — APPELLANT

Vs

Air India Limited and Others — RESPONDENT

Date of Decision : 08-04-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 509
Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 — Section 10, Section 11, Section 13, Section 13(3), Section 13(3)(i), Section 15, Section 18, Section 4, Section 9<

Citation : (2016) 150 FLR 488 : (2016) 2 ILRKerala 591 : (2016) 3 JCC 2077 : (2016) 2 KerLJ 434 : (2016) 2 KHC 569 : (2016) 2 KLT 374 : (2016) LabLR 732 : (2016) LIC 2419 : (2016) 3 RCRCivil 571 : (2016) 3 RCRCriminal 406 : (2016) 3 SCT 141

Hon'ble Judges : A. Muhamed Mustaque, J.

Bench : Single Bench

Advocate : N. Nandakumara Menon, Sr. Adv., P.K. Manojkumar, Smitha S. Pillai and M.C. Siny, Advocates, for the Appellant; M. Gopikrishnan Nambiar, P. Gopinath, P. Benny Thomas, K. John Mathai, Joson Manavalan and Kuryan Thomas, Advocates, for the Respondent

Final Decision : Disposed off

Judgement

A. Muhamed Mustaque, J.—1. A question regarding the compliance of principles of natural justice has arisen in this writ petition in the context of an enquiry conducted by the Internal Complaints Committee (ICC) constituted under the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as ''Act 14 of 2013'').

2. In view of the legal question that is involved in this writ petition, this Court is only addressing the legal issue bereft of facts involved.

3. The petitioner is working as an Officer-Apron in the Ground Services Department (GSD) of Air India Limited, Thiruvananthapuram. The ICC of Air India Limited, Southern Region received a complaint forwarded by the Airport

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Director. This complaint alleged to have been raised by 17 lady employees'' of Air India-SATS (AI-SATS), a joint venture company of Air India and Singapore Air Transport Services Limited. The Committee conducted an enquiry against the petitioner based on the complaint. The report of the Committee is produced as Ext.P23. The issue in this writ petition is revolved around the validity of the enquiry report, on the ground of non compliance of principles of natural justice.

4. The case of the petitioner is that he was not given any opportunity in the matter and complaint as referred in the ICC is a forged one by some officials of the joint venture company and some of the officers of the Air India to wreck vengeance against the petitioner for having filed a complaint before the Central Bureau of Investigation (CBI). Therefore, the enquiry concluded without giving an opportunity to the petitioner to cross examine the complainant and to controvert the factual finding in the enquiry report, is vitiated.

5. The stand of the Airport Authority is that the report is a preliminary report to find the involvement of the petitioner in sexual harassment as raised in the complaint. It is contended that when a prima facie case is made out based on the report, further disciplinary action would be initiated as per the Rules and Regulations of the Air India and therefore, the petitioner can defend any action proposed in such proceedings. It is further contended that on account of the secrecy and privacy required in conducting such an enquiry and to give full freedom to the complainant to depose before the Committee, an enquiry was conducted respecting dignity of the complainant and also in a fair manner. The respondents also relied on the Government of India Office Memorandum dated 16.07.2015 to justify the procedure followed in the matter. To sum up the defence of the respondents is that the report now prepared is only a preliminary enquiry report to signal the management to proceed further as against the petitioner for the misconduct based on the sexual harassment.

6. As seen from the pleadings and reports, the stand taken up the Air India as well as ICC before this Court is that an enquiry regarding misconduct on sexual harassment has not attained finality and it can be proved or disproved in the disciplinary proceedings if any initiated by the management based on the report.

7. Act 14 of 2013 was enacted to provide protection against the sexual harassment of women at work place and also for redressal of the complaint of sexual harassment. The preamble of the Act 14 of 2013 is as follows:

"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."

8. Therefore, the provisions in the Act has to be understood in the light of preamble as above. Section 4 Chapter 2 refers to the constitution of the Internal Committee, the composition of the members is by nomination by the employer. The Presiding Officer of the Committee shall be women employed as senior level at the work place. Section 9 of Chapter 4 provides for procedure of raising

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complaint by aggrieved women. Any aggrieved women in terms of Section 9 is free to raise complaint in writing before the Committee. Section 11 provides for a manner in which an enquiry has to be conducted based on the complaint. It is appropriate to refer the relevant portion of Section 11 of the Act 14 of 2013 is as follows:

"11. Inquiry into complaint (1) Subject to the provisions of Section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case, exist, forward the complaint to the police, within a period of seven days for registering the case under Section 509 of the Indian Penal Code, and any other relevant provisions of the said Code where applicable:"

9. This would show that if the respondent in the complaint is an employee, the enquiry of the complaint shall be made in accordance with the service rules applicable. Sub-section 3 of Section 11 also gives the Committee the same powers vested in a civil court under the Code of Civil Procedure, 1908 in respect of certain matters referred therein like summoning witnesses, discoveries etc. Section 13 in this case is relevant as far as to find the nature of the report prepared now. Section 13 provides as follows:

"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 often 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

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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 recovery of the sum as an arrear of land revenue to the concerned District Officer."

10. Section 13 read with Section 11 clearly indicates the enquiry to be concluded under Section 13 is not a preliminary enquiry contended by the respondents but it should be a full fledged enquiry as to the finding of fact. This is so clear from Section 13(3)(i). The enquiry that has to be conducted by ICC in same manner to prove misconduct in disciplinary proceedings as referable in Service Rules, if no Service Rules exist in such manner, domestic enquiry is conducted.

11. The status of the Committee, therefore, deemed to be an Inquiry Committee for disciplinary action under the service rules (See order of the Hon''ble Supreme Court in Medha Kotwal Lele v. Union of India [, 2013(1) SCC 311]. Thus when the enquiry is concluded, what is left to the discretion of the employer to take action in accordance with service rules for the proven misconduct. If the Central Civil Services (Classification, Control and Appeal) Rules would apply, the starting point of action referred in Section 13(3) of the Act 14/2013 is from the proceedings under Rule 15 of Part IV of the above rules. Thus, the choice left to the employer is to impose penalty in accordance with the service rules on a proven misconduct. If the service rule provides any punishment for such misconduct, the punishment can be imposed based on such findings.

12. The power of the ICC is also very clear from the Section 15 itself. The Committee can also determine the compensation payable by the delinquent to the victim. Thus, it is very clear from Sections 11, 13 and 15, the report of the ICC is the determining factor to take follow up action by the employer in accordance with service rules or otherwise.

13. In the background of legal provisions as above, every Internal Committee constituted under the Act 14 of 2013 necessarily, has to follow the principles of natural justice in conducting their enquiry. The rules framed under the Act 14 of 2013 also would indicate that the Committee shall follow the principles of natural justice [See the Rule 7(4)]. It is also specifically noted that Section 18 provides an appellate remedy as against the recommendation. This also would show that the conclusive nature of the finding of the fact in the enquiry to be made by the ICC. Thus, it has to be summed up that the enquiry conducted by the ICC as to the fact finding is final unless it is varied in appeal. It cannot be varied by the employer in a follow up action to be taken in terms of Section 13.

14. Therefore, the next question is, in what manner the principles of natural justice have to be secured in the enquiry conducted in a complaint relating to the sexual harassment. This is a delicate question to be addressed by the Committee

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itself. The natural justice has got elasticity and would depend upon the context in which it is referred.

15. The Hon''ble Supreme Court in Dev Dutt v. Union of India [, 2008 (8) SCC 725] observed on principles of natural justice is as follows:

"What is natural justice? The rules of natural justice are not codified nor are they unvarying in all situations, rather they are flexible. They may, however, be summarised in one word: fairness. In other words, what they require is fairness by the authority concerned. Of course, what is fair would depend on situation and context."

16. Lord Denning in B. Surinder Singh Kanda v. Government of the Federation of Malaya [1962 AC 322] observed as follows:

"If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them."

17. The fundamental principles relating to the principles of natural justice is that when a prejudicial statements are made, the same shall not be used against any person without giving him an opportunity to correct and contradict. In sexual harassment complaint, sometimes the complainant may not have courage to depose all that has happened to her at the work place. There may be an atmosphere restraining free expression of victim''s grievance before the Committee. The privacy and secrecy of such victims'' also required to be protected. It is to be noted that verbal cross examination is not the sole criteria to controvert or contradict any statement given by the aggrieved before any authority. Primarily, in a sexual harassment complaint, the committee has to verify and analyse the capability of the aggrieved to depose before them fearlessly without any intimidation. If the Committee is of the view that the aggrieved is a feeble and cannot withstand any cross examination, the Committee can adopt such other measures to ensure that the witnesses statement is contradicted or corrected by the delinquent in other manner. The fair opportunity, therefore, has to be understood in the context of atmosphere of free expression of grievance. If the Committee is of the view that the witness or complainant can freely depose without any fear, certainly, the delinquent can be permitted to have verbal cross examination of such witnesses. In cases, where the Committee is of the view that the complainant is not in a position to express freely, the Committee can adopt such other method permitting the delinquent to contradict and correct either by providing statement to the delinquent and soliciting his objections to such statement.

18. What is reminded here by this Court to the Committee is that a fair opportunity should be given to the delinquent in such manner the Committee think fit to consider. There is no easy and precise rule defining fair opportunity.

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19. The Office Memorandum cannot supersede the statutory provisions. The statutory provisions are very clear in what manner this enquiry has to be conducted and concluded.

In view of the above, the impugned report is set aside. The ICC is directed to reconsider the matter after giving fullest opportunity to the petitioner.

The writ petition is disposed of as above.

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