
(2006) 09 BOM CK 0108

In the Bombay High Court

Case No : Writ Petition No's. 282 of 2004 and 1308, 1309 and 2364 of 2006

Prof. Manohar Dhonde and Indian Bahujan Teachers
Association (Ibta), Maharashtra State

APPELLANT

Vs

The State of Maharashtra and Others
 Asha Shantaram
Deshpande and Another Vs Prof. Manohar Dhonde and
Others
 Swati Panditrao Chavan and Others Vs The
State of Maharashtra and Others

RESPONDENT

Date of Decision : 26-09-2006

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 41D, 41D(1)
Commissions of Inquiry Act, 1952 — Section 8B
Constitution of India, 1950 — Article 14, 15, 17, 173, 19(1)
Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 202, 357
Evidence Act, 1872 — Section 132
Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule
143, 23, 28(5), 31, 33
Maharashtra State Commission for Women Act, 1993 — Section 10, 10(1), 13, 6, 9
Penal Code, 1860 (IPC) — Section 354, 376, 504, 506, 509
Representation of the People Act, 1951 — Section 5

Citation : (2007) 2 ALLMR 717 : (2007) 1 BomCR 417

Hon'ble Judges : N.V. Dabholkar, J;M.G. Gaikwad, J

Bench : Division Bench

Advocate : B.L.Sagar Killarikar, in Writ Petition No. 282 of 2004 and B.L.Sagar Killarikar, in Writ Petition No. 4170 of 2004, for the Appellant; K.B. Chaudhary, A.G.P. for Respondent Nos. 1, 6 to 8 in Writ Petition No. 282 of 2004, R.S. Deshmukh, in Writ Petition No. 282 of 2004, K.M. Suryawanshi, in Writ Petition No. 282 of 2004, V.D. Hon, for Vilas Jadhav, for Respondent No. 10 in Writ Petition No. 282 of 2004, P.R. Patil, for Respondent Nos. 9 and 10 in Writ Petition No. 282 of 2004 and V.D. Sapkal, for Respondent Nos. 11 to 13 in Writ Petition No. 282 of 2004, K.B. Chaudhary, A.G.P. for Respondent Nos. 1 to 4 Writ Petition No. 4170 of 2004, V.D. Hon, in Writ Petition No. 4170 of 2004 and V.D. Sapkal, for Respondent Nos. 7 and 8 in Writ Petition No. 4170 of 2004, for the Respondent

Judgement

N.V. Dabholkar, J.—The two Writ Petitions are pertaining to a common subject,

which can be described as "grievance relating to sexual harassment meted out to some lady teachers working in a private school." Writ Petition No. 282 of 2004 is filed by two Petitioners, who claim to be office bearers of two different associations, namely, Bharatiya Vidyarthi Sena and Indian Bahujan Teachers Association. Writ Petition No. 4170 of 2004, which was filed after about six months since Public Interest Litigation (PIL, for short) is filed by three lady teachers of the said private school, which is run by management-Respondent No. 9 in the first Writ Petition.

As many as eleven Civil Applications were also filed by different parties in these two matters, which are clubbed together right from 16.8.2004, when the first major order was passed, common in both the Writ Petitions. We may quote operative part of the order dated 16.8.2004 for ready reference;

We direct the Registrar of this Court to forward copies of both these petitions along with annexures including reply filed by the respondent no.9, with further direction that the respondent no.2 shall conduct an enquiry in the light of law declared by the Apex Court in Vishaka and others Vs. State of Rajasthan and Others, . While conducting the enquiry, the Commission shall give notice to all the concerned and hear the parties. If any party desires to record the statement in camera, the same should be permitted. After conducting the enquiry, the Commission shall submit a report to this Court within a period of three months from the date of receipt of this order by the Commission. On receipt of the report, the copies of the report shall be submitted to this Court to enable this Court to pass necessary orders, if need be.

5. We further direct that the responsible Officer representing the Commission-respondent No. 2, shall remain present in this Court on the next date of hearing. We further make it clear that the Commission (respondent no.2) shall not be influenced by the fact that both the petitions have been kept pending in this Court.

It appears from the record that the Maharashtra State Commission for Women ("MSCW" or "said Commission" for the sake of brevity, henceforth) prayed for time extension, by its communications dated 5.11.2004 and 9.2.2005. By order dated 22.11.2004, this Court was pleased to extend time to submit the report, upto 20.12.2004. On 20.12.2004 and 2.3.2005, further time extensions were granted, by two months and seven weeks respectively. The said Commission has submitted its report vide forwarding letter dated 9.4.2005. This Court took a note of the report submitted and ordered supply of copies of the same to all the parties, by order dated 26.4.2005.

2. In order to comprehend the scope of this peculiar litigation, we find it necessary and desirable to refer to the various Civil Applications filed and orders passed therein.

Writ Petition No. 282 of 2004 ("PIL" for short) was filed by representatives of the two associations, initially reciting nine respondents, namely, State of

Maharashtra, MSCW, Charity Commissioner, Bombay, Joint Charity Commissioner, Aurangabad, Dr. Babasaheb Ambedkar Marathwada University, Director of Education, Pune, Deputy Director of Education, Aurangabad, Education Officer (Secondary) Z.P. Aurangabad and Jai Tulja Bhavani Shikshan Prasarak Mandal, Aurangabad, which is a management of the school, wherein the three lady teachers (petitioners in second Writ Petition) are / were serving. By the time the matters came up for final hearing, the list of Respondents is extended by four more and how they happened to be added, will be clear as and when we refer to the Civil Applications and orders passed therein. In the second Writ Petition, eight parties were recited as Respondents, i.e. State, Secretary, Department of School Education, Deputy Director of Education, Aurangabad, Education Officer (Secondary), Z.P. Aurangabad, Shri P.K. Nalawade, Administrator and convener of Enquiry Committee constituted by the management, Shri Rangnath Bhaurao Jadhav, who was Vice President of the society-management. Principal and Vice Principal of the educational institutions, namely, Jai Bhavani Vidya Mandir and Junior College are impleaded as Respondent Nos. 7 and 8. By referring to their names, impliedly, it is indicated that their impleadment is in their personal capacity and reference to their designation is eventual.

3. It is by order dated 20.2.2006 in the last Civil Application No. 941 of 2006 that the two Writ Petitions were given preferential date of hearing and the Petitions were fixed for final hearing on 14.3.2006 at 2.30 p.m. In fact, they were heard on 21st, 26th June, 3, 4, 11, 12 and 14 July, 2006. Still on record, there are four Civil Applications pending in the PIL and 2 in the second Writ Petition. By Civil Application No. 1308 of 2005, Principal Asha and Vice Principal Leela have prayed for intervention in PIL, by directions to the Petitioners therein to add them as Respondent Nos. 10 and 11. By order dated 2.3.2005, it is ordered that this civil application can be considered at the time of final hearing. At the outset, when these two ladies were already Respondent Nos. 7 and 8 in second Writ Petition and the two Writ Petitions were already clubbed together, as can be seen from order dated 16.8.2004, we cannot avoid feeling that the application for intervention was not at all necessary. Feeling uncomfortable by this hanging stage, the two ladies filed Civil Application No. 7936 of 2005, which is disposed of by this Court vide order dated 14.7.2005, with the following order.

Heard. By consent, order dated 2.3.2005 passed in Civil Application No. 1308 of 2005 is hereby recalled and the present Civil Application is allowed and the applicants are to be joined as Respondent Nos. 12 and 13. Amendment to be carried out forthwith." We feel that, with the order in subsequent application, Civil Application No. 1308 of 2005 is fructified and thus not alive.

By Civil Application No. 7006 of 2005, Shri Gajanan Surase, the then Registrar of Dr. Babasaheb Ambedkar Marathwada University, applied for intervention in Writ Petition No. 282 of 2004 (PIL). There were other prayers in the application, but the application was disposed of with the order as follows:

Civil Application for intervention is allowed in terms of prayer Clause (B)

By virtue of this order, Gajanan Surase came on record as Respondent No. 11. By implication, other prayers to strike down the report of the MSCW and adverse remarks therein, as against him, stood rejected, at least at that stage. By order dated 19.4.2004, this Court allowed impleadment of Shri Rangnath Jadhav, the then Vice President of the management, as Respondent No. 10. Civil Application No. 1307 of 2005 filed by the Principal and Vice Principal appears to be pending with the second Writ Petition. By this Civil Application, they have prayed to vacate the interim relief granted by this Court on 16.8.2004 in the said Petition. In fact, no separate interim relief is granted in either of the two Writ Petitions on 16.8.2004, but MSCW was ordered to conduct an enquiry and submit report, by that order which is reproduced hereinabove. Earlier, Civil Application No. 11015 of 2004 was filed by Rangnath Jadhav, on behalf of Respondent No. 9, claiming himself to be Ex-Secretary, praying for recalling the order dated 16.8.2004. The said application was dismissed by order dated 20.12.2004. The report of the said Commission having come on record on 9.4.2005, Civil Application No. 1307 of 2005 has become infructuous. The two ladies had simultaneously filed Civil Application No. 1309 of 2005 in PIL, praying for identical relief as in Civil Application No. 1307 of 2005. For the reasons above, Civil Application No. 1309 of 2005, also became infructuous. We may refer that, by Civil Application No. 11433 of 2004, the Petitioners in PIL had prayed for directions to Respondent No. 2, to provide protection to the witnesses during pendency of enquiry into the complaint of sexual harassment, as directed by this Court by order dated 16.8.2004, in terms of guidelines in Vishaka's case (supra). This application was disposed of vide order dated 20.12.2004, by directing the applicants to file proper application before the said Commission.

4. By Civil Application No. 2660 of 2005, the Petitioners in PIL have prayed for amendment of Writ Petition No. 282 of 2004. The amendment is confined to addition of three prayer clauses i.e. (A), (B) and (B-1) as follows;

(A). To direct the respondents to forthwith give wide publicity and circulate the guidelines laid down by the Apex Court in Vishaka and others Vs. State of Rajasthan and Others, for the preservation and enforcement of right to gender equality of working women in all the educational institutions, Universities, public trusts and such other similar institutions, by issuing a Writ of Mandamus or any other appropriate writ, order or directions.

(B) To direct the Respondents to forthwith issue appropriate directions to provide for consequences of suspension / disqualification of functionaries of the public trusts, educational institutions, cooperative societies and those who violated the guidelines of the Supreme Court in Vishakha's case, to stop government aid, to provide for punishment for misconduct, withdrawal of recognition or affiliation on the ground of sexual harassment of women working in such institutions, determination and payment of compensation to the victims, etc; by issuing a Writ of Mandamus or any other appropriate writ, order or directions.

(B-1). To direct the respondent Nos. 1 to 8 to forthwith initiate an inquiry against

the respondent no.9 and its office bearers for determination and payment of compensation jointly and severally by the Trustees of the respondent no.9 to the lady teachers for violation of gender equality and dignity of women teachers while working in its school/college and pay the compensation within a period of six months or such other time as may be fixed by this Honourable Court, by issuing a Writ of Mandamus or any other appropriate writ, order or direction.

We may say that PIL (WP No. 282 of 2004) in its concluding paragraph 22 contains prayer clauses A to J. However, prayers C to H are pertaining to interim reliefs. By prayer (I) costs of Writ Petition are prayed for and prayer (J) is a residuary clause, praying for any relief or order which the Court may find petitioners entitled to in the ends of justice. Earlier to that, there are three prayer clauses i.e. A, B and B (by mistake two consecutive prayers are numbered as prayer B). On comparison, it can be seen that the second prayer (B) in the main petition is verbatim prayer Clause B-1 sought to be added by way of amendment by Civil Application No. 2660 of 2005. Prayer Clauses (A) and (B) (first) of the PIL petition read as follows;

(A). To direct respondent no. 1 to forthwith take steps to amend Bombay Public Trusts Act, 1950. Maharashtra Educational Institutions (Management) Act, 1976, the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977 and the Rules framed thereunder, Maharashtra Universities Act, 1994, to provide for disqualification, suspension of Trustees and Members of the educational institutions on the ground of sexual harassment, their vicarious liability in respect of such acts of any of the Trustees/Members or staff, stoppage of government aid, punishment for misconduct, withdrawal of recognition or affiliation, payment of compensation from the grant in aid or salary etc; by issuing a Writ of Mandamus or any other appropriate writ, order or directions.

This prayer Clause, although not verbatim as prayer Clause B as sought to be added by Civil Application No. 2660 of 2005, can be said to be similar in effect. Both these prayers seek for legislation aimed at providing measures for striking at the evil of sexual harassment.

B (first). To direct respondents no. to 8 to forthwith take appropriate action in accordance with law for appointment of Administrator on the respondent no.9 and disqualify/removal of Board of Trustees of respondent no.9, by issuing a Writ of Mandamus or any other appropriate writ, order or direction.

An elaborate order is passed on 2.3.2005 in Civil Application No. 2660 of 2005 and we quote the relevant part of the said order.

2. The learned Counsel for respondent no.9 objected to the inclusion of prayer clause (A) in Writ Petition No. 282 of 2004, contending that no writ of mandamus can be issued against the legislature directing them to legislate or relegislate or amend any legislation.

3. In this view of the submission, we agree with the submission made and

objection raised by the counsel for the respondent no.9. Petition to this extent i.e. with respect to prayer clause (A) is liable to be dismissed. Accordingly, it is dismissed.

4. So far as prayer Clause (B) (first) is concerned, parties agree that prayer Clause (B) has become infructuous in view of subsequent events. Accordingly, to that extent, petition is dismissed for want of cause of action.

6. So far as prayer Clause (B) far as prayer Clause (B) far as prayer Clause (B) (second) is concerned, that would survive and accordingly petition would survive to that extent only.

7. So far as application for amendment (C.A. No. 2660 of 2005) is concerned, the same is taken up for hearing. Through the proposed amendment (prayer Clause "A"), the petitioner is seeking wide publicity and circulation of the guidelines laid down by the Apex Court in Vishaka and others Vs. State of Rajasthan and Others, . In our view, this has already been done with pronouncement of the judgment of the Apex Court. Part of amendment is thus not necessary and the same is rejected.

8. So far as prayer Clauses (B) and (B-1) are concerned, consideration thereof can be postponed till the result of the report of the Commission is received by this Court.

It can be seen that as a result of this order, prayer Clause (A), as also prayer Clause B (first), from PIL Petition, Prayer Clause (A) sought to be amended by the said Civil Application are no more available to the petitioners. We are, therefore, concerned with only prayer Clause (B) (second) from the PIL petition and prayer Clauses B and B-1 from the Civil Application. Prayer Clause (B) (second) from PIL petition being identical to prayer Clause B-1 from the Civil Application, it can be said that the scope of the first Writ Petition filed as PIL, is now confined only to prayer Clauses B and B-1 from Civil Application No. 2660 of 2005, which are reproduced hereinabove and also highlighted for the purpose of emphasis. It may not be out of place to point out here itself that prayer Clause B sought to be added by amendment, begins with "to direct the respondents to forthwith issue appropriate directions to provide for" and use of similar phrase again in the later part of the said prayer Clause i.e. "to provide for punishment for misconduct, withdrawal of recognition", gives to prayer clause, a tenor as if the petitioner is seeking directions for suitable legislation for the purpose of action against wrongs of sexual harassment against wrong doers, as also against management of the institution, which failed to prevent sexual harassment at the working place in their institutions. If that be so, no writ of mandamus can be issued for such purpose. Consequently, prayer Clause B as sought to be added by Civil Application No. 2660 of 2005 would not survive for the reasons for which prayer Clause A in the main petition is dismissed by this Court vide order dated 2.3.2005. Thus, Writ Petition would survive for only one prayer i.e. prayer (B) (second) which is equivalent to prayer (B-1) in the Civil Application.

5. Civil Application No. 7578 of 2005 in PIL Petition has raised as many as six prayers. However, concluding part of the application (just above prayer para 10) reads thus;

Hence, the Civil Application for following reliefs, pending hearing and final disposal of the above Writ Petition.

Thus, this Civil Application was, in fact, seeking interim relief during pendency of PIL Petition and prayer clauses (A) to (C) are the main prayer clauses. By prayer clauses (D) and (E), the interim relief in terms of prayer clauses (A) to (C) during pendency of Civil Application, is sought. By order dated 23.8.2005, this application is kept pending for being considered at the time of hearing of the main Writ Petition. The prayers A to C may be reproduced as follows.

A. To direct Respondent No. 9 Jai Tulja Bhawani Shikshan Prasarak Mandal, Aurangabad, to forthwith remove Smt. Asha Deshpande and Leelabai Wakle, from their present posts as Principal and Vice Principal, respectively.

B. To restrain Respondent No. 9 Jai Tulja Bhavani Shikshan Prasarak Mandal, Aurangabad, from entrusting or assigning any office or post or work or function to Respondent No. 10 and 11 in relation to the said educational institutions and its schools/colleges (Respondent No. 10-Rangnath Jadhav and Respondent No. 11-Gajanan Surase, were office bearers of the management.)

C. To grant stay to the pending enquiry initiated by Respondent No. 9 against Shri Sadashiv Lone, Smt. Ashvini Jadhav.

In view of the fact that, all these prayers were made as interim relief during pendency of Writ Petition, now, when the Writ Petitions are being finally disposed of, Civil Application No. 7578 of 2005 becomes insignificant. In fact, prayer (A) seeks removal of Principal and Vice Principal, whereas prayer (B) seeks suspension of all office bearers. Prayer (C) seeks stay of departmental proceedings initiated by the management against Sadashiv Lone and Ashwini Jadhav (who, according to the petitioners, were witnesses in the enquiry before MSCW). As already stated, since the reliefs claimed were during pendency of Writ Petitions, now those became redundant. However, the court cannot be prevented from considering any such action as sought by prayers A and B, if the material on record and the conclusions arrived at on the basis of the same by this Court, so warrant. . For the reasons discussed hereinabove, Civil Application Nos. 2660 of 2005 and 7578 of 2005 can be considered to have been disposed of.

6. Civil Application No. 2364 of 2006 is filed in Writ Petition No. 4170 of 2004, by three petitioners in that Writ Petition. It appears that, by communication dated 9.9.2005, the orders relieving petitioner No. 1 Swati from the services are issued. The communication informs that during academic year 2004-05, she was appointed on clock hour basis, but she was being relieved with effect from 9.9.2005, because sufficient clock hours were not available during academic year 2005-06. By the said Civil Application, implementation and enforcement of this

order is sought to be stayed during pendency of the Writ Petition. As a consequential relief, it is prayed that Petitioner No. 1 should be allowed to work as Assistant Teacher in the school. Further, injunction is prayed for restraining Respondent Nos.5 to 8 (management, office bearers, Principal and Vice Principal) from taking any action against Petitioner Nos.2 and 3 without permission of this Court. Directions to authorities of education department for approval of appointments of Petitioner No. 2 and 3, as also enquiry into illegal actions of Respondent Nos.7 and 8, are also prayed for. It may be said that prayers A to C being limited by the period to the date of decisions of Writ Petitions, now do not survive and prayer clauses D and E, as in the case of prayers A and B in Civil Application Nos.7578 of 2005, can be considered, if the material on record and conclusions based thereon, so warrant. Eventually, we may state that there are absolutely no orders obtained in Civil Application No. 2364 of 2006 till this date.

7. In Writ Petition No. 4170 of 2004, prayer clauses B and C are the main prayers, other being formal or for ad-interim relief. Prayer clauses B and C read as follows:-

B. By issuing appropriate writ, orders or directions or by passing appropriate orders in the nature of writ of mandamus, Respondent Nos.1 to 5 may please be directed to constitute enquiry committee, as contemplated in direction No. 7 within 2 weeks and make enquiry against Respondent Nos. 6 to 8, strictly in accordance with directions of the Supreme Court in Vishaka's case (supra).

(C). By issuing appropriate writ, orders, directions or by passing an appropriate order in the nature of writ of certiorari, report of enquiry dated 6.4.2004 (annexure C) may please be held void-ab-initio and the same may please be quashed and set aside.

Respondent Nos. 6 to 8 in this petition are (i) Shri Rangnath Jadhav, (ii) Principal and (iii) Vice Principal. The Petitioners have prayed for enquiry against them, as also suitable action. If this is taken into account, it can be seen that, this prayer clause and prayer clauses A and B from Civil Application No. 7578 of 2005 are somewhat overlapping each other.

8. If all above details are taken into consideration, it can be said that we are required to consider issuance of suitable directions to Respondent No. 1 to 8 in PIL petition i.e. State, MSCW, Charity Commissioner, Dr. B.A.M.U and authorities of the Education Departments of the State and Z.P. Aurangabad, to initiate appropriate enquiry into the allegations of sexual harassment, and also to consider suitable action against management-Respondent No. 9, its office bearers (Respondent No. 10 and 11) as also Principal and Vice Principal (Respondent Nos.12 and 13), so also for determination and payment of compensation by all of them jointly and severally to the lady teachers. We believe, prayer clauses A and B in Civil Application No. 7578 of 2005, as also prayer Clause B in Writ Petition No. 4170 of 2004, fall within the womb of above prayer. Prayer Clause (C) in Writ Petition No. 4170 of 2004 is a totally different

aspect, which seeks to quash the report of the enquiry committee (Exhibit C in Writ Petition No. 4170 of 2004), by which the Principal and Vice Principal are exonerated. Prayers challenging removal of Petitioner No. 1 Swati (Civil Application No. 2364 of 2006) could be subject of independent Writ Petition, unless the petitioners are able to establish firm link between sexual harassment and discontinuation of service of petitioner no.1. Otherwise also, those prayers sought interim relief.

9. Petitioners in Writ Petition No. 282 of 2004 (PIL) have referred to observations of the Supreme Court in Vishaka's case, to the effect that sexual harassment of working woman at work place amounts to violation of rights of gender equality and right to life and liberty, violation of right to practice and occupation, that law for effective enforcement of basic human right of gender equality is absent and, therefore, the Supreme Court has laid down comprehensive guidelines/norms, by declaring those as law of the land. They referred to facts of the case, only after pointing out that pursuant to the guide-lines laid down by the Apex Court, authorities are expected to act with jet speed to take all possible steps for restoring dignity of working women and that Respondent No. 1 ought to have (impliedly thereby conveying that it has not so far) amended rules to provide comprehensive provisions such as disqualification of such trustees and members of educational institutions, their suspension pending the enquiry, removal of trustees and perpetrators, freezing of bank accounts, withholding government aid, if any, taking over management of the school, appointment of administrator, initiation of appropriate proceedings under Bombay Public Trusts Act, 1950 against the trustees, derecognition of the college or school, and determination of payment of compensation to the victims by the perpetrators etc, as also action against authorities, if they fail to attend the complaints of sexual harassment and take remedial steps within reasonable time. (In view of dismissal of prayer clause "A" of the petition vide order dated 02.03.2005, these details have become insignificant. Otherwise also, directions issued by the Supreme Court are always binding on everyone in the land and State of Maharashtra should not require a repeat declaration from this Court to act upon the same.). Thereafter petitioners have referred to news published in local newspapers dated 13.08.2003, regarding sexual harassment of a lady teacher working in the school of Respondent No. 9, by Respondent No. 10 Shri Rangnath Jadhav and pointed out that from the news item, it was clear that the lady teacher had complained about the misconduct of Respondent No. 10 to Shri Uttamsingh Pawar, then President of Respondent No. 9 and Ex-member of Parliament of ruling party Congress-I. That there were similar complaints by two more lady teachers working in the college of Respondent No. 9. That no action was taken against Respondent No. 10 in spite of aggrieved lady teachers having approached Shri Uttamsingh Pawar, Deputy Director of Education and police authorities. There was also no action against the institute-management or office bearers. In the meanwhile, Respondent No. 11, who is Registrar of Dr. B.A.M. University, had become the President of the Management/society. Police took cognizance of a complaint by

only one lady teacher and refused to do so about other two lady teachers, saying that one complaint was sufficient. Police registered offence against Respondent No. 10, only after filing of Criminal Writ Petition No. 390 of 2003. It is the claim of the petitioners that inaction on the part of authorities led to agitations jointly by, as many as 14 associations, espousing cause of teachers, by observing bandh on 19.08.2003. Respondent Nos. 6 to 8 are only pretending to take action against the management and it is informed to President of one of the associations that Respondent No. 1 is asked to take action under Rule 33 of M.E.P.S. (Conditions of Service) Rules, 1981, and that a proposal for appointment of an Administrator for the society and the School was forwarded to the Director of Education. On 22.08.2003, in fact, Director issued a show cause notice to Respondent No. 9, asking as to why an Administrator may not be appointed. On 16.10.2003, Petitioner No. 1 applied to Deputy Director of Education for immediate suspension of Principal, Vice Principal, an enquiry into the affairs of the school, suspension of in charge Education Officer etc. Respondent No. 9 in the meanwhile suspended only Principal and Vice-Principal. The School/College and society have continued their activities as no action is taken against them by the authorities. Respondent No. 10 Shri Jadhav resigned on his own, but in spite of lapse of 3 months since the show cause notice dated 22.08.2003, there was no appointment of administrator. It is also pointed out that Petitioner No. 1 was invited by the then President of Respondent No. 9 for a cup of tea to sort out the issues and to see that no action is taken against the society. Thus, it is contended that the Petitioners are constrained to file PIL, as the authorities have abdicated their powers, duties and functions to take (28) actions, such as, taking over management of the society, seizure of accounts of the society, freezing bank account, withholding grants of the society and school, arrange for payments of salaries of teachers/employees, directly by the officials of Respondent Nos.6 and 7, thorough enquiry into the affairs of the society, suspension of all the trustees, disqualifying/removal of Board of trustees, for omission on their part to react, derecognition of the college/society and also determination and payment of compensation to the lady teachers, who were subjected to sexual harassment. These contents in paragraph 15 of the petition reflect the expectations of petitioners, ultimately incorporated in prayer Clause B(second) of the Writ Petition.

10. Writ Petition No. 4170 of 2004 is filed by three lady teachers, who have complaints of sexual harassment (who shall be referred to by first alphabets of their names and surnames, i.e. S.C. U.G. and S.J. now onwards for the sake of brevity as well as protection of their decency and modesty.) As is evident from prayer clauses (B) and (C) from this Petition, which are reproduced in earlier part of this judgment, the Petitioners have prayed for directions to Respondent Nos. 1 to 5 to constitute committee as contemplated by direction No. 7 in Vishaka's case and conduct an enquiry against Respondent Nos. 6 to 8. They have also prayed for appropriate directions quashing the report of the enquiry dated 6.4.2004 (Exhibit C), as void-ab-initio. It is the claim of the Petitioners that, they

had filed complaints regarding their sexual harassment at the hands of Respondent No. 6 with the help of Respondent Nos. 7 to 8, belatedly. This was because the issue related to sexual harassment of the teachers and by lodging of complaints, there was a possibility of adverse effect on their reputation in the society, as well as in their family life. They have filed complaints only when they were convinced that events of sexual harassment were growing day by day. The issue was widely discussed by the petitioners in their family members and it was only in the year 2003 that a detailed complaint was lodged with the office of Deputy Director of Education, Aurangabad. A brief reference is made also to the fact that, all the teachers unions/organizations and Non Government Organizations (NGOs) came together and by taking appropriate measures, persuaded the Government by democratic way to take serious action against all concerned, by making detailed enquiry. On the basis of proposal of the education department, the Director of Education, Pune, appointed an administrator for the school in question. Consequential orders appointing Shri P.K. Nalawade, Deputy Education Officer (Primary), Zilla Parishad, Aurangabad as an administrator, were issued by Education Officer, Zilla Parishad, Aurangabad, on 8.12.2003. Since then, the school is being run by the Administrator. An enquiry was initiated against Respondent Nos. 6 to 8 (Shri Rangnath Jadhav and Principal and Vice Principal of Jai Bhawani School) under Rules 36 and 37 of M.E.P.S. Rules, 1981. The Administrator became convener of one man committee. The representatives of the employees were appointed as contemplated by the rules. By supplying a copy of the judgment of the Supreme Court in Vishaka's case, Shri P.K. Nalawade was requested about proper constitution of enquiry committee. It was pointed out that, as per the judgment, the committee should be headed by a woman and not less than fifty percent of the members, should be women. Unfortunately, Respondent No. 5 refused to act upon the said judgment and proceeded with enquiry under Rules 36 and 37 of M.E.P.S. Rules. . Respondent No. 6 Shri Rangnath Jadhav, Vice President and treasurer of Jai Bhavani Shikshan Prasarak Mandal, refused to appear before the committee, contending that he is not an employee of the society, because he is a director of the society. Other employees (Respondent No. 7 and 8) did appear before the committee. Nearabout 60 employees jointly represented for adequate protection for the purpose of recording of their statements about sexual harassment of the petitioners. Respondent No. 5 failed to give adequate protection and, therefore, all 60 employees refused to appear before the committee. Ultimately, not a single statement came to be recorded by the enquiry committee. On 6.4.2004, on account of non availability of any material, one man committee of Respondent No. 5 has exonerated Respondent Nos. 7 and 8 of the charges levelled against them. It is pleaded that constitution of the committee and the procedure adopted, both were in contravention of guidelines-cum law laid down by the Supreme Court in Vishaka's case and, therefore, entire proceeding is sought to be quashed as void-ab-initio. This petition is accompanied by copies of three complaints dated 16.10.2003, undated and undated, tendered by S.C., U.G. and S.J. respectively, first one being addressed to Police Station, Cidco, Aurangabad

and remaining two addressed to Deputy Director of Education, Aurangabad. Exhibit B is the enquiry report, apparently signed by four persons, namely, Shri P.K. Nalawade as convener and three members, who included one lady member signed as Sow.N.N. This is the report exonerating Respondent Nos.7 and 8 and sought to be quashed.

11. So far as Writ Petition No. 4170 of 2004 is concerned, reply is filed by Respondent Nos.7 and 8 (i.e. Principal and Vice Principal of the school and Junior College, on 6.6.2005, accompanied by list of thirteen documents. Earlier to that, Petitioner Mrs. S.J. has filed additional affidavit on 29.4.2004, annexing to it, a copy of her complaint to PSI Jawahar Nagar Police Station, dated 23.11.2003 and communications received by her from police attached to said police station. The communications appear to invite her for further enquiry in the matter. In Writ Petition No. 282 of 2004 (PIL), two affidavits have been filed on behalf of Respondent No. 9, on 5.3.2004 by Shri Rangnath Jadhav (Respondent No. 10) and on 14.7.2005 by Shri Narendra Jadhav, the then Secretary of Respondent No. 9. Respondent No. 10 has filed quite a lengthy affidavit on 7.7.2005, which is also accompanied by some documents. Respondent Nos. 12 and 13 (Principal and Vice Principal). have also filed an affidavit on 7.7.2005, accompanied by good number of documents. The petitioner has filed a rejoinder to the affidavit of Respondent No. 10, on 13.7.2005.

In order to restrict the length of the judgment, we abstain from reproducing contents or gist of these replies. But we shall refer to those if and, as and when necessary.

12 (a). During the course of his arguments, learned Counsel Shri Sagar for petitioners, assailed the constitution of enquiry committee, exonerating report of which is sought to be quashed by second writ petition. It was pointed out that it was headed by a male member (Administrator Shri Nalawade) and otherwise also its composition did not conform to guideline No. 7 regarding Complaints Committee, as laid down by Apex Court in Vishaka's case as there was only one lady member out of four, including the convener. He referred to certain provisions of the Maharashtra State Commission for Women Act, 1993

(a) legislation much before the judgment in Vishaka's case) and repeatedly referring to guidelines by the Supreme Court in the said case, submitted that inspite of lapse of considerable time, no legislation as desired by those guidelines has yet taken the field in the State (which submission was not controverted by any of the respondents). He pointed out that the Apex Court has specifically laid down these guidelines to be binding and enforceable in law, until suitable legislation is enacted to occupy the field. Impliedly he submitted that this Court can issue directions to constitute and activate a mechanism to take cognizance of the complaints of petitioners regarding sexual harassment and thus provide relief to the petitioners by penalty to and compensation from wrong-doers (Unfortunately he has not referred Tuesday, December 05, 2006 to existing provisions in Bombay Public Trusts Act, 1950 or Maharashtra Employees of

Private Schools (Conditions of Service) Regulation Act, 1977 or Rules thereunder, if any, those may be making provisions for actions against trust / trustees and/or staff of the trust / society. This could have enabled us to precisely determine the zone not covered by existing legislation). He has strenuously taken us through three complaints of three lady teachers, Annexure "A" to PIL by Mrs.UG, Annexure "K" to PIL by Mrs.SC and Annexure "A-1" to additional affidavit by petitioner in second writ petition by Mrs.SJ, in order to demonstrate that there was sufficient material prima facie to set the law into motion, by respective authorities to whom the complaints were addressed. Pointing out that there is no protection to the women against violation of their right to life with dignity, nor even Maharashtra State Commission for Women Act, 1993, provides any machinery, he urged that writ petitions (either PIL or by individual) are maintainable, as this Court is armed with Article 226 to provide relief when no other remedy is available. By referring to couple of reported decisions, he urged that plenary powers can be exercised to grant compensation to the wronged lady teachers from wrong-doers. Referring to report of MSCW and observations therein, it was submitted that now it is not open for any of the respondents to take an exception to the procedure adopted for the purpose of enquiry, or challenge the report by saying that they were not given reasonable / sufficient opportunity of being heard. By referring to prayer clauses in Writ Petition No. 4170/2004 and C.A. No. 2364/2006, it was submitted that termination of Smt.SC was vindictive as it was engineered by reducing the student strength deliberately and then claiming that workload was not available.

(b). The arguments by learned Counsel for respondents and more particularly those representing the Principal / Vice Principal, (Shri V.D. Sapkal Advocate), Management (Shri P.R. Patil Advocate) and Shri Rangnath Jadhav (Shri V.D. Hon Advocate) can better be described as counter attack rather than reply. All of them have challenged maintainability of PIL and also prayed for exemplary costs from petitioners therein. Consequently conduct of petitioners in PIL was under strong criticism. It was urged by Shri Sapkal that this Court had not heard respondents before passing order dated 16.8.2004 and, therefore, MSCW ought to have served notices, apprising respondents of the charges they are to face and it ought to have scrupulously followed the principles of natural justice, which according to Shri Sapkal, MSCW has not. It was submitted that PIL ought to be dismissed, because, it is not at all a Public Interest Litigation, but seeks remedy against "personal wrong". Persons wronged having come to Court, by second writ petition, it is evident that they are not persons from deprived class / incapable of approaching Court of Law on their own. Indirectly it was also suggested that Writ Petition No. 282/2004 is a "publicity interest litigation" by pointing out that all the news items relied upon for the purpose of PIL are published at the instance of petitioners in that writ petition. According to Shri Sapkal, para 9 of the Writ Petition No. 282/2004 and para 3 of rejoinder are admissions that "Bandh" were at the call of petitioners, which is encroachment on the fundamental rights of people at large and hence those petitioners are required to be dealt with stern

hands. Criticizing the conduct of petitioners, it was said that they are vindictive, in claiming an enquiry into the affairs of trust / management, by para 11 of the petition. It was submitted that punishment to wrongdoers or compensation to victims, for sexual harassment, was possible by other judicial proceedings and, therefore, writ petition is not maintainable for either relief. It was also urged that no writ can be issued against a trust, which is a private body. Referring to report by MSCW, it was submitted that the same is not an outcome of judicial enquiry. Those can at the most be termed as inferences based on investigation and hence the report can not be treated as basis or foundation, either for holding respondents guilty of sexual harassment or for making them liable to pay compensation. Otherwise also, it is said that the report is violative of principles of natural justice as respondents are not heard before recording a finding that respondents have indulged into sexual harassment. To buttress this argument, it was also added that right to reputation is also fundamental right of respondents. It was specifically pointed out that PIL is filed only after Principal / Vice Principal were exonerated and reinstated by withdrawing the suspension. An objection is raised also because as per report itself all the members were not present for enquiry and the same is not signed by all the members. So far as Writ Petition No. 4170/2004 is concerned, it was submitted that the enquiry was in compliance with direction no.5 in Vishaka's case and by now directions 4 & 5 in Vishaka's case are complied. The exoneration is result of the fact that nobody deposed before committee. It is prayed that both petitions may be dismissed with exemplary costs against petitioners in PIL.

(c). While adopting all arguments advanced by Advocate Shri Sapkal; Shri Hon, Advocate for respondent No. 10 (Mr.Rangnath Jadhav) accused petitioner No. 1 Prof.Dhonde to be prosecuting the PIL because his illegal demands are not satisfied.

(d). Shri P.R. Patil Advocate for management submitted that PIL for compensation to those who are capable of approaching Court of Law themselves, is not maintainable. He pointed out that two criminal cases on the basis of complaints by two lady teachers, S.C.C.Nos.6166/2003 and 6441/2002 (on the basis of complaints respectively by Smt.UG & SC) for offence punishable u/s 354 of IPC are pending before competent Magistrate and compensation can be claimed u/s 357 of Code of Criminal Procedure therein. According to him, neither writ of mandamus against private individuals nor writ can be issued against trust, as all trustees are not impleaded. It was emphatically argued that this Court must not act on the recommendations on the MSCW as contained in the report, because the enquiry is in total breach of principles of natural justice. He pointed out that copies of depositions and opportunity to cross-examine were denied to the respondents and hence recommendations can not be termed as judicious conclusions.

(e). Shri Deshmukh Advocate for MSCW only submitted that the report is absolutely honest account of how enquiry was conducted. He defended the report

signed only by Member Secretary to be authentic in view of Section 9(3) of the Act, 1993.

(f). While replying, Advocate Shri Sagar for petitioners contended that in the light of guidelines 1 & 11, respondents having failed to perform their duty to protect fundamental rights, public duty, writ of mandamus is maintainable. According to him, criminal Courts will not be able to deal with "sexual harassment" as defined by guideline 2. Shri Sagar was more elaborate in his reply. He relied upon factual details, which according to him, are vindictive and intimidating tactics on the part of respondents. One complainant Mrs.SC is removed for want of students. Other complainant Mrs.SJ was suspended and reinstated only after appointment of Administrator. Prime witness Mr.Lone was terminated and third complainant Mrs.SJ is not being allowed to sign muster roll. Hence, all witnesses being employees and persons indicted being in authority, nobody dared to depose before the enquiry committee. According to him, MSCW has rightly appreciated the material before it. The time of "sexual harassment" was time opportune, when lady teachers were about to complete second year and were due for confirmation. Upon their complaints, it was duty of management to constitute a committee and enquire into the matter, as directed by the Supreme Court. Advocate Shri Sagar submitted that as per report of MSCW, respondents have filed their affidavits, they have filed their statements, they were allowed to examine some of their witnesses. They were also allowed access to the record, although copies were not supplied and statements were recorded in camera. Before facing the enquiry, they were aware of allegations (by supply of copies of writ petition). Thus, the report, according to him, is prepared after reasonable opportunity to respondents and can not be blamed of having not observed principles of natural justice. It was submitted that news items were placed before the Court by petitioners and nothing was suppressed. Although a private body, trust receives grant in aid. In protecting rights of lady teachers i.e. right to life with dignity, management was charged with public duty as cast by law laid down by the Supreme Court and hence writ of mandamus can be issued. Reiterating that none of the existing statutes (BPT Act, 1950; MEPS Regulation Act, 1977; Maharashtra State Commission for Women Act, 1993) provide efficacious remedy, he prayed for relief in terms of prayer clauses (B) and (B-1) in C.A.No.2660/2005.

13. Report of MSCW is on record, which runs into as many as 34 typed pages and after concluding, " prima facie it, therefore, appears from the enquiry conducted that there was a case of sexual harassment at the work place, wherein complainants' modesty has been outraged.", the committee has recommended as follows :

(1) Mr.Ranganath Jadhav should tender a written apology to all the three complainants, viz. U.G., S.C., S.J.

(2) Mr.Ranganath Jadhav should not be allowed to hold any office in the Jaibhavani Trust in any capacity as it appears that he misuses his authority.

(3) Mrs.Deshpande and Mrs.Wakale should be immediately suspended and disciplinary action be taken against them for the following reasons :

(a) It is evident from the examination of Mrs.Deshpande and Mrs.Wakale that Mrs. U.G., S.C. and S.J. were pressurised to see Mr.Jadhav in spite of their repeated denial to do so.

(b) Mrs.Garje has been very vocal in communicating her grievances about her sexual harassment at the work place to the concerned authorities including the management personnel, at appropriate time and place. These respondents did not take cognizance of this issue in spite of their authority and did not adhere to the guidelines of the Honourable Supreme Court.

(4) Mrs.S.J. and S.C. should be made permanent in the institution as per the procedure laid down by the Education Department.

(5) All the days on which the complainants" and their witnesses had to attend the enquiry at the Commission"s office should be treated as on duty.

(6) Police protection and security should be given to the complainants as well as the witnesses.

(7) The purview of the committee was limited to the issue of sexual harassment at the work place, so an enquiry should be conducted to look into the matter of administrative irregularities (misappropriation of funds, abuse of authority in ensuring reduction of students to deny permanency to teachers etc.) noted during the enquiry.

(8) The complaints, Committee also recommends that the enquiry initiated against Professor Ashwini Jadhav and Mr.Lone, Peon should be discontinued and they should be immediately reinstated as it is apparent that the enquiry initiated against them was motivated due to their appearance as witnesses for the complainants.

(9) All the three respondents (Mrs.Deshpande, Mrs.Wakale and Mrs.R.Jadhav) should bear the expenses incurred by the petitioners during the enquiry amounting to Rs. 1,75,227 (Rs.One Lac Seventy Five Thousand Two Hundred and Twenty Seven only/-) and the social cost to the extent of Rs. 1,00,000/-(Rs.One Lac only/-) be borne exclusively by respondent No. 3 Mr.Ranganath Jadhav. Apart from these specific observations / recommendations regarding complaints of sexual harassment by three lady teachers, who are petitioners in Writ Petition No. 4170 of 2004, report is concluded with couple of general observations, which can be summarised as follows:

By taking into consideration the difficulties suffered by the complainants in attending the enquiry at Bombay, it is observed; " We need to look into the various mechanisms for quick disposal of cases of sexual harassment near the complainant"s work place.

It is also observed,

Also the need of tackling so many witnesses needs to be questioned. Implementing the need of natural justice in cases of sexual harassment may hamper the proceedings.

The report is concluded by observing that;

(D) This enquiry establishes the need for a separate monitoring body to be established at the district / taluka level to scrutinise cases in private companies and institutions. The formation of a neutral Government body at the district level to conduct such enquiries "will ensure the implementation of Vishaka"s judgment in right spirit.

Some salient features of this report need to be referred to. Committee constituted was of six members, which included Member-Secretary of the Commission as Chairperson, 4 members i.e. Advocate Jai Vaidya, Mrs. U.H.Kadrekar, Officer on Special Duty of the State Commission, Mrs. Sneha Khandekar from Indian Centre for Human Rights and Law, and Shri P.K. Nalawade from Department of Education. In fact, this P.K. Nalawade was appointed as administrator of Respondent No. 9 for some period before Mr. Surase took over as President, after resignation by Respondent No. 10. Mrs. Rukhmini Nalawade was observer appointed by Respondent No. 9. The Committee has in the initial part framed following issues for its consideration.

(1) Whether the complainants were sexually harassed during the course of their employment at their work place ?

(2) Whether sexual harassment occurred by;

(a) demands of sexual favours;

(b) repeated memos issued to complainants;

(c) threats of termination / suspension from service;

(d) pressurising the witnesses and supporters, by issuing termination / suspension orders / threats ? The complaints also pointed out several administrative irregularities, such as, issue of transfer certificate to reduce the number of students, unauthorised fee collection, unaccounted money transaction, tampering with attendance register of staff, undated resignations of the teachers etc. In the initial part of the report, the procedure followed by the Commission is described and it can be seen that the proceedings were quite eventful, by somewhat aggressive approach by the Respondents which, in the opinion of the Commission, was an attempt to obstruct proceedings, or at least make those look as if biased proceedings. Initially, the management had not nominated any lady observer. Only after Mr. Gajanan Surase took over, he has nominated Mrs. Rukhminibai Nalawade. In fact, Mr. Nalawade did not attend the proceedings as Administrator of the management, but Mr. Surase, who had succeeded the Administrator, attended four meetings and sent his representative Mr. Narendra Jadhav in the 5th meeting and thereafter he orally communicated

his inability to attend the proceedings. Thus, for remaining four sittings, the management did not participate in the proceedings. An incident is reported wherein Mrs. Rukhmini Nalawade, the observer of the management, entered into verbal exchange with witness Vidyanand Dhaitadak. After she was explained that the questions she desired to put to the witness, could be asked after the witness completes his deposition, Mrs. Nalawade felt offended and thereafter she decided not to attend further proceedings. This was communicated by letter dated 3.12.2004 and, therefore, it could be presumed that meetings after that date, were not attended by the observer of the management. Since Mr. Rangnath Jadhav-Respondent No. 10 informed that he had not received copy of Writ Petition No. 4170 of 2004, Mrs. S.C. was directed to furnish him the same and although Mr. Jadhav informed the Committee of his application to the High Court for recalling the order dated 16.8.2004, in the absence of any stay from this Court, the Committee proceeded with its proceedings of the first meeting on 14.10.2004 and thereafter for nine meetings. It is reported that in the first meeting, the Committee explained the procedure and the scope of enquiry, to both the sides and took a note of contention of Shri Rangnath Jadhav that he was appearing before the Committee under protest. By communication dated 20.1.2005, Shri Jadhav appears to have raised several allegations and complaints against members of the Committee, which were dismissed as false one. The Committee has recorded that, it has not examined all fifty one witnesses cited by Respondents, although affidavits of fifty one witnesses were filed by Respondents. It appears that the Principal and Vice Principal were asked to nominate the witnesses they desired to examine and accordingly, eighteen witnesses nominated by them were examined. Mr. Jadhav had submitted a list of eleven witnesses and all, except Shri D.S.Pawar and L.B. Gurkhe, were examined by the Committee, whereafter Shri Jadhav expressed that he does not wish to examine remaining witnesses. Almost all the witnesses were examined in-camera. Three complaining lady teachers requested to record their depositions in the absence of any male persons. This request was upheld by the Committee. However, similar request by Principal and Vice Principal was turned down, as they were the persons in authority. The Committee has recorded that in its opinion, enquiry of complainants in the presence of Respondents, would have prejudiced the complainants and, therefore, their request was upheld. The Committee has also recorded that, during the examination of the witnesses for the Respondents, who were mainly teachers, it was revealed that they had also signed applications against Respondents during the period Principal and Vice Principal were under suspension and that their affidavits filed in support of Principal and Vice Principal were thus in contradiction with their complaint applications. Eight affiants took exception when the Committee tried to ascertain their signatures on the affidavits and contradictory complaints. Since the Committee noticed that throughout the proceedings there were bickerings between the complainants and the Respondents, the Committee decided not to hand over any part of the proceedings, including the minutes of the meeting, or the documents placed on record, to either of the parties. After recording all these events during progress

of the enquiry, the Committee has recorded gist of depositions of three complainants, namely, Mrs. U.G., S.C. and Mrs. S.J. Quite a considerable details of facts and events are recorded under the caption "Mr. Manohar Dhonde". But from the report, it is not clear as to whether Mr. Dhonde was examined or not. Gist of deposition of Mr. Subhash Meher, second petitioner in PIL petition, is also furnished. Thereafter, the report contains the gist of depositions of Principal, Vice Principal and Mr. Rangnath Jadhav, whereafter, the Committee had arrived at its findings. When we refer to this part captioned as "Findings", it gives us an impression of incompleteness of the report for the simple reason that it only deals with complaints of sexual harassment by Mrs. U.G. The report does not deal with the evidence of Mrs. S.C. and S.J., who were other two lady teachers complaining about sexual harassment. A finding is recorded that there was an irregularity in the account. Admittedly, the account was maintained with Aurangabad-Jalna Gramin Bank situated close to the office of Jadhav and that the amount collected under the pretext of examination fees was credited in that account. The Committee also noticed that such fees was collected from Rs. 100/- to Rs. 350/= and without permission for such collection by Examination Department. Although it was denied by Mr. Jadhav, it appeared that printing work of management was given to the printing press of Mr. Jadhav. Special Committee found evidence of Mrs. U.G. supported by her witness Mrs. A. Jadhav, to be acceptable because it felt that lady teachers would not make such complaint at the cost of own character assassination and that the defence of Rangnath Jadhav that they were making complaints at the behest of his political rival Mr. N. Gadekar, was found insufficient to nullify the weightage that could be given to statements of complaining lady teachers because the allegations were at the risk of reputation of the makers of the statements. Mrs. U.G. has spoken about incident dated 9.8.2003 that occurred at the printing press. It seems that the witness Mrs. A. Jadhav had accompanied Mrs. U.G. at that time and Mr. Rangnath Jadhav is said to have suggested Mrs. U.G. to come alone. Mr. Suryabhan Patil and Ravindra Surase (brother in law of Mr. Jadhav) were said to be sitting with Mr. Rangnath Jadhav at that time. But, Mr. Surase claimed that he had just reached there and he rushed there, as he heard some chaos. According to Mrs. U.G. two persons sitting with Rangnath Jadhav, were asked to leave, as soon as she reached there. Thus, there were quite discrepant versions about details surrounding with the incident. The Committee also observed that the Principal and Vice Principal had manipulated the muster roll and passbook of Aurangabad District Central Cooperative Bank Limited. Although Mrs. U.G. had reported on duty at the school on 9.8.2003 and signed the muster, whereafter she was told by Principal to visit Mr. Rangnath Jadhav, but attendance register, when observed by the Committee, showed that Mrs. U.G. was marked absent. The Committee also observed that during the course of the enquiry, there was undue pressure on the witnesses because two main witnesses, namely, Ashwini Jadhav and Lone Peon, were suspended. The Committee has further recorded that, when the witnesses approached the Committee for protection, it had written to the Police Commissioner, Aurangabad, to provide protection to Mrs.

Jadhav and Mr. Lone, but no police protection was provided, and the witnesses were told that they would be given protection only on the days of enquiry and that too on payment. Finding part is concluded with a paragraph, by discussing that Shri Gajanan Surase consistently denied occurrence of incident during his tenure as chairman. He also denied his presence for the meeting dated 21.10.2003, in which Mrs. U.G. is said to have complained to the management committee of sexual harassment. The Special Committee has recorded that, denials by Mr. Surase were unreliable because the details of the committee meeting dated 21.10.2003 reported in press on 22.10.2003 indicated presence of Mr. Surase during that meeting.

14. Some of the provisions from the Maharashtra State Commission for Women Act, 1993, as also some of the guidelines laid down by the Hon'ble Apex Court in the matter of Vishaka and others Vs. State of Rajasthan and Others, which were referred to and relied upon, by either counsel, may usefully be reproduced for ready reference. Section 8(1), which empowers the Commission to appoint committees, reads thus:

8. Committees of Commission:

(1). The Commission may appoint such committees as may be necessary for the efficient performance, exercise and discharge of its functions, powers and duties and also for dealing with such special issues as may be taken up by the Commission from time to time." It is evident from Sub-section (2) that Commission also has powers to appoint one or more persons as it thinks fit on any of the committees, although such person is not a member of the Commission. Section 9 empowers the Commission to determine and regulate its own procedure. Sub-sections (2) & (3) are more important, which read thus:

9(2). The Commission shall regulate its own procedure and the procedure of the committees thereof;

(3). All orders and decisions of the Commission shall be authenticated by the Member Secretary or any other officer of the Commission duly authorised by the Member Secretary in this behalf.

Sub-rule (3) is mainly relied upon by learned Counsel for petitioners in order to repel the submission of the respondents that report of the Commission submitted to this Court is signed only by Member Secretary and not by all the members. Section 10 is pertaining to functions of the Commission and sub-clauses (a), (e), (f), (g) and (m) of Sub-section (1), relied upon by the learned Counsel, read thus:

10(1). The Commission shall perform all or any of the following functions:

(a). Investigate and examine all matters relating to the safeguards provided, for women under the constitution and other laws;

(e). Take up the cases of violation of the provisions of the constitution and of

other laws relating to women with the State (53) Government or appropriate authorities;

(f). Entertain complaints and take sue motu notice of the matters relating to -

(i). deprivation of women's rights;

(ii). non implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development;

(iii). Non compliance of policy decisions, guidelines or instructions aimed at mitigating hardship and ensuring welfare and providing relief to women and to take up the issues arising out of such matters with the State Government or appropriate authorities;

(g). Render guidance and advice to the needy women in instituting the proceedings in any judicial forum or Tribunal for violation of constitutional provisions or in any other laws relating to women.

(m). Fund litigating including Police complaint involving issues affecting a large body of women or the interpretation of any provision of the constitution or any other law affecting women, and present to the State Government, every six months report relating to such matters.

On reference to Sub-section (2), it is evident that the Commission, while performing its functions and more particularly for the purpose of investigating into matters referred to in Clauses (a), (f) and (l) of Sub-section (1), is empowered with the powers of a civil Court for the purpose of summoning and enforcing presence of witnesses, discovery and production of documents, receiving affidavits in evidence etc. On reference to Section 13, which relates to statements made by persons to Commission, unfortunately it must be said, that although a special legislation, the said section does not provide any special rule of evidence, which will guide the judicial authorities about evidentiary value to be adduced to the statements of witnesses recorded by such Commission or committees constituted by the Commission. On the contrary, the said provision appears to be reproduction of Section 132 of Indian Evidence Act. So far as guidelines laid down by the Hon'ble Apex Court in the matter of Vishaka and others Vs. State of Rajasthan and Others, are concerned, following guidelines were specifically referred to by either of the Counsel, apart from some observations which were relied upon by learned Counsel for the petitioners. The guidelines are contained in concluding paragraph No. 15 and those are in all 12 points.

1. Duty of the Employer or other responsible persons in work places and other institutions. It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. Definition:- For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as;

(a) physical contact and advances;

(b) a demand or request for sexual favours.

(c) sexually coloured remarks;

(d) showing pornography;

(e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature. Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in Government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

4. Criminal Proceedings:

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority. In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

5. Disciplinary Action: Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. Complaint Mechanism:

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

7. Complaints Committee:

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaint Committee, a special counsellor or other support service, including the maintenance of confidentiality. The Complaint Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of undue pressure or

influence from senior levels, such Complaints Committee should involve a third party either NGO or other body who is familiar with the issue of sexual harassment. [By further part of this guidelines, the Complaints Committee and the employers are expected to submit annual reports to the Government Department concerned, on compliance with the aforesaid guidelines.].

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector.

By guideline No. 03, the Hon''ble Apex Court has suggested certain preventive measures and by guideline No. 8, it is laid down that the issues of sexual harassment allowed to be raised at worker's meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings. Guidelines are expected to be notified in a suitable manner for the purpose of creating awareness of the rights of the female employee. The employer or a person in charge are expected to take all necessary steps against sexual harassment by third party and to render reasonable assistance to the affected person in terms of support and preventive action. The guidelines are prescribed to be without prejudice to any rights available under the Protection of Human Rights Act, 1993. This is by virtue of guidelines Nos. 9,10 and 12. The judgment is concluded with the directions that the guidelines and norms should be strictly observed in all work place by preservation and enforcement of the right to gender equality of the working women, and it is also declared that these directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field.

15. Before we enter into the discussion on the cross contentions raised by the parties and record our findings and reasons therefor, for arriving at a conclusion, if the Petitioners are entitled to relief and if yes, of what nature, it is desirable that we remind ourselves of the surviving prayers, although at the cost of repetition and length of the judgment. As already discussed in paragraphs 4 to 8 ante, following prayers have remained to be considered after taking into consideration all intermittent orders passed by this Court. Prayer B(second) from PIL petition, which is also prayer B-1 in Civil Application No. 2660 of 2005.

To direct Respondent Nos. 1 to 8 to forthwith initiate enquiry against Respondent No. 9 and its office bearers for determination and payment of compensation jointly and severally by the trustees of the Respondent No. 9 to the lady teachers for violation of gender equality and dignity of women teachers while working in its school / colleges and pay compensation within a period of six months or such other time as may be fixed by this Hon''ble Court, by issuing a writ of mandamus or any other appropriate writ, order or direction.

Prayer clauses B and C from Writ Petition No. 4170 of 2004.

B. By issuing appropriate Writ, orders or directions or by passing appropriate orders in the nature of writ of mandamus, Respondent No. 1 to 5 (authorities of

the Education Department and the Management) may please be directed to constitute enquiry committee as contemplated in direction No. 7 within 2 weeks and make enquiry against respondent Nos. 6 to 8 (Shri Rangnath Jadhav, Principal and Vice Principal) strictly in accordance with directions of the Supreme Court in Vishaka's case.

C. By issuing appropriate writ, orders or By issuing appropriate writ, orders or By issuing appropriate writ, orders or directions or by passing an appropriate order in the nature of Writ of certiorari, report of enquiry dated 6.4.2004 (Annexure C) may please be held void-ab-initio and the same may please be quashed and set aside.

Although we have found that Civil Application Nos. 2660 of 2005 and 7578 of 2005, both in Writ Petition No. 282 of 2004, can be considered to have been disposed of, for the reasons discussed in paragraphs 4 and 5 ante, we have also observed that, the court cannot be prevented from considering action as prayed by prayer clauses (A) and (B) in Civil Application No. 7578 of 2005, if material on record and conclusions arrived on the basis of the same so warrant. (Eventually, Civil Application No. 7578 of 2005 was kept pending by order dated 23.8.2005 for being considered at the time of hearing of parent Writ Petitions.) We have also observed in paragraph 6 ante that, prayers (D) and (E) in Civil Application No. 2364 of 2006 in Writ Petition No. 4170 of 2004, are somewhat similar and overlapping the prayers (A) and (B) in Civil Application Nos. 7578 of 2005. Civil Application No. 2364 of 2006 is still alive. Hence, we reproduce those prayers from two Civil Application for the sake of reminder. Prayers (A) and (B) from Civil Application No. 7578 of 2005.

(A) To direct Respondent No. 9 Jai Tulja Bhavani Shikshan Prasarak Mandal, Aurangabad, to forthwith remove Asha Deshpande and Leelabai Wakle, from their present posts as Principal and Vice Principal.

(B) To restrain Respondent No. 9 Jai Tulja restrain Respondent No. 9 Jai Tulja restrain Respondent No. 9 Jai Tulja Bhavani Shikshan Prasarak Mandal, Aurangabad, from entrusting or assigning any office or post or work of function to Respondent Nos. 10 and 11 in relation to the said educational institutions and its schools / colleges (Respondent No. 10 Rangnath Jadhav and Respondent No. 11 Gajanan Surase).

Prayers (D) and (E) from Civil Application No. 2364 of 2006.

D. To direct Respondents to grant approval to the applicant Nos. 2 and 3.

(E). To direct Respondent No. 3 (Deputy Director of Education) to enquire into illegal actions of Respondent Nos. 7 and 8 (Principal and Vice Principal) as mentioned in applications dated 15.7.2004, 14.6.2005, 22.6.2005, 4.7.2005 etc., and submit a report to this Hon'ble Court within a period of two weeks.

While repeatedly drawing our attention to the prayers in the two civil applications, learned Counsel for the Petitioners, probably lost sight of the fact

that all the prayers in Civil Application No. 7578 of 2005 and prayers (A) to (C) in Civil Application No. 2364 of 2006, were made only by way of interim relief.

16. Taking into consideration the submissions of all learned Counsel representing respective parties, the surviving prayers for relief and material on record, following points arise for consideration.

(1). Whether PIL is maintainable ? If not, are Petitioners in Writ Petition No. 282 of 2004 liable to be imposed exemplary costs ?

(2). Whether the Committee constituted by MSCW pursuant to orders of this Court, has followed principles of natural justice ? What is the evidentiary value of the report ?

(3). Can this Court act upon the said report and recommendations therein, either for recording a finding of Respondents Rangnath Jadhav, Principal and Vice Principal being guilty of sexual harassment of lady teachers and directing payment of compensation to lady teachers ?

(4). What relief, if any ?

17. Maintainability of Writ Petition No. 282 of 2004 as filed by two Petitioners, was under severe attack by learned Counsel for Respondents, so much so that they have gone to claim that exemplary costs may be imposed upon them. It was prayed that costs imposed may be credited to State, although may not be paid to the Respondents in person. It was argued that petitioners have no locus, that it is not at all "public interest", but "publicity interest" litigation, through which remedy for private wrong is being sought. Although in the light of Vishaka's judgment, it was not disputed that right to life with dignity is a fundamental right enshrined by Article 21 and that sexual harassment would amount to an aberration, yet according to Respondents, present cause is a "private cause" of three lady teachers and therefore, could not have been prosecuted as public interest. Both sides together have taken us through plethora of case law, while supporting respective submissions. People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, , relied upon by the learned Counsel for the Petitioners, speaks about Public Interest. Litigation, its importance in Legal Aid movement and in ensuring basic human rights to poor and weaker sections of community. While upholding the maintainability of a writ petition alleging violation of various labour laws, which constituted infringement of fundamental rights under Articles 17, 21, 23 and 24, the Hon'ble Apex Court spoke thus on the issue of locus standi and constitutional obligations of the State to take necessary steps.

(D). Locus standi Where judicial redress is sought of legal injury or legal wrong suffered by a person, or a class of persons, who, by reason of poverty, disability or socially or economically, are in disadvantaged position to approach the court, and the court is moved for this purpose by a member of a public by addressing a letter drawing the attention of the court to such legal injury or legal wrong, the

court would cast aside all technical rules of procedure and entertain the letter as a Writ Petition on the judicial side and take action upon it.

(K). Constitutional obligation of State:- Whenever any fundamental right, which is enforceable against private individual, such as, for example, a fundamental right indicated in Articles 17 or 23 or 24 is being violated, it is the constitutional obligation of the State to take the necessary steps for the purpose of interdicting such violation and ensuring observance of the fundamental right by the private individual, who is transgressing the same. Of course, the person whose fundamental right is violated, can always approach the court for the purpose of enforcement of his fundamental right but that cannot absolve the State from its constitutional obligation to see that there is no violation of fundamental right of such person, particularly when he belongs to the weaker section of the community and is unable to wage a legal battle against a strong and powerful opponent, who is exploiting him.

It is evident that conventional notion of "locus standi" is given a back seat when and only when judicial redress is sought of a legal injury suffered by a person or class of persons, who, by reason of poverty, disability or socially or economically disadvantaged position, are unable to approach the court. The lady teachers aggrieved by alleged sexual harassment have themselves approached the court with Writ Petition No. 4170 of 2004, after some time gap. Being teachers/lecturers of the school / college, they are well educated. Being married women, they are presumably second earning member of their respective families and can be believed to be economically sound. Learned Counsel for Respondents justifiably argued that, by their belated Writ Petitions, three lady teachers have proved that it was not necessary for any association or third person to take cudgels for them. They belong to neither socially nor economically disadvantaged position. The reported matter arises out of a letter addressed to one of the Honourable Judges of the Supreme Court, by an organization formed for protecting democratic rights, alleging violation of labour laws in respect of workmen engaged in various Asiad projects. The letter was treated as a Writ Petition because the workmen, whose rights were said to have been violated and to whom a life of basic human dignity was denied, were poor, ignorant, illiterate human, who, by reason of their poverty and social and economical disability were unable to approach the court for judicial redress and hence, it was held that the organizations had locus standi to maintain the Writ Petition, espousing the cause of the workmen. Eventually, if we apply the test for which the letter petition was treated as Writ Petition by the Supreme Court, it must be said that the Petitioners in PIL would fail to pass the test of locus standi. No doubt, in the Writ Petition and more particularly in the cause title, they have recorded their identity with some organization. Petitioner No. 1 is concerned with students union as can be seen from his designation "Marathwada Pramukh of Bharatiya Vidyarthi Sena." His designation itself indicates that his organization is not necessarily an organization working in the interest of teachers/lecturers. That makes the case of Petitioner No. 1 weak, so far as question of maintainability is concerned.

Petitioner No. 2, by its name, " Indian Bahujan Teachers Association" appears to be an association safeguarding interest of teachers/lecturers. However, it cannot be lost sight of that the three lady teachers, complaining of sexual harassment, are the persons aggrieved. It can be said that it was a grievance of three individuals and not a grievance of class of teachers. Even after so much water has flown under the bridge, and although it appears that in the press conferences convened by the petitioners, it was suggested that a large sex scandal is likely to be unearthed, no fourth lady teacher has come with an independent Writ Petition, or with a prayer that she may be impleaded as co-petitioner. Consequently, it cannot be said that Petitioner No. is espousing the cause of a class of persons or teachers/lecturers for safeguarding whose interest, association is constituted. (The fact that no fourth lady teacher has joined as co-petitioner and which fact is used by us for the purpose of drawing an inference that the PIL is not the one for the cause of class of teachers, could have been countered by saying that, because the wrong doers are the persons in authority, others have not dared to complain or to join the complaints, that they need protection etc. We shall come to this aspect little later.) Reliance was also placed on a recent judgment of this High Court by another Division Bench at Bombay, in the case of Secretary, India Bio dynamic and Organic Farming Association v. The Principal Secretary to Government of Maharashtra and Ors 2006 (4) All MR 1 and more particularly observations in paragraph 22. This was a letter petition by the Petitioner Association addressed to the Hon"ble the Chief Justice of this High Court, expressing serious concern towards suicide by farmers in the District of Jalna. Tata Institute of Social Science was impleaded as a party and was requested to submit a comprehensive report dealing with causes of suicides by farmers in the State. It was in the light of those facts and circumstances, held; that the maintainability of these proceedings and the constitutional foundation for the invocation of the jurisdiction of the Court cannot be questioned. It was also observed that the foundation was right to life under Article 21. Shri Sagar Killarikar, learned Counsel for the Petitioners, has also placed reliance upon observations of the Supreme Court in the case of K. Venkatachalam v. A. Swamickan and Anr AIR 1999 SCW 1353 and more particularly following observations from paragraph 27.

Article 226 of the Constitution is couched in the widest possible term and unless there is clear bar to jurisdiction of the High Court, its powers under Article 226 of the Constitution can be exercised when there is any act, which is against any provision of law or violative of constitutional provisions and when recourse cannot be had to the provisions of the Act for the appropriate relief.

This was a case, where the appellant was not elector in the electoral roll for an assembly constituency for general elections and he filed nomination on affidavit impersonating himself for another person of same name in the electoral roll. Thus, he lacked basic qualification under Clause (C) of Article 173 of the Constitution read with Section 5 of the Representation of People Act, which mandated that a person to be elected from a constituency, has to be elector of

that constituency. A Writ Petition against a person, who got elected as a member of legislative assembly, fraudulently (by impersonation as some one else) and one who was not a voter of that constituency, was certainly a case of an individual occupying seat in the legislative assembly, although not eligible to do so. Writ Petition against such an individual can be seen to be a public interest litigation aimed at maintaining the honour of democracy established in accordance with the provisions of the Constitution. Present Writ Petition aimed at seeking redress to the grievance of three lady teachers about their sexual harassment cannot be equated with the litigation in the reported matter. Shri V.D.Sapkal, learned Counsel, while representing Principal and Vice Principal, has challenged the maintainability of PIL, by relying upon case of Ashok Kumar Pandey Vs. The State of West Bengal and Others, , and more particularly observations as contained in paragraphs 4, 10 and 35, which read thus;

4. When there is material to show that a petition styled as "Public Interest Litigation" is nothing but a camouflage to foster personal dispute, said Writ Petition is to be thrown out.

10. It is thus clear that only a person acting bonafide and having sufficient interest in the proceeding of PIL will alone have as locus standi and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration.

35. Unless an aggrieved party is under some disability recognized by law, it would be unsafe and hazardous to allow any third party be a member of the Bar to question the decision against third parties.

Learned Counsel did not fail to draw our attention also to some contents from paragraphs 12, 14 and 16 of the said judgment, which contain observations cautioning the courts to be careful while entertaining Public Interest Litigation. The Supreme Court has observed thus in paragraph 14.

14. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (1) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petition seeking to assail, for oblique motive, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature.

In observations contained in paragraph 16, the Hon''ble Apex Court has clearly said that a time has come to weed out the petitions, which though titled as public interest litigations, are in essence something else. The maintainability of PIL is

objected, by challenging the locus standi of the petitioners, by pointing out status of aggrieved lady teachers and also by contending that the Writ Petitions are filed in order to seek redress against private wrongs. In other words, it is submitted that the public law remedy is tried to be used against private wrongs. For supporting such argument, Advocate Shri Sapkal has placed reliance upon observations of the Supreme Court in the matter of Binny Ltd. and Another Vs. V. Sadasivan and Others, , and more particularly observations as contained in paragraph 29. "29. Thus it can be seen that a Writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel the public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably reequipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but nevertheless, there must be the public law element in such action.

Shri P.R. Patil, learned Counsel representing the management has placed reliance on the observations of the Supreme Court in the matter of Common Cause, A Registered Society Vs. Union of India and Others, , and more particularly observations as contained in paragraph 113 of the judgment, which read thus;

113... Had the "Common Cause" approached the Civil Court for damages on account of tort of misfeasance in public office, its suit would have been dismissed on the ground that it was not one of the applicants for a petrol outlet; its own interest was not injured in any way nor had the petitioner made allotment in favour of one of the applicants maliciously or with the knowledge that the allotment would ultimately harm the "Common Cause." How could then a finding of commission of misfeasance in public office by the petitioner be recorded in proceedings under Article 32 and that too, at the instance of "Common Cause" on the basis of a Press report ? Mr. Gopal Subramaniam contended that "Common Cause" was justified in filing the petition under Article 32 in Public Interest to expose the wanton way in which allotments were made by the petitioner. To that extent, Mr. Gopal Subramaniam is right. The Court has already quashed the fifteen allotments made by the petitioner in view of the arbitrary exercise of power by him. But the Court went a step further and held that petitioner had committed the Tort of Misfeasance in Public Office and awarded exemplary damages.

In fact, it can be seen that the contents in paragraph 113, is a discussion of submissions by the lawyer and expression of limited opinion by the Court. We feel that, submissions in paragraph 52 and its rejection by the Supreme Court, and observations in paragraph 54 are more relevant and applicable for our purpose.

52. ... He contended that, interim compensation may be granted by the Court under Article 32 as immediate relief and the whole matter may be referred to the Civil Court for determination of the amount of compensation or damages payable to the Petitioner or the Petitioner may be directed to approach the Civil Court. This proposition cannot be accepted.

54. Thus, where public functionaries are involved and matter relates to the violation of Fundamental Rights or the enforcement of public duties etc. the remedy would lie, at the option of the petitioner, under the public law notwithstanding that damages are also claimed in those proceedings.

Before making observations in paragraph 54 quoted hereinabove, the Hon''ble Supreme Court has in paragraph 53 referred to its observations in earlier judicial pronouncement in the matter of M.C. Mehta and another Vs. Union of India and others, , to quite an elaborate extent. We are irresistibly tempted to quote part of those borrowed observations.

The power of the Court is not only injunctive in ambit, that is, preventing the infringement of a fundamental right, but it is also remedial in scope and provides relief against a breach of the fundamental right already committed vide *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, The power of the Court to grant such remedial relief may include the power to award compensation in appropriate cases. We are deliberately using the words "in appropriate cases" because we must make it clear that it is not in every case where there is a breach of fundamental right committed by the violator that compensation would be awarded by the Court in a petition under Article 32. The infringement of the fundamental right must be gross and patent, that is incontrovertible and ex facie glaring and either such infringement should be on a large scale affecting the fundamental rights of a large number of persons, or it should appear unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged position to require the person or persons affected by such infringement to initiate and pursue action in the Civil Courts. It is only in exceptional cases of the nature indicated by us above, that compensation may be awarded in a petition under Article 32 *Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others*, , relied upon by Advocate Shri P.R. Patil and more particularly the contents from paragraphs 12 and 15, prescribe a caution against entertainment of unscrupulous litigation titled as Public Interest Litigation.

12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, an ugly private malice, vested interest

and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not be publicity-oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of the public, who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force or habit or from improper motives, and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

The ruling was used by learned Counsel Shri P.R. Patil for twofold argument. While cautioning us against entertaining the Writ Petition (PIL) for grant of any relief, he has also used it for praying exemplary costs from the petitioners. In fact, exemplary costs to be imposed upon petitioners in PIL is a prayer of all Respondents, while conceding that the costs recovered may be credited to the State. (The conduct of petitioners in PIL was under heavy criticism for the purpose. We shall advert to this facet of the litigation little later.) While observing in paragraph 15, "no litigant has right to unlimited draught on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions.", the Supreme Court concluded paragraphs 16 with following observations;

16. ... It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as aforesaid so that the message goes in the right direction that petition filed with oblique motive do not have the approval of the Courts.

18. From the observations relied upon by the learned Counsel for both sides, from the reported judgments, which are quoted hereinabove, according to us, following principles emerge.

(1). Public Interest Litigation by third person is maintainable, provided he seeks redressal of legal injury to a person, or class of persons who, by reason of poverty or being socially or economically in a disadvantaged position, is not in a position to take up legal battle himself/themselves.

(2). There is no rule that writ of mandamus under Article 226 cannot be issued against a private body or a person. Writ of mandamus can be issued against a private body or a person charged with public function/s.

(3). A writ of mandamus under Article 226 can possibly be issued in the light of

the observations of the Supreme Court in the matter of M.C. Mehta and another Vs. Union of India and others, , in favour of an individual for damages in exceptional circumstances as prescribed by the Supreme Court.

(4). Courts should be cautious in entertaining Writ Petitions styled as PILs. Under this name, "private interest", "publicity interest" litigations by persons with vested interest, persons actuated by a desire to win notoriety or cheap popularity, must be filtered out and, if necessary, by imposing exemplary costs upon them. Applying above principles, it must be said that the writ petition filed as Public Interest Litigation by the two individuals identifying themselves to be office bearers, one of a Students' Union and another of a Teachers' Union, does not fit in the principles deduced by us from the reported judgements and quoted at serial Nos. (1) and (3) hereinabove. We have already indicated while discussing the observations of the Supreme Court in the matter of People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, that the persons for whom petitioners in Public Interest Litigation have taken up cudgels are lady teachers, well educated and financially sound, being second earning member in the family. Only that being female teachers, they could not have been able to muster courage enough to approach the court of law, may not be sufficient as will be evident when we discuss the issue of non-provision of protection to witnesses by the MSCW. For the same reasons, a writ of mandamus directing the respondents/alleged wrong doers of sexual harassment to pay compensation cannot be issued by this Court either in the Public Interest Litigation or even in the petition filed by the aggrieved lady teachers, since both the writ petitions do not satisfy conditions prescribed by the Supreme Court in the matter of M.C. Mehta. Not only that, the lady teachers do not belong to poverty stricken or socially and economically disadvantaged position, but the allegations levelled by them are repeatedly controverted by almost all the respondents. So far as remedy for damages is concerned, the same is not for a class of persons but only for three individuals. If the Petitioners have claimed that ex member of Parliament, who is office bearer of the management, had invited them for a cup of tea (Exh.L, page 82 in PIL) and thus to persuade him to observe silence, it is alleged on oath by Respondent No. 10 that Petitioner No. 1 Manohar Dhonde has gone on the rampage because his demand for a ransom of Rs. 2.00 lacs was not fulfilled by Shri Rangnath Jadhav [Reply affidavit by Respondent No. 10 in Writ Petition No. 282 of 2004, para 9 (XXV)]. In fact, it is also alleged that, there was a complaint by one Mrs. Minakshi Vithore against petitioner No. 1 Manohar Dhonde, of having demanded ransom from her (Exh.14, affidavit in reply by Respondent No. 10, dated 7.7.2005). This complaint dated 28.12.2004 by Mrs. Minakshi Vithore seems to have been addressed to Member Secretary of MSCW (we are unaware if MSCW has taken any action upon the same.). The PIL, therefore, to the extent it has taken up the cause of lady teachers aggrieved by alleged sexual harassment and both the Writ Petitions, if at all expect an order of payment for damages by this Court, would not be maintainable. However, we must remind ourselves of surviving prayers which we

have reproduced in para 15 ante, whereby PIL prays for direction to Respondent Nos. 1 to 8, as public authorities, to initiate enquiries against Respondent No. 9 management of the school/colleges for determination and payment of compensation. Thus, order of compensation does not appear expected from this Court, but at the conclusion of enquiry by proper authorities from amongst Respondent Nos.1 to 8 into the functioning of the affairs of Respondent No. 9. So far as Writ Petition No. 4170 of 2004 is concerned, by prayer Clause (B), it expects Respondent Nos. 1 to 5 to hold an enquiry against respondent Nos.6 to 8 therein. By prayer (C), it prays for quashment of enquiry report, by which Principal and Vice Principal are exonerated. The surviving prayer from PIL can be considered for issue of appropriate writ, provided the Writ Petition is maintainable. We have already held that the Writ Petition is not maintainable to the extent of grievances of lady teachers and payment of damages, because the lady teachers themselves have demonstrated of their capacity to take up the legal battle by subsequent writ petition. Prayers (B) and (C) in Writ Petition No. 4170 of 2004 will have to be considered on their own merits as the said Writ Petition is not assailed on the ground of its maintainability. So far as prayers (A) and (B) from Civil Application No. 7578 of 2005, which seek directions for removal of Principal and Vice Principal and for action against Respondent Nos. 10 and 11 (Mr. Rangnath Jadhav and Mr. Gajanan Surase) so as to make them powerless members of the management are concerned, those can be considered only if PIL 282 of 2004 is maintainable, since this is a Civil Application in that PIL for grant of interim relief to that effect. The relief of this nature is beyond the final relief as claimed in the Writ Petition and can be considered for denial on that ground alone, but in any case, such a relief cannot be considered simultaneously with a relief for an enquiry against those individuals. It will be absurd to grant a relief of initiating appropriate enquiry by appropriate authority against these four individuals, as also the management of the school and at the same time, issue writs, either removing or making them powerless persons in their office against these four respondents. Viewed from this angle, even if the relief in terms of prayer Clause (B)(second) from PIL and prayer clauses (B) and (C) from Writ Petition No. 4170 of 2004, which are only surviving prayers after interim orders, is to be granted, practically it may not be possible to consider grant of prayers (A) and (B) from Civil Application No. 7578 of 2005.

19. The observations in the judgments reported at P.D. Shamdasani Vs. Central Bank of India Ltd., , as also Shrimati Vidya Verma, through next Friend R.V.S. Mani Vs. Dr. Shiv Narain Verma, , are relied upon by learned Counsel Shri Sapkal, learned Counsel for the Principal and Vice Principal to oppose any prayer for grant of any relief, either by way of compensation, or by way of direct action against alleged wrong doers, by relying upon the observations to the effect that violation of rights of property by a private individual not being within the purview of those Articles [19(1)(f) and 31(1)], a person, whose rights of property are infringed by private individual, must seek his remedy under the ordinary law and not under Article 32. Such an argument was tried to be supported by Shri P.R.

Patil, learned Counsel for the Respondents, by placing reliance upon the observations of the Supreme Court in the matter of Sohanlal Vs. The Union of India (UOI), , and more particularly paragraph 7 thereof, which lays down that, although normally, a Writ of Mandamus does not issue to or an order in the nature of mandamus is not made against a private individual, such an order is made against a person directing him to do some particular thing specified in the order, which appertains to his office and is in the nature of a public duty. Shri Sapkal, learned Counsel, has advanced his argument, by submitting that no writ can be issued against trust unless all trustees are joined as parties, by relying upon observations of this Court in the matter of H.N. Bhiwandiwalla v. Zoroastrian Co-op Credit Bank Ltd AIR 2001 Bom.267 We feel it needless to deal with all these cases in details, in view of the principles deduced by us on the basis of latest judicial pronouncements of the Hon"ble the Supreme Court in paragraph 18 ante.

20. Shri Sagar Killarika, learned Counsel for Petitioners, has relied upon quite a few judicial pronouncements, in order to support his argument that in a given case, compensation in favour of petitioners (aggrieved lady teachers) can be awarded. In the matter of People's Union for Civil Liberties Vs. Union of India and another, , compensation of Rs. 1,00,000/= was awarded to family of each deceased. In this matter, police were alleged to have taken up two persons, alleged terrorists, and killed them. Three others, who were caught and taken away along with two deceased, were kept in police custody for long and later on released on bail. Along with Writ Petition, affidavits of these persons and wives of the deceased were also filed. Enquiry was entrusted to the District and Sessions Judge, Manipur, who concluded that there was no encounter and two deceased were shot dead by the police, while in custody. It was only after accepting these findings recorded by the District and Sessions Judge, compensation was awarded. The landmark case of D.K. Basu Vs. State of West Bengal, , and more particularly following observations therein, were also relied upon.

22... Any form of torture or cruel inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise....

55. ...The relief to address the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is thus, in addition to the traditional remedies and not in derogation of them.

In Paschim Banga Khet Mazdoor Samity and others Vs. State of West Bengal and another, , it was observed;

9. ...Article 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance.... Failure on the part of a Government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21.

Observing thus, compensation of Rs. 25,000/= was granted. The first two cases relied upon by Shri Sagar Killarikar, were of custodial death and the third one was of alleged negligence on the part of a Government hospital. The compensation was prayed for from the State. Taking observations from the matter of D.K.Basu (supra), it could be awarded in cases of "established invasion of the fundamental rights of the citizen. These features of the reported cases distinguish those from the one before us. Compensation, if any, to the aggrieved lady teachers in the matters before us is required to be awarded from private individuals i.e. the management and / or the Principal or Vice Principal, there is no specific prayer for compensation from the State, and the issue whether the invasion of the fundamental rights is sufficiently established for this Court to safely direct payment of compensation, would depend upon the evidentiary value and acceptability of the report of the special committee constituted by the MSCW pursuant to the orders passed by this Court on 16.8.2004. We are of the considered view that the cases relied upon by Shri Sagar Killarikar, learned Counsel, do not persuade us that the matters can be considered for grant of compensation to the aggrieved lady teachers at this stage, unless we find the report submitted by MSCW to be strongly convincing. We would be justified in taking such a view, in the light of the observations of the Supreme Court relied upon by Shri P.R. Patil, learned Counsel in recent judicial pronouncement in the matter of Sube Singh Vs. State of Haryana and Others, , which observations read thus;

In cases where custodial death or custodial torture or other violation of the rights guaranteed under Article 21 is established, the courts may award compensation in a proceeding under Article 32 or 226.... However, before awarding compensation, the Court will have to pose to itself the following questions, (a) whether the violation of Article 21 is patent and incontrovertible, (b) whether the violation is gross and of a magnitude to shock the conscience of the court, (c) whether the custodial torture alleged has resulted in death or whether the custodial torture is supported by medical report or visible marks or scars or disability. Where there is no evidence of custodial torture of a person except his own statement, and where such allegation is not supported by any medical report, or other corroborative evidence, or where there are clear indications that the allegations are false or exaggerated fully or in part, the courts may not award compensation as a public law remedy under Article 32 or 226, but relegate the aggrieved party to the traditional remedies by way of appropriate civil / criminal action.

It can be said that, as in the matter of D.K. Basu (supra), even in this matter compensation as public remedy, is awardable on the basis of established violation of rights guaranteed under Article 21.

21. The finding of non-maintainability of PIL, arrived at on the basis of discussion so far, is mainly based on the status of the aggrieved lady teachers. The Respondents have vociferously attacked the conduct of the petitioners in PIL, and

by relying upon the reported judgments, as also the factual details, have alleged that Writ Petition No. 282 of 2004 is a "private interest litigation", if not, a "publicity interest litigation" and prayed for dismissal of the same with exemplary costs to be imposed upon the petitioners as laid down by the Supreme Court in the matter of Dattaraj (supra). From (2004) 3 S.C.C. 203 James Martin v.State of Kerala, following observations from para 24 therein, were relied upon by learned Counsel for the Respondents.

24. It needs to be noted that in the name of hartal or bandh or strike, no person has any right to cause inconvenience to any other person or to cause in any manner a threat or apprehension of risk to life, liberty and property of any citizen, or destruction of life and property, and the least to any government or public property. It is high time that the authorities concerned, take serious note of this requirement while dealing with those who destroy public property in the name of strike, hartal or bandh. No person has any right to destroy another's property in the guise of bandh or hartal or strike, irrespective of the proclaimed reasonableness of the cause or the question, whether there is or was any legal sanction for the same.

The judgment is concluded with the observations;

... unless such acts are controlled with an iron hand, innocent citizens are bound to suffer and they shall be the victims of the high handed acts of some fanatics with queer notions of democracy and freedom of speech or association, which provides no licence to take law into their own hands.

In the matter at hands, there is no evidence that bandh observed on 19.8.2004, had turned out to be violent, thereby causing damage or destruction of any private or public property. However, learned Counsel Shri Sapkal has advanced his argument further, by claiming that this was an encroachment upon fundamental rights of common citizens and for the purpose, he relied upon the observations of a Full Bench of Kerala High Court, in the matter of Bharat Kumar K. Palicha and Another Vs. State of Kerala and Others, , which judgment is subsequently upheld by the Hon"ble the Supreme Court, as can be seen from the judgment in the matter of CPI v. Bharat Kumar, reported at AIR 1998 S.C. 184 By its judgment, the Full Bench of the Kerala High Court allowed original petitions, by declaring that calling for bandh by any association, organization or political party and enforcing of that calling, is illegal and unconstitutional. Para 7 of the judgment is concluded with following observations.

7.... Learned Counsel appearing for the political parties contended that this Court cannot take note of what actually happens when a bundh is called, but this Court can only go by the call for the bundh itself, which does not involve the call for violence or forceful prevention of people from going about their avocation. We do not think that we would be justified in adopting such an ostrich like policy. We cannot ignore the reality of what is involved when a bundh is called.

Impliedly, it is suggested that the Courts can take a judicial notice of

apprehension of eruption of violence during the bundh and many people restraining themselves from going about their avocation due to such apprehension. We may only point out that at Exhibit B, there is a xerox copy of news item published in daily Marathi "Sakal" dated 13.8.2003 and the reporting is accompanied by a photograph of workers of Bharatiya Vidhyarthi Sena putting a lock to Jai Bhavani Vidya Mandir. Action of the workers of the association to which, Petitioner No. 1 belongs, does not conform to "call of bundh". The action indicates that unless the school was locked, even petitioners believed the children to attend the school and the school to function. The photograph is eloquent of the fact that bundh was "forced" and not only "called" or "appealed for".

In paragraph 8, the Full Bench of Kerala High Court observed thus : "8. ... We are inclined to understand the concept of a bundh as one where people are expected not to attend to their work or to travel for any purpose nor to carry on their trades with a threat held out either express or implied that any attempt to go against the call for the bundh would result in danger to life and property. Even if there is no express or implied threat of physical violence to those who are not in sympathy with the bundh, there is clearly a menacing psychological fear instilled into the citizen by a call for a bundh which precludes him from enjoying his fundamental freedoms or exercising his fundamental rights. We are therefore not inclined to accept the contention of the political parties and the learned Advocate General that the calling for a bundh does not involve the holding out of any threat express or implied to the citizen not to carry on his activities or to practise his avocation on the day of the bundh. We are inclined to the view that the call for a bundh implies a threat to the citizen that any failure on his part to honour the call, would result in either injury to person or injury to property and involves preventing a citizen by instilling into him the psychological fear that if he defies the call for the bundh, he will be dealt with by those who are allegedly supporters of the bundh."

In paragraph 14, the Full Bench concluded thus, which is the ultimate decision in the matter:-

14. ... If this be the position and if the call for the bundh and the holding of it entails restriction on the fundamental freedoms of the citizen, it has to be held that no political party has the right to call for a bundh on the plea that it is part of its fundamental right of freedom of speech and expression.

Shri Sapkal, learned Counsel has also placed reliance on the observations of the Supreme Court in paragraph 6 of the judgement in the matter of Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another, , which read thus :

6. ... Right to life under Article 21 includes the right of a person to live without being hounded by the Police or the CBI to find out whether he has committed any offence or is living as a law-abiding citizen.

In fact, the observations by the Supreme Court were pertaining to different situation. The issue involved was whether a decision to direct an inquiry by the CBI against a person can be lightly ordered. Shri Sapkal, learned Counsel has used the observations in a different fashion. According to him, two prosecutions on the basis of complaints by two lady teachers were already launched, Administrator of the Management had taken over, the Principal and the Vice Principal were suspended and all these events had taken place before filing of PIL on 09-12-2003. The conduct of calling bundh and making it effective by putting a lock on the entrance of the school was an act of taking the law into his own hands and the PIL filed after all the authorities had initiated appropriate proceedings is an example of the desire of the petitioner to keep on hounding the alleged wrong doers. According to learned Counsel, the conduct indicates that the petitioners have not come to this Court with clean hands, heart and mind, and therefore, no relief can be granted in PIL. On the contrary, exemplary costs need to be imposed upon the two petitioners. Demonstrating from the newspaper reports, clippings xerox copies of which are annexed to the petition, as also replies by various respondents, Shri Sapkal, learned Counsel pointed out that all the newspaper reporting is at the instance of Press Conferences called by these petitioners. This includes the last Press Conference called on 07-05-2005 wherein the copies of the report by the Special Committee constituted by MSCW were made available to the Press and which have appeared in the Newspaper. The report was received in a sealed condition which was opened by the court and copies were made available to the parties only on payment of fees for xeroxing. The observations/recommendations of MSCW were subjudice and there was no indication on that day that those were accepted by the court. According to Shri Sapkal, learned Counsel, the alleged wrong doers are subjected by the petitioners to a media trial. Although Shri Sagar Killarika, learned Counsel for the petitioners responded by saying that his client has not suppressed the fact of Press Conference called by him, by relying upon the xerox copies of Press Reports annexed to Writ Petition No. 282 of 2004, at Exhibit-B (paper book pages 28 to 40), it must be said that the fact of Press Conference immediately after the receipt of copies of the report by the Special Committee constituted by MSCW is brought on record by the respondents. Affidavit filed by Shri Rangnath Jadhav on 07-07-2005 is accompanied by xerox copies of the Press Reports that appeared in the Newspaper on 08-05-2005 and these reports contained quite a considerable number of observations from the reports submitted by MSCW to this Court including that the Commission has arrived at a conclusion that lady teachers were subjected to sexual harassment and the information given by the Registrar, Dr. Babasaheb Ambedkar Marathwada University Shri Gajanan Surase was found to be false and misleading. Even the figures of the expenses incurred by the complainant - lady teachers which were recommended to be borne by the alleged wrong doers have appeared in the Press (it may be said here that on going through all the Press Reports, there is sufficient material within the text to indicate that the Press Conferences were convened by the petitioners. The petitioners have never disowned responsibility of convening the Press

Conferences). In this context, learned Counsel Shri Sapkal has referred to the observations of the Supreme Court in the case of M.P. Lohia, etc. v. State of West Bengal and Anr. reported at AIR 2005 SCW 767 and more particularly, those contained in paragraph 10, which read thus :"

10. Having gone through the records, we find one disturbing factor which we feel is necessary to comment upon in the interest of justice. The death of Chandni took place on 28th February, 2002 and the complaint in this regard was registered and the investigation was in progress. The application for grant of anticipatory bail was disposed of by the High Court of Calcutta on 13-02-2004 and SLP was pending before this Court. Even then an article has appeared in a magazine called "Saga" titled "Doomed by Dowry" written by one Kakoli Poddar based on her interview of the family of the deceased. Giving version of the tragedy and extensively quoting the father of the deceased as to his version of the case. The facts narrated therein are all materials that may be used in the forthcoming trial in this case and we have no hesitation that this type of articles appearing in the media would certainly interfere with the administration of justice. We deprecate this practice and caution the publisher, editor and the journalist who were responsible for the said article against in such trial by media when the issue is subjudice."

Release of Special Committee Report of MSCW to the Press, even before application of its mind by the court to the same; is an act by which the petitioners have indulged into convincing the Society, of respondents being guilty, before any court held them so. In the reported matter, the journalist was responsible but in the matter at hands, it was over enthusiasm of the petitioners that was the cause. Leaving aside all other aspects, it must be taken a note of the fact that detailed reporting of the grievances of lady teachers regarding sexual harassment by release of the same to the Press on 12th August, 2005 which appeared in the Print on 13th August, 2005 and the reports those appeared in the Press on 8th June, 2005 on the basis of Special Committee report from MSCW has certainly thrown the modesty and decency of the complainants to the winds. It is the claim of these lady teachers that they were slow in re-acting to the sexual harassment by appropriate legal action due to fear of damage to reputation. The petitioners ought to have questioned themselves before going to the Press as to "whether it is absolutely necessary to approach the Press and publish the story of sexual harassment in order to secure remedy to the wronged lady teachers ?". They ought to have considered whether calling of bundh was the only remedy available on 19-08-2003 ?

The contention of the learned Counsel for the respondents that the petitioners in PIL who have scant regard for fundamental rights and constitutional freedoms of others should not be entitled to any relief in exercise of special and plenary powers of this Court, was tried to be opposed by Shri Sagar Killarika, learned Counsel for the petitioners with reliance on the observations of the Supreme Court in the matter of Mr. "X" v. Hospital "Z" reported at AIR 1998 SCW 3662

(the gravity of error in publishing the things through Press Conferences on the part of the petitioners can be realized by comparing that the Hon'ble the Apex Court refers to the parties by English alphabets in order to avoid embarrassment to the parties concerned which restriction was not observed by the petitioners who convened the Press Conferences or by the Press while reporting as briefed by the petitioners and the aggrieved lady teachers). The observations relied upon by Shri Sagar Killarikar, learned Counsel from paragraph 43 run thus :

43. ...

"Right to life" includes right to lead a healthy life so as to enjoy all faculties of the human body in their prime condition, the doctors by their disclosure that the patient was HIV (+) cannot be said to have, in any way, either violated the rules of confidentiality or the right of privacy. Moreover, where there is a clash to two Fundamental Rights, as in the instant case, namely, the patient's right to privacy as part of right to life and his proposed wife's right to lead a healthy life which is her Fundamental Right under Article 21, the right which would advance the public morality or public interest, would alone be enforced through the process of court, for the reason that moral considerations cannot be kept at bay.

It was submitted by Shri Sagar Killarikar, learned Counsel that agitation that was developed by the petitioners, was against the immoral actions on the part of the Respondents and, therefore, any encroachment on fundamental rights of others by the bundh observed, cannot be condemned as blameworthy conduct. The learned Counsel lost sight of the fact that it was not a clash of fundamental rights of aggrieved lady teachers and the alleged wrong doers - Respondents. By call of bundh, the petitioners for the alleged immoral conduct causing breach of fundamental rights of aggrieved lady teachers, that is, right to life with dignity, by subjecting them to sexual harassment, was not in clash with any fundamental rights of the Respondents. The petitioners, by calling the bundh, held the society and schools at ransom. Thus, this was not a case of clash of fundamental rights, but it was a case of robbing Robert for paying Peter. We are unable to appreciate that the observations in the case relied upon by Shri Sagar Killarikar, learned Counsel, any way absolve the petitioners from the responsibility they have incurred in acting against the directions by the Supreme Court (Supreme Court having approved Full Bench judgment of Kerala High Court, the said decision becomes the decision of the Supreme Court), issued as back as in the years 1997 - 1998. Learned Counsel for the Respondents were justified in claiming that the Petitioners (in PIL), who have approached the Court on the basis of the judgment of the Supreme Court, claiming that the judgment of the Supreme Court (Vishaka's case) is law laid down for the land, have approached the court only after showing scant respect to earlier judicial pronouncements of the Supreme Court, in their actions of calling bundh and releasing the special committee's report to the Press, which was still under consideration of the Court.

22. The discussion on the conduct of the Petitioners in PIL, which is not only criticised, but condemned by the Respondents in chorus, cannot be complete

without taking a note of the chronology of events. We have gathered it from various affidavits and documents on record and can be stated in brief, as follows.

-----	Year/date	Events
-----	2000	The incident at the residence of Mrs. Wakale pertaining to Mrs. S.C. 17.07.2000 Appointment of Mrs. S.J. 09.09.2001 Visit of Mr. R.J. to the residence of Mrs. S.C. January, 2002. Assurance by Mr.R.J. to Mrs. S.J. of permanency 08.08.2002. Incident at the residence of Mrs. Wakale, regarding Mrs. S.J. 06,08 & 24 Incident with Mrs. U.G. (asked by the August,2002. Principal and Vice Principal to reach money to Mr. R.J. at his office.) 18.09.2002. Visit of Mr. R.J. to the residence of Mrs. U.G. 26.09.2002. Complaint by Mrs.U.G. to Dr. Gadekar (said to be political rival of Respondent No. 10). 02.10.2002. Mrs. U.G. voiced her grievance to the Principal and Vice principal in the staff meeting. 14th and 16th Mrs. U.G.voiced her grievance to Mr. October 2002. More (management member). 25.06.2003. Mrs. U.G. voiced her grievance. 30.07.2003. Mrs. U.G. and Mrs. S.C. voiced their grievance to the Board. 01.08.2003. Mrs. U.G. voiced her grievances to the Education Department, by a written complaint dated 30.07.2003. 05.08.2003. Mrs.U.G.gave her written complaint to Petitioner No.2 (Exhibit R-10 in W.P. No.4170 of 2004, which is a joint affidavit by Petitioner Nos. 1 and 2 submitted before MSCW). 09.08.2003. Incident at the office of Mr.R.J. regarding Mrs. U.G. 09.08.2003. Lodging of complaint by Mrs. U.G. with Jawahar Nagar Police Station, registered as CR No.I-124/2003. 09.08.2003. Arrest of Mr. R.J., Principal and Vice Principal on the same day.
		11.08.2003. Mrs. U.G. approached Petitioner No.1 with a written complaint (as per joint affidavit referred to above.). 11.08.2003. Representation by Petitioner No.1 to the Commissioner of Police. 13.08.2003. All newspapers reporting on the basis of Press Conference dated 12.08.2003. 16.08.2003. Deputy Director of Education, Aurangabad, informed Petitioner No. 2 that action against erring staff members in accordance with rules 23 and 33 of the M.E.P.S. (Conditions of Service) Rules, 1981, is asked to be taken by the management. 17.08.2003. Ex-Member of Parliament Shri Pawar invited petitioners for tea. 19.08.2003. Bundh. 20.08.2003. Press reporting about the said bundh. 22.08.2003. Notice by Director of Education (Secondary and Higher Secondary), Pune, to the President/Secretary of the Management, inviting them to show cause as to why the management may not be taken over. 29.08.2003. Reports in the Press, of Petitioners and other office bearers, along with a delegation having met the dignitaries (Sarvashree Gopinath Mundhe, Nitin Gadkari (as per Marathi daily, "Tarun Bharat", at paper book page No.39 in Writ Petition No.282/04) and also to Shri Lal Krishna Advani, as per joint affidavit of the Petitioners, and having apprised them of the issue. 23.09.2003. By the Court order obtained by Mrs.S.C. in Writ Petition No.390 of 2003 (paperbook page 81 of W.P.NO.282 of 2004), she was directed to file appropriate complaint with the police, if she desires to file it. Learned APP had shown inclination to investigate, if a proper complaint is filed. 16.10.2003.

Mrs. S.C. approached Police Station, CIDCO and Jawahar Nagar, Aurangabad, with a copy of the order of this Court passed in Writ Petition No.390 of 2003 and lodged her complaint which was registered as CR No.235 of 2003 on the same day. 27.10.2003. Principal and Vice Principal were suspended. 08.12.2003. Order directing appointment of Administrator. 09.12.2003. Shri P.K. Nalawade, Deputy Education Officer, Primary, Zilla Parishad, Aurangabad, took over as Administrator. 09.12.2003. Writ Petition No.282 of 2004 came to be filed in this Court. 22.04.2004. Application by Principal and Vice Principal to the Commissioner of Police about threats to them, against seven persons which includes three petitioners in W.P.No.4170 of 2004 and Mrs. Ashwini Jadhav. 22.04.2004. The Principal and Vice Principal were reinstated (exonerating report is dated 6.4.2004) because nobody deposed before the Enquiry Officer. 27.04.2004. Registration of CR. No.31/2004 with Jawahar Nagar Police Station, Aurangabad, against nine accused persons, including three Petitioners in Writ Petition No.4170 of 2004, Smt. Ashwini Jadhav and Peon Sadashiv Lone, on the basis of the incident alleged to have taken place on the same day at about 9.30 or 10.00 a.m., wherein the accused persons are alleged to have visited the office of Principal, demanded her resignation, dealt her with slaps and blows, threw chilly powder into her eyes and tarnished her face with black colour. 06.06.2004. Presentation of W.P.No. 4170 of 2004. 16.08.2004. First order by this Court. 08.09.2004. Suspension of peon Mr. Lone. 04.10.2004. Suspension of Mrs. Ashwini Jadhav. 05.10.2004. Dismissal of Writ Petition No.6187 of 2004 filed by Mr.Lone, challenging his suspension.

The dates, on which the Petitioners were active in this matter before and after filing of PIL, can be summarised thus.

On 5.8.2003, Petitioner No. 1 got knowledge of the incidents by written complaint by Mrs.U.G. On 12.8.2003, the Petitioners held Press conference, reports of which appeared in the Press on 13.8.2003. On 19.8.2003, bundh was observed, details whereof were reported by Press on 20.8.2003. As per the Press report dated 29.8.2003, a delegation, including Petitioners, met the dignitaries i.e. Sarvashree Gopinath Mundhe and Nitin Gadkari, and according to the joint affidavit of Petitioners, the delegation also met Shri L.K.Adwani, on that date. On 9.12.2003, Writ Petition (PIL) was presented in this Court. On 7.5.2005, after receipt of report from MSCW, a Press conference was held by Petitioners, a report of which appeared in the news on 8.5.2005, while the matter was still fixed for hearing in the month of June, 2005. It must be said that the Petitioners chose to approach this Court only after resorting to assistance of fourth pillar of democracy, namely, the PRESS. They approached this Court also after taking harsh step, such as, observing bundh on 19.8.2003. The question we are required to pose to ourselves is, "Whether filing of Writ Petition was necessary, if the Petitioners believed that the steps taken by them, such as, reporting in the Press, observing bundh and delegation to political dignitaries, could have served the purpose and if the Writ Petition could serve the purpose, whether these

earlier steps were necessary ?" This also needs to be viewed in the light of events, which indicate some action on the part of some authorities, although Petitioners may be able to claim that some of those were result of thrust by their agitation. Still, it cannot be denied that some of the authorities had swung into action, without requiring any push e.g. Mrs.U.G. approached Police Station, Jawahar Nagar, Aurangabad, on 9.8.2003 with her complaint against three Respondents. The complaint was registered on the same day, and as the copy of FIR indicates, three Respondents were also arrested on the same day. It must be said to the credit of the police that they did not show any attitude of evasion. The complaint of Mrs. S.C. was registered by police station on 16.10.2003. It is claimed that police had not registered the same earlier and hence, she was required to approach this Court on Criminal side for suitable directions to police station. Eventually, the orders were passed by this Court on 23.9.2003 and Mrs. S.C. approached Jawahar Nagar Police Station for recording her complaint only on 16.10.2003, which does not speak well about her promptitude. A copy of order of this Court in Criminal Writ Petition No. 390 of 2003, dated 23.9.2003, is filed at paperbook page 81 in Writ Petition No. 282 of 2004 and the same reads as follows;

Mr Kishor Patil, learned APP, states that if proper complaint is made to the police station, the PSO will register and investigate the crime, if it discloses a cognizable offence. As on today, he submitted, that there is no complaint lodged with the police station. In these circumstances, we direct the Petitioners to file appropriate complaint to the police station, if she desires to file it. On receipt of such complaint, appropriate action in accordance with law be taken.

A copy of this complaint dated 16.10.2003 is at Exhibit K to Writ Petition No. 282 of 2004. On 11.8.2003, the Petitioners and their associations are said to have given a representation to Commissioner of Police, Aurangabad (Exhibit E) and in the light of events discussed hereinabove, the contents in this representation to the Commissioner of Police, to the effect that, many teachers and two lady teachers i.e. Mrs. U.G. and Mrs. S.C., have complained in the past to the Commissioner of Police, as also to the Petitioners, is required to be branded as incorrect statement. The allegations in this representation are general and vague and out of five demands, serial Nos. 2 and 5 could not have been attended by the Police Commissioner. Remaining three demands were for externment of Shri Rangnath Jadhav, enquiry of sex scandal through CID and police protection to two complaining lady teachers. What is annexed to PIL, as copies of complaints by complaining lady teachers, includes complaint dated 30.7.2003 by Mrs. U.G. to Deputy Director of Education, Aurangabad, and a copy of complaint by Mrs.S.C. to Jawahar Nagar Police Station, Aurangabad. On reference to Writ Petition No. 4170 of 2004 filed by three lady teachers also, we find copies of these two complaints annexed to this petition. There is no copy of any other complaint addressed by these two lady teachers to any other authority, yet, the joint affidavit in its alphabetical paragraph (S) says that, as no offence was registered in spite of complaint by Mrs. S.J. and Mrs. S.C. to the Commissioner,

Writ Petition No. 390 of 2003 was required to be filed. In fact, this joint affidavit also says that on 13.8.2003, the Commissioner of Police himself recorded in camera statements of these lady teachers. The grievance is, yet no offence was registered. In fact, one offence was already registered on 9.8.2003 and a possibility cannot be ruled out that all complaints of all lady teachers could have been part and parcel of the same offence registered on 9.8.2003, if this was a continuous activity, as alleged. On 16.8.2003, Deputy Director of Education had informed the Petitioners that the Principal and Vice Principal would be suspended. On 22.8.2003, notice was issued to the management, directing it to show cause as to why management should not be taken over. These communications had not gone waste because, the Principal and Vice Principal were suspended w.e.f. 27.10.2003 (even before the Administrator took over), appointment of Administrator was ordered on 8.12.2003, who took charge of the management on 9.12.2003. Registration of offence on 9.8.2003, recording of statements of aggrieved lady teachers by the Commissioner of Police himself on 13.8.2003, directions/notices issued by Education Department on 16.8.2003 and 22.8.2003, which culminated into an action on 27.10.2003 and 8.12.2003, were the events which took place even before filing of Writ Petition and at least registration of offence on 9.8.2003 did not require any indulgence of the petitioners. Eventually, we may refer to additional affidavit of Mrs. S.J. filed in Writ Petition No. 4170 of 2004. Annexed to this affidavit, is a copy of her complaint dated 23.11.2003 addressed to PSI Jawahar Nagar Police Station. In this complaint, she refers to directions of the High Court dated 23.9.2003 and yet she has approached the police station on 23.11.2003. Of course, amongst references, she also indicates that a written complaint was given to the Commissioner of Police on 8.8.2003. A copy of this complaint to the Commissioner of Police is not available in the record of either Writ Petitions, and along with this affidavit, there are also copies of communications dated 27.5.2004, 13.7.2004 and 19.7.2004, by which PSI, Jawahar Nagar Police Station, has requested Mrs.S.J. to attend the police station in connection with her complaint. It is obvious that, probably, the offence pertaining to the grievance of Smt. S.J. is not registered for want of further details. The order of this Court in Writ Petition No. 390 of 2003, is dated 23.9.2003 and if it is claim of Mrs.S.J. that she had approached the Court because her complaint was not entertained either by the police station or by the Commissioner, the yawning gap between order of this Court and Mrs.S.J. approaching the police station is practically double than that in the case of Mrs. S.C. who approached police station on 16.10.2003. Over and above, she has not responded to further calls by police station. The representation, allegedly given to the Commissioner of Police by two complaining lady teachers and others, referred to in the representation dated 11.8.2003, by the Petitioners and their associations also to the Commissioner of Police, and the complaint dated 8.8.2003 by Mrs.S.J. to the Commissioner of Police, referred to in her complaint to police station dated 23.11.2003, are not available to us in the form of copies. In the press report in Marathi daily "Gaonkari" dated 13.8.2003, it is recorded that only after Mrs.U.G. showed courage to complain about sexual harassment,

two more lady teachers have come forward. Mrs. U.G. had filed her complaint on 9.8.2003. If all these things are read together, can we presume / believe that Mrs. S.J. might have submitted representation to the Commissioner of Police on 8.8.2003 ?. It is not her case that the police station refused to record her complaint and hence she approached to the Commissioner of Police. This also requires to be considered in the light of the fact that, the complaint of Mrs. U.G. was promptly acted upon by the police station, which is evident from the fact that it was registered on the same day and even arrest of the accused was effected on the same day, which is a matter of record. The circumstances enable us to find a possibility that, prior to 9.8.2003 nobody had approached the police station. This may be even due to fear of damage to the reputation. Treatment given to the complaint of Mrs. U.G. by the police ought to have been sufficient to create confidence in the minds of Mrs.S.C. and S.J. that, if they lodge the complaint with the police station, that also would be acted upon. It is on this background, one is required to question, " Whether it was really necessary for the petitioners in PIL to jump into the picture with total disregard to the confidentiality for the sake of decency and modesty of complaining lady teachers ?". We cannot avoid feeling that although the complaint of Mrs. U.G. was promptly taken cognizance of by the police, a picture is tried to be painted, as if no cognizance was being taken on the earlier occasions, although there is no convincing material on record to firmly believe earlier attempts to approach the authorities, except bare words of the complaining lady teachers that they had approached some of the members in the management and Principal, ventilating their grievance. Even on 30.7.2003, only Mrs. U.G. is said to have forwarded her complaint to Deputy Director of Education, Aurangabad. It may not be out of place to record here what steps, the petitioners could have possibly taken, as well-wishers of the aggrieved lady teachers, presuming it for the sake of arguments that none of the authorities in the management, education department or police department, were taking cognizance of their genuine grievance/complaints, and without resorting to measures, such as, press conference, thereby throwing privacy of lady teachers to the winds or harsh measure like bundh. The Petitioner/s could have accompanied the aggrieved lady teachers to either of the authorities with a written complaint, so that the authorities should take appropriate steps on the basis of the same. If the lady teachers were initially hesitant, they could have done some counselling with the aggrieved ladies and their family members to embolden them to submit their complaints in writing to either of the three authorities. These complainants, accompanied by leaders of the association, could have ensured that the complaints were not given deaf ears. If the authorities showed disinclination to act upon the complaints, or even without wasting time in approaching them, if the aggrieved ladies firmly believed that the authorities would not take cognizance, they could have approached the court of Magistrate with a private complaint, in which case, the Petitioners could have rendered assistance by accompanying, by helping to select lawyer and even to an extent by providing finance, if that was necessary. Either direction by the Magistrate for enquiry by

police u/s 202 of the Code of Criminal Procedure 1973, or direction for investigation u/s 156(3) of the Code, would have been sufficient for registration of offence setting the criminal law into motion. The petitioners are educated persons. They could have directly moved the State Commission for Women, which is empowered to investigate and examine all matters relating to safeguards provided for women under the Constitution and other laws, to take up the cases of violation relating to women, to entertain complaints, even by taking suo - motu notice of all matters relating to deprivation of women's rights and render guidance and advice to the needy women in instituting appropriate proceedings in any judicial forum, or tribunal for violation of constitutional provisions, or any other laws relating to women. The State Commission for Women, through its office could have been in a position to take up the matter to either of the three authorities, thereby compelling them to take appropriate action, by virtue of powers conferred and duties cast upon it, by Section 10 of the Maharashtra State Commission for Women Act, 1993. Coming to the joint affidavit filed by the two Petitioners in PIL, before the Special Committee constituted by MSCW, a copy of which is available as annexure to the affidavit by Principal and Vice Principal, who are also lady teachers, we may point out that in the affidavit, affiants have designated themselves as, i.e.

direct witnesses and Petitioners". If designating themselves as "direct witnesses" is not ignorance, this will have to be taken as a false statement. It is nobody's case that the two petitioners were witnesses to the incident referred to in three complaints by three lady teachers. In sub para (3) of paragraph 1, it is stated that Mrs. U.G. gave a written complaint, regarding mental and sexual harassment by Shri Rangnath Jadhav, Principal and Vice Principal, to Petitioner No. 1 on 11.8.2003. Mrs.U.G. and her husband requested him to secure justice to them. This is followed by a statement that the couple, before approaching petitioner No. 1, had approached the management and officers of education and police department, with a written representation and expected justice and since there was no justice, but escalation of injustice, without caring for life and reputation, the couple had approached Petitioner No. 1 and Ors., who were working in the social and educational movement, by a written complaint with a request to secure justice to them. At least part of this statement is a false statement on oath. On 9.8.2003, couple of days before Mrs.U.G. and her husband are said to have approached Petitioner No. 1, the complaint of Mrs.U.G. was registered as an offence and the accused were arrested on the same day. (Copies of the written complaints which are said to have been tendered to petitioner Nos. 1 and 2 by Mrs.U.G. on 11.8.2003 and 5.8.2003 respectively, are not made available for our perusal). Eventually, in paragraph 2, it is also recorded that on 9.8.2003, Petitioner No. 2 had approached the police authorities, along with Mrs. U.G. and after written complaint, police had caught the Vice President Shri Rangnath Jadhav red handed and while misbehaving with Mrs. U.G. and thereafter the offence was registered. Having gone through the complaint dated 9.8.2003, a xerox copy of which is made available, we find no

presence of police, when Mr. Rangnath Jadhav allegedly misbehaved with Mrs. U.G. at his office. The complaint only speaks about arrival of her husband, because she had kept him hinted that she was proceeding to the office of Mr. Jadhav. The contents in the affidavit that the police caught Rangnath Jadhav raid handed, therefore, are at the cost of truth. In paragraph 8, it is said that, although they have given complaint to the State Commission for Women, through the associations, no steps were taken at least till notice was issued by the court. Copy of this complaint to MSCW, is also not made available for our perusal. Paragraph 10 of this affidavit makes an interesting reading. It exposes Petitioner No. 2 as a person having axe to grind. It is said that the members of the management have accorded threats to the lives of the affiants and, therefore, it is now necessary that they are provided protection. It is added that, in the past also, there was an attempt to remove Petitioner No. 2 Subhash Meher from the employment, by trying to influence caste scrutiny committee and vigilance cell of Social Welfare Department, so that they should invalidate his caste claim. But, the decision of the Scrutiny Committee invalidating the caste claim of Petitioner No. 2 was quashed by the Division Bench of this High Court, and Petitioner No. 2 was thus subjected to torture. Paragraph 10 is as vague as free translation given by us hereinabove, so far as the person, who had tried to influence the officers of the scrutiny committee for invalidating the caste claim of petitioner No. 2. If the contents are not referring to some of the Respondents, then those will have to be ignored as irrelevant. But, if paragraph 10 is included, because petitioner No. 2 believes some of the Respondents to be responsible to influence the scrutiny committee, it is a case where Petitioner No. 2 has personal axe to grind. The two petitioners are certainly not direct witnesses to any of the incidents of sexual harassment, and but for summons by the committee, it was not necessary for them to appear before the committee. Issue before the committee being "sexual harassment", they could not have provided any other material except the fact that the lady teacher/s had approached them with a grievance. But for the summons from the committee, we could not term these petitioners to be over-enthusiastic to attend the proceedings. Taking into consideration that cognizance was taken by police of complaint by Mrs. U.G., even before she is said to have approached petitioner No. 1 on 11.8.2003, the complaints of Mrs. S.C. and Mrs. S.J. were also registered by the police on 16.10.2003 and 23.11.2003 respectively, i.e. on the same day they reached the police station. (May be backed by the court order which, it is doubtful, whether was really necessary in the light of response by the police to the complaint of Mrs. U.G.). Principal and Vice Principal were suspended on 27.10.2003 and notice of taking over management was issued to it on 22.8.2003. Being the events, which had taken place before presenting Writ Petition on 9.12.2003, even if it is assumed that the authorities were moved because of pressure by the agitation, the question would arise, "whether the institution of PIL was necessary ?", and the answer should be in the negative. If at all the Petitioners desired to approach the court of law, they ought to have done so before and instead of taking steps, such as, press conference and agitating measure like bundh. We cannot avoid

Honourable Court, seeking protection and had approached the special committee for the purpose, as directed by the court. It is recorded in the report that, as per the directions of the High Court, the Commission had written to Police Commissioner, Aurangabad, to provide protection to Mrs. Jadhav and Mr. Lone, vide communication dated 29.12.2004, but there was no reply from the authority. From the report of the committee under MEPS Act and Rules constituted by the Administrator, a copy of which is available at Exhibit R-5 to the reply filed on behalf of management by Shri Narendra Jadhav on 28.7.2005 in Civil Application No. 7578 of 2005, it is evident that sixty employees of the management had given representation to the committee. By intimation dated 31.3.2004, they were directed to remain present on 6.4.2004 at 9.00 a.m. The committee had invited the employees one by one, for recording their statements, and in order to know their opinion. But only one teacher appeared before the Committee and Ors. refused to appear. Thereafter some of the teachers together appeared before the Committee and insisted for holding an enquiry, by calling a meeting of all the employees together in a hall. As the committee expressed its inability to follow such a procedure, Sarvashree Rathod, Kamble, Lone and Kherdekar, approached the committee together and informed that the employees were scared to come before the committee. They also questioned the committee as to who will be responsible, if some of the employees are murdered after having made statements before the committee. Thus, it is tried to be suggested that the complaining lady teachers and their witnesses were constantly under threats and required police protection. Other side of the picture is also available by material on record. Petitioners, as office bearers, were with the complaining lady teachers. With their support, lady teachers were not scared to narrate their grievance even to the Press. Impliedly, it is the claim of the Petitioners in PIL that their mode of agitation put pressure on the authorities to act, which they were not willing to. Strength of the association can be judged from the fact that there was total bundh in majority institutions in the town on 19.8.2003. Exhibit B (page 28 in Writ Petition No. 282 of 2004) publishes a photograph with caption that, "the workers of Bharatiya Vidyarthi Sena put a lock on Jai Bhavani Vidya Mandir, on 12.8.2003.". If at all, it was a question of man power, once the Petitioners came into picture, there was no dearth of the same on the side of complaining lady teachers, or their witnesses. As a result of refusal by all the employees to make any statements before the enquiry committee, Principal and Vice Principal, who are also lady teachers, were exonerated by the report dated 6.4.2004 and they were reinstated on 22.4.2004. Annexed as Exhibit R-7 to the affidavit dated 28.7.2005 filed by Shri Narendra Jadhav in Civil Application No. 7578 of 2005, is a copy of an application by the exonerated Principal and Vice Principal, dated 22.4.2004, the day on which they were reinstated by withdrawing the suspension, and addressed to the Commissioner of Police, Aurangabad. They have also prayed for police protection, appropriate action against the named persons and threatened to proceed on hunger strike, if no action is taken against the threats. It is informed that the Assistant Teacher Smt. Manisha Shinde threatened them of burning, by use of petrol. Smt. Ashwini

Jadhav, the three complaining lady teachers and the Assistant Teacher Shri Arun Kamble, abused in filthy language and threatened that they (Principal and Vice Principal) will be despatched, by breaking their arms and legs. The matter does not end here. On 27.4.2004, an offence is registered as CR No. 31/2004, with Jawahar Nagar Police Station, Aurangabad, on the basis of complaint by the Principal, Mrs. Ashwini Jadhav, Manisha Shinde, Arun Kamble, Namdeo Rathod, peon Sadashiv Lone, Rekha Pathrikar and three complaining lady teachers, are recited as accused persons. It is alleged that, all the lady teachers named above, entered the office of the Principal, demanded her resignation and abused her. Ashwini and Manisha allegedly threw chilly powder in the eyes of the Principal and dealt her with slaps. Mrs. U.G. and S.C. tarnished face of the Principal by black colour and also hurled cow dung at her. Mrs. S.J. and Rekha Pathrikar are alleged to have man-handled Mrs. Wakale (Vice Principal). Referring back to the report of the committee appointed by Administrator, Saravashree Rathod, Kamble and Lone are the three amongst four, who had gone before the committee, expressing fear of murder of the person, who may depose before the committee. In the writ jurisdiction, we do not have sufficient measures which will enable us to elect one out of the two, as truthful version. At least the photograph published in the newspaper can be believed, which speaks of the strength behind the complaining lady teachers. And, if representation to the Police Commissioner dated 22.4.2004 and complaint to the police station on 27.4.2004 by the Principal, are taken into consideration, the question that crops up is, "whether the complaining lady teachers, or their witnesses or the petitioners, were really in need of any protection, police protection ?". The answer must be in the negative. The demands for police protection, therefore, must be viewed as an attempt to create an atmosphere and believe that they were under threats.

24. Judgment of the Supreme Court in the matter of Vishaka and others Vs. State of Rajasthan and Others, is referred and relied upon by the Petitioners, as the supporting law/legal position, to their case. We have reproduced verbatim some of the guidelines, specifically relied upon by either side (mainly by petitioners) and have also tried to summarise the purport of the remaining guidelines which were not so specifically relied upon. As is expressed in the opening part of the said judgment, that petition was brought as a class action by certain social activists and NGO's, with the aim of focussing attention towards this social aberration and assisting in finding suitable methods for realisation of true concept of "gender equality" and to prevent sexual harassment of working women in all work places, through judicial process, to fill the vacuum in existing legislation. The same was entertained in view of need to find an effective alternative mechanism to fulfil urgent social need. The incidents of sexual harassment of working women at work place, it is observed; "results in violation of the fundamental rights of "gender equality" and "Right to life and liberty" and these are violation of rights under Articles 14, 15, 21, as also Article 19(1)(g) of the Constitution. Following observations in paragraphs 16 of the judgment, preceding the guidelines (12) in number, provide "object and reason" for laying

down the guidelines, which, as observed in paragraph 9 of the judgment, are consented to by Union of India, through the learned Solicitor General;

In view of the above and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work place, we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for the purpose.

Taking a note of the fact that present civil and penal laws do not adequately provide for specific protection to women from sexual harassment at work places, the Hon"ble the Supreme Court felt it necessary and expedient for employers in work places, as well as other responsible persons or institutions, to observe the guidelines, in order to ensure the prevention of sexual harassment of the women at work places. Considering the guidelines as a compact scheme, it can be seen that responsibility to take suitable measures for prevention of sexual harassment of women at work place is placed on the employers, both, from public sector as well as private sector. Both of them are expected to add to the service conditions pertaining to discipline rules / regulations prohibiting sexual harassment and to provide for appropriate penalties. Once the "sexual harassment" is incorporated as "misconduct" in the discipline rules, employers are expected to take suitable disciplinary actions against those indulging into sexual harassment of women workers. Employers are also expected to launch prosecutions under penal law, if the behaviour complained amounts to specific offence under Penal Code. [Sections 509, 506, 504, 354 and 376(b) appear prima facie attracted by the possible behaviour amounting to sexual harassment.]. The employer / person responsible are also responsible to provide protection against third party harassment. Last but not the least, they are expected to provide suitable mechanism so that aggrieved women can place their grievance before such "Complaints Committee", which should provide support / services for prosecution of, or disciplinary action against the wrong doers. [Guideline No.(7) has also provided the composition of Complaints Committee, headed by a female member, having at least 50 per cent members to be female and involvement of independent / neutral party in the same.] Involvement of workers in taking such remedial measures is also found desirable. Hon"ble Supreme Court has in point No. 11, requested the Central Government / State Government to adopt suitable measures including suitable legislation, for observance of these guidelines and thus ensure protection to working women against sexual harassment at work places, either from co-workers, superiors or third person. It is for this purpose that the Hon"ble Apex Court has defined "sexual harassment" and incorporated the same within the guideline at serial No. 2. Although learned Counsel for the Petitioner has repeatedly referred to this landmark judgment and guidelines laid down therein, and also to the fact that the Supreme Court having specifically declared this to be law of the land by force of Article 141, at least till suitable legislation takes the field, neither the learned AGP, nor learned Counsel for the

State Commission for Women, nor learned Counsel for the management (Respondent No. 9 in Writ Petition No. 282 of 2004), have apprised us of any steps taken by either of those bodies for enforcing observance of these guidelines at work places, except Government Resolution No. " _____ " dated 3.08.2004, issued by the General Administration Department in the Government of Maharashtra. The Government Resolution indicates that, by the Government Resolution dated 19.5.1999, a " _____ " is constituted and the scope and ambit of its powers are also prescribed. By the earlier Government Resolution, the said Committee was empowered to recommend disciplinary action, but by this Government Resolution, report of the said Committee is to be treated as enquiry report and disciplinary authorities are expected to act upon the report and take suitable action against the indicted person, in accordance with discipline and appeal rules. There is nothing to show that the State Government has motivated, or compelled private sector in the State to ensure protection for working women against sexual harassment [Report from MSCW special committee, is not a report of " _____ ", which is given status of the report of enquiry by disciplinary authority.] We have no indications that MSCW had swung into action and moved the State Government, as is possible for it by virtue of Section 10(1)(d) and (p) of the Maharashtra State Commission for Women Act, 1993, after judgment in Vishaka's case. Had there been any such steps, even after orders dated 16.08.2004, the Commission could have apprised this Court of the same and persuaded this Court for modification of orders to divert the enquiry in accordance with the new mechanism, if any, established. And the management of school, a Government aided private body, it can be presumed, has no provision for observance of the guidelines. It must be said that attitude of one and all is either totally insensitive, or at least not adequately sensitive to the guidelines laid down by the Supreme Court and directed to be observed. However, to the disadvantage of the petitioners, Vishaka's judgment does not lay down as to how "sexual harassment" can be dealt with, either for compensation to the wronged, or for punishment to the wrong doer, directly in the Writ jurisdiction under Article 226 of the Constitution. Probably that is why petitioners have prayed for directions to respondents to take action. Conventionally, High Court does not entertain any grievance for which alternate and efficacious remedy is available under existing laws. It also abstains from proceeding in the matters, where there are disputed questions of fact. In 2004 (4) SCC 543 TN Electricity Board v. Sumathi and Ors., the Supreme Court has observed thus in paragraph 10:-

10. In view of clear proposition of law laid down by this Court in Sukaman Das case, when disputed question of fact arises and there is clear denial of any tortious liability, remedy under Article 226 of the Constitution may not be proper. However, it cannot be understood as laying down a law that in every case of tortious liability, recourse must be had to suit. When there is negligence on

the face of it and infringement of Article 21 is there, it cannot be said that there will be any bar to proceed under Article 226 of the Constitution.

Although later half of the observations quoted above seem to dilute the rigour of general rule embodied in earlier part, that is only by way of exception and when the liability is obvious on the face. It would thus be safe to proceed under Article 226, only on the basis of "established" facts or position. There is a handicap ingrained in the procedure that is followed while entertaining petitions under Article 226. The Courts proceed on the basis of affidavits filed by the parties and if the affidavits make conflicting claim, there is no mechanism or assistance, such as, cross examination as is available to traditional trial courts, to determine truthfulness or otherwise of the averments in conflicting claims, before electing one version as safely acceptable to act upon. Ordinarily, affidavits cannot properly be acted upon, unless both parties agree to have them treated as evidence. This is because, affidavits are statements on oath by the affiant, not tested on the touchstone of cross examination for the purpose of ascertaining veracity and reliability. Affidavits are evidence of facts alleged therein, only when opposite party does not controvert the affidavit. It is this human limitation of human justice that is acknowledged by Courts in referring to act under Article 226, when there are disputed questions of fact. Moreover, right conferred upon indicted person by principle of audi alterem partem, cannot ever be lost sight of. Compensation also has its edge of penal nature. It is at least sentence of fine for civil wrong and hence, even before awarding compensation, the person will have to be given reasonable opportunity to defend. It is this aspect that compels us to examine the report of MSCW, which is submitted after enquiry, as ordered by us, its acceptability in the light of contentions of respondents that principle of natural justice are not followed during the course of enquiry and then only we can take a decision, if we can safely take action on the basis of said report.

25. The report received by this Court from MSCEW, is under signature of the Member Secretary. Consequently, learned Counsel for the Respondents have raised doubts about authenticity of the report. It was pointed out that the committee consisted of as many as six members, including the representative of the management and also lady representative nominated as observer by the management (Shri P.K.Nalawade and Smt. Rukhmini Nalawade). In spite of this, the report is signed only by Member-Secretary, who was the chairperson of the committee. We are afraid, authenticity of the report cannot be successfully challenged by this small irregularity, if that be so. Moreover, the report was signed by the Member-Secretary, who was, in fact, chairperson of the committee. In this context, reliance was placed upon Section 9(3) of the Maharashtra State Commission for Women Act, 1993, which reads:

9. Procedure to be regulated by Commission. (1) xxxxxxxxxxxxxxxxxxxxxxxx

(2) xxxxxxxxxxxxxxxxxxxxxxxx

(3). All orders and decisions of the Commission shall be authenticated by the

Member-Secretary, any other officer of the Commission duly authorised by the Member Secretary in this behalf.

The report having been authenticated by the Member Secretary as required by the law and more particularly Section 9(3) of the Act, the genuineness of the same cannot be doubted. In fact, on reading Section 9 as a whole, it is evident that, the Commission, or committee constituted by Commission is empowered to regulate its own procedure.

26. Coming to the report submitted by the special committee of MSCW in compliance of order passed by this Court on 16.8.2004, we have already reproduced gist of the same and recommendations nearly verbatim in para 13 ante. The report is under serious challenge from the Respondents on the ground that the Committee has not followed principles of natural justice and, therefore, recommendations can neither be accepted as findings after judicial enquiry, nor those can be acted upon. It was submitted that, the proceedings of the committee can be looked at , at the most; as an investigation. We may state here itself that the recommendations of the committee commenced with following words.

Prima facie it, therefore, appears from the enquiry that, there was a case of sexual harassment at the work place, wherein the complainants' modesty had been outraged." We have categorized the recommendations of the committee in two parts, while describing those in the earlier part of this judgment i.e. (i) those, which are specific recommendations and (ii) those, which are general observations. Before addressing to the challenge by the Respondents that the report is not acceptable and, therefore, recommendations of the committee cannot be acted upon, we would like to consider recommendations generally. Amongst the general observations, the committee has observed that one of the key issues that needs to be highlighted, is the mental trauma the complainants had to go through, along with long travelling from Aurangabad to Commission's office at Mumbai for more than ten visits. So far as mental trauma is concerned, we are unable to provide any practical solution. But, troubles, the complainants were required to suffer because of the journey on ten occasions from Aurangabad to Mumbai, could have been avoided by the special committee, by deciding to hold its sittings at Aurangabad. Section 9 of the M.S.C.W. Act is referred earlier in this judgment, and it is evident from the text of Sub-section (1) that the Commission or a Committee can decide its place of sitting, apart from the powers conferred upon the Commission to regulate its own procedure and the proceedings of the committees thereof, by virtue of sub section (2) (d). Sub-section (1) of Section 9 reads thus;-

9. Procedure to be regulated by Commission. (1). The Commission or Committee thereof shall meet as and when necessary and shall meet at such time and place as the chairperson may deem fit.

Second general observation pertains to need of dealing with so many witnesses.

The Committee says, "also the need of tackling so many witnesses needs to be questioned." We are afraid, the committee is required to blame itself for the purpose, when the committee sits down to conduct the enquiry, its presiding officer (the Committee in this case), which decides and rules about the number of witnesses to be examined. In this matter, when core issue that was expected to be enquired into by the Committee, being "sexual harassment" of the complainants, the committee ought to have selected the witnesses, who could provide direct and best possible evidence i.e. the complainants, persons who were present when the alleged incidents of sexual harassment took place or the persons to whom the complainants had narrated their grievance, soon after the incident. In this matter itself, we are unable to appreciate examination of two Writ Petitioners in PIL as witnesses, by the Commission. As already discussed earlier they had audacity to file an affidavit titling themselves as "_____ " (direct witnesses). The contents of their own affidavits falsify the claim. This is because, according to the Petitioners, Mrs. U.G. had approached them on 11th August and 5th August respectively. Thus, the two Petitioners had no direct knowledge of the incidents, nor they were the persons to whom the incidents were reported, soon after occurrence. All the enquiries are expected to proceed on the basis of admissible evidence and not on the basis of opinions. Merely because the complainant produces many witnesses, or defence does so, the enquiring authority is not bound to examine them all. There is nothing wrong, if the presiding authority interrogates the complainant about the point on which the witness is likely to depose and then take a decision, whether the witness is really required to be examined. It was for the committee to separate grain from the chaff. The observations to the effect that the number of witnesses to be examined, is a problem, clearly indicates incapacity and failure of the committee to carry out such exercise of selecting direct, relevant and material evidence from the indirect opinion and inadmissible evidence. The most dangerous observation of the committee is contained in penultimate paragraph of the report and it reads thus;

Implementing the need for natural justice in cases of sexual harassment may hamper the proceedings.

We are afraid, these observations from a body, which is a committee constituted by a statutory authority-the Commission, are shocking, and not only surprising. The principles of natural justice cannot be divorced from any enquiry, more so when the conclusions of the enquiry are likely to impose penal consequence or civil liability, such as, compensation, upon indicted person. As already discussed above, even the High Court under its jurisdiction as conferred by Article 226, refuses to act, when there are disputed questions of fact. Even such restraint on the part of regular judicial forum, is a consequence of the importance of principle of natural justice. The indication that observance of principle of natural justice hampers enquiry against sexual harassment, thereby impliedly suggesting that such principles should be ignored, cannot be sustained for any reasons and at any costs. There is no presumption that every complainant approaches the forum

available, with whole truth. Right of hearing conferred upon delinquent, privilege to cross examine the witnesses and such steps, are aimed at enabling the enquiring authority, may it be judicial or quasi judicial, an opportunity to ascertain truthfulness and reliability of the accusations levelled by the complainant. The suggestion that the principle of natural justice may be ignored, or may not be insisted upon, for application in the cases of sexual harassment, would mean conviction of the indicted person as soon as, there is a complaint of sexual harassment. The enquiry dehors the application of principle of natural justice, would be a mere farce of enquiry. We must record here that a statutory body, or a sub committee constituted by it, ought never to think of giving a go-by to principle of natural justice.

The committee has also spoken about need to look into various mechanisms for quick disposal of cases of sexual harassment and separate monitoring body to be established at the district / taluka level to scrutinize the cases in private companies or institutions or formation of neutral government bodies at district level, to conduct such enquiries, for the purpose of implementation of recommendations in Vishaka's case, we have already demonstrated and we repeat that Section 10 of the M.S.C.W. Act, 1993, enables the Commission to take up all these issues with the State Government. Need to take such steps now expressed by the Committee, in effect, is an admission that in spite of lapse of nine years since the judgment in Vishaka's case, the Commission has not taken any such steps, although the Commission is supported by Section 10 for the purpose.

27. Coming to specific recommendations as enlisted in paragraph 13 ante, we cannot avoid feeling that couple of recommendations travel beyond the scope of enquiry. The Commission was expected to enquire about the sexual harassment and make recommendation about steps to be taken. After arriving at a conclusion that there was prima facie evidence to believe that the complainants were subjected to sexual harassment at work place, the committee has recommended an enquiry to be conducted to look into the matter of administrative irregularities (misappropriation of funds, abuse of authority in ensuring reduction of strength of the students to deny permanency to the teachers etc.), noted during the enquiry. In the report, we have not been able to find any material discussed by the committee, on the basis of which it arrived at a prima facie conclusion that there were such irregularities in the administration. In any case, other administrative irregularities, was not subject of the enquiry. About the allegation that transfer certificates were forcibly issued to some of the students, aimed at reducing their strength so that some of teachers (one of the complainants) could be terminated, we have already expressed that this does not appear probable and possible. The students, who have already secured admissions to a school, guardians may not be inclined to hunt admissions somewhere else at the desire of management of the school, where the child is already admitted. Observing that the enquiry against and suspension of Smt. Ashwini Jadhav and Mr. Lone, peon, was motivated due to their appearance as

witnesses for the complainants, it is recommended that the enquiries should be stopped and they should be reinstated. No doubt, because of opinion that the suspension and enquiry are linked with the appearance of the delinquents as witnesses for the complainants to the displeasure of the management, the recommendation appears relevant. But, while making such a recommendation, the report of the committee does not contain any discussion for arriving at a conclusion, on the basis of which it has so recommended. Unless the opinion formed that suspension and enquiry were motivated is justified by the reasons, such a recommendation cannot be upheld. It can be presumed that probably, these two were examined as witnesses and they expressed their suspension and enquiry, as motivated. For arriving at a conclusion that the enquiry and suspension of these two witnesses was motivated, the Committee would have been required to arrive at a conclusion not only that their version is truthful, but also that the charges levelled against them in departmental enquiry are false. There is no discussion in the report on this aspect and we have already discussed the conduct of both these, of refusing to depose before the committee constituted for enquiring into allegations against the Principal and Vice Principal, as also violent conduct of tarnishing the face of Principal with black colour, on 27.4.2004, before order of this Court on 16.8.2004 and before their suspension in September/October, 2004. In fact, suspension of peon Lone was confirmed by this Court, by dismissal of his Writ Petition No. 6187 of 2004, on 5.10.2004 (At Exhibit R-3 to reply filed by the management on 28.7.2005 in Civil Application No. 7578 of 2005, there are copies of the orders of this Court, which indicate that on 27.4.2005, Mr. Lone and Mrs. Ashwini Jadhav had withdrawn their Writ Petition Nos. 2300 and 2290 of 2005, by indicating to the court that, in view of subsequent developments, the petitioners have been asked to be reinstated.). The factual details thus, clearly indicate that the committee has recommended withdrawal of both, suspension and enquiry, as against these two individuals without discussing any reasons for arriving at a conclusion that the same were motivated. The recommendation that Mrs.S.J. and Mrs.S.C. should be made permanent in the institution, as per the procedure laid down by the Education Department, is certainly beyond purview of the enquiry and also without discussing any reasons for such a recommendation. Annexed as C-4 to Civil Application No. 2364 of 2006 filed by the three petitioners in Writ Petition No. 4170 of 2004, there is a communication dated 30.4.2005 by Deputy Director of Education, Aurangabad, addressed to Head Master, Jai Bhawani Vidya Mandir, Aurangabad. References relied upon in this communication include application by Mrs. S.J. dated 29.4.2005 and also letter dated 30.4.2005 from Aurangabad District Junior College Teachers Association. By the communication, it is evident that for the academic year 2000-01, 2001-02, 2002-03 and 2003-04, Smt.S.J. was granted approval as a teacher for physical education on clock hour basis. The journey beyond the scope of the recommendations by the Commission to confer permanency on Mrs. S.J. is evident from this status of Mrs. S.J. as reflected from the said communication. The Commission has not even said that they may be considered for permanency. It is also recommended that Mrs.

Deshpande and Mrs. Wakale (Principal and Vice Principal) should be immediately suspended and disciplinary action be taken against them, because the complainants were pressurised by them against wishes of the complainants. Indirectly, Principal and Vice Principal are held guilty of abetment to sexual harassment. This Court had passed an order of enquiry on 16.8.2004 and after couple of adjournment, the Commission submitted its report with forwarding letter dated 9.4.2005. The chronology of events given by us in paragraph 22 hereinabove, shows that the Principal and Vice Principal were suspended on 27.10.2003 and on exoneration after enquiry constituted under Rule 36 of the M.E.P.S Rules, 1981, werereinstated on 24.4.2004. We have already discussed that exoneration was result of the fact that although 60 staff members approached the enquiry committee, they refused to depose one by one and they desired the enquiry to be held by a meeting of all in a hall. The recommendation of suspension and enquiry of Principal and Vice Principal in the month of April 2005, one year after their reinstatement, demonstrates total non application of mind to the facts of the case on the part of the Committee. One of the recommendations was for provision for protection, of police protection and security to the complainants,as well as witnesses. Subject of provision of police protection to the witnesses has now-a-days assumed importance also due to trend of hostility of witnesses in criminal trials, resulting into acquittals.Yet,there is no codified provision for such police protection. About this recommendation, without repetition of our reasons, we may only say that for the reasons discussed in paragraph 23 ante, we have found that neither the complainants nor their witnesses needed any police protection, because they were supported enough by man and muscle power.

28. Remaining four recommendations include directions to Shri Rangnath Jadhav to tender written apology, his being restrained from holding any office in the trust, treating the attendance of complainants before the enquiry committee as on duty and bearing all expenses of enquiry to the tune of Rs. 1,72,227/= by Shri Rangnath Jadhav and Principal and Vice Principal together, plus social costs of Rs. 1,00,000/= to be borne by Shri Rangnath Jadhav. The recommendations indicate that the committee has found all three delinquents prima facie guilty of indulging into sexual harassment at work place. It was the contention of the learned Counsel for the Respondents that the enquiry committee has not followed principles of natural justice,as against which,it was the contention of Advocate Shri Sagar Killarikar that reasonable opportunity of being heard was conferred upon the Respondents and principle of audi alterm partem having been satisfied, nothing more could be expected of the committee. Both the sides relied upon some factual details regarding the manner in which the enquiry was conducted. Mr. Killarikar pointed out that all the Respondents have filed their statements before the committee, they also filed their affidavits and they were also allowed to examine some of the witnesses. Although there is a grievance that the delinquents were not supplied with copies of the statements of the complainants and their witnesses, as observed in the report, they were allowed

access to the record, although the statements were recorded in camera. Prior to appearance before the Commission, the delinquents were aware of the allegations because of supply of copies of Writ Petition. Mr. Killarikar went ahead to claim that the report of the Commission is now enquiry report and it can be acted upon for disciplinary action, in view of the Government Resolution dated 03.08.2004 (we have already discussed this Government Resolution earlier and the report by _____), is given the status of enquiry report and not the report of the committee ordered to enquire into, by court.). As against this, while challenging reliability of the report and for the purpose of contending that the committee has not observed the principle of natural justice, learned Counsel for the Respondents raised following points. The Commission ought to have served a notice of the charges, the delinquents were expected to face. It was contended by Mr. Patil that not only copies of depositions were denied, but opportunity of cross examination of the witnesses was also denied. Mr.P.K. Nalawade is shown as member at serial No. 5. Admittedly, Shri Gajanan Surase appeared in his place, who succeeded Mr. Nalawade as the President of the management. (Mr.Nalawade was the administrator appointed). Mr. Surase attended only four meetings and 5th one was attended by Mr. Narendra Jadhav, on behalf of Mr.Surase. Thus, out of nine sittings, four sittings were not attended by one member and the Commission took no steps to ensure presence of that member. As per the report itself, Mrs. Nalawade, ladies' observer of the management, withdrew from the committee on 03.12.2004. There were no steps taken by the committee to get substitute by requesting the management. The report itself points out that as the complainants Mrs. U.G., S.C. and S.J. requested recording of their depositions in absence of any male members, and the request was accepted. But, the similar request by Principal and Vice Principal, who are also female deponents, to record their statements in camera, was rejected. The reason recorded is that, according to the committee, enquiry of complainants in presence of non-complainants would have prejudiced the complainants, but the same could not be held applicable to the non-complainants. This observation at page 10 of the report, suggests that the statements of the complainants were recorded without allowing the delinquents to hear the same. In camera statements, or the desire of the complainants to record their statements in absence of any male individuals, did not require recording of statements in absence of female delinquents i.e. Mrs. Deshpande and Mrs. Wakale, but that seems to have been done. Denying an opportunity to depose in camera to these two female delinquents, was certainly an incident of double standards adopted by the committee, according to learned Counsel for the Respondents. At page 9 of the report, the committee has recorded that there were several cross allegations between the complainants and non complainants and also small bickering outside the enquiry room. Non complainants made false allegations against the committee itself. In view of these, the committee unanimously decided not to hand over any part of the proceedings, including minutes of the meetings, documents placed before it etc., to either parties, as the enquiry could not have been completed otherwise. (In spite of this, it was

suggested by Advocate Shri Sagar that, although the Respondents were not supplied copies of depositions and statements, they were allowed access to the record.). If all the details referred hereinabove are taken into consideration, there is room to infer that the statements of the complainants were recorded, by keeping even the female delinquents outside the enquiry room, they were denied copies of the depositions and even access to the record. Keeping aside the factual details for the time being, we intend to refer to the observations from the judicial pronouncements relied upon by the parties on the issue of principles of natural justice. In the matter of State of Bihar Vs. Lal Krishna Advani and Others, , Shri Sapkal, learned Counsel for the respondents/lady teachers, has relied upon following observations from paragraphs 5, 6 and 8 of the judgement, as consolidated in head-note. One is entitled to have and preserve, one's reputation and one also has a right to protect it. In case any authority, in discharge of its duties fastened upon it under the law, traverses into the realm of personal reputation adversely affecting him, must provide a chance to him to have his say in the matter. In such circumstances right of an individual to have the safeguard of principles of natural justice before being adversely commented upon by a Commission of Inquiry is statutorily recognised and violation of the same will have to bear the scrutiny of judicial review. It would but be necessary to notice a person whose conduct the Commission considers it necessary to inquire into during the course of the inquiry or whose reputation is likely to be prejudicially affected by the inquiry. Such a person would have a reasonable opportunity of being heard and to adduce evidence in his defence. Thus, the principle of natural justice was got inducted in the shape of statutory provision. It is thus incumbent upon the Commission to give an opportunity to a person before any comment is made or opinion is expressed which is likely to prejudicially affect that person. Needless to emphasise that failure to comply with principles of natural justice renders the action non est as well as the consequences thereof.

The Court was dealing with the provisions of Section 8-B of the Commissions of Inquiry Act (60 of 1952). Although such a provision from the MSCW Act is not relied upon, the observations are required to be taken into consideration in view of the fact that as a result of inquiry, the respondents were likely to be held responsible for sexual harassment. Following observations from the case of Canara Bank and Others Vs. Shri Debasis Das and Others, from paragraphs 13, 14 and 15 were also relied upon.

13. Natural justice is another name of common sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common sense liberal way....

14. The expressions "natural justice" and "legal justice" do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is

called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law....

15. The adherence to principles of natural justice as recognised by all civilised States is of supreme importance when a quasi-judicial body embarks on disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle....

It is evident from the observations in paragraph 15 that the principles of natural justice cannot be divorced with even in the matters of enquiries by quasi-judicial bodies or for the purpose of administrative action involving civil consequences. The case of Shri O.P. Choudhry Vs. Rehabilitation Ministry Employees Cooperative House Building Society and Others, , relied upon by learned advocate Shri P.R. Patil was an extreme case wherein Shri K.N. Kapur had not impleaded the appellant as a party to the writ petition, and in his absence, according to the Supreme Court, no order adverse to his interest could have been passed. The appeal preferred by the appellant was, therefore, allowed and the order passed by the High Court was modified to the extent that the appellant was placed at serial No. 33 and Shri K.N. Kapur at serial No. 34 of the seniority list. We do not think that we are facing such a situation in the matter before us. The respondents were impleaded before this Court and they had also attended and rendered evidence before the Inquiry Committee. The observations from paragraphs 59 and 61, relied upon by Shri P.R. Patil, learned advocate, from the case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, lay down the same principle that the principles of natural justice are applicable to quasi-judicial inquiry as also administrative inquiry. The observations of the Supreme Court are thus :

Now, if this be the test of applicability of the doctrine of natural justice, there can be no distinction between the quasi-judicial function and an administrative function for this purpose. The aim of both administrative inquiry as well as quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice, or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable to quasi-judicial inquiry and not to administrative inquiry. The law must, therefore, now be taken to be well settled that even in an administrative proceeding which undertook civil consequences, doctrine of natural justice must be held to be applicable."

In view of the observations of the Supreme Court, in the matters of Maneka Gandhi as well as Canara Bank, we feel fortified in our criticism against the observations of the Committee to the effect, "implementing the need for natural justice in case of sexual harassment may hamper the proceedings."

Requirements of observance of principles of natural justice is observed in quite

strong words by the Supreme Court in the matter of Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis, , as follows.

"Even where there was no specific rule on the subject, like Rule 143 in the case before us, this Court has held that violation of implied rule of natural justice, in case of exercise of quasi-judicial powers results in a void decision. It was so held because the application to observe rules of natural justice was an imperative in such a situation."

The observations borrowed from earlier judicial pronouncement in the case of State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, , which read thus :-

The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with an authority to adjudicate upon the matters involving civil consequences. It is one of the fundamental rules by our Constitution set-up that every citizen is protected against exercise of arbitrary authority by the Act or its officers. Duty to act judicially would, therefore, arise from the very nature of the function to be performed, it need not be shown to be separately added. If there is bar to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the association of justice be ignored and an order to the prejudice of a person is made, the order is nullity. That is basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

The rulings referred above prescribe that even quasi-judicial authorities or administrative authorities while inquiring into allegations against an individual in their capacity as such can not escape from the requirements of observance of principles of natural justice which is the requirement of fairness of trial of a person against whom allegations are levelled, may it be judicial, or quasi-judicial or administrative. We have already discussed earlier the rival submissions of the parties on this issue and we feel that following points can be summarised as the region wherein the Special Committee constituted by the MSCW has derogated from observing principles of natural justice.

[i] They have applied double standards while allowing "in camera" hearing. They have allowed the complainants to depose "in camera" but the same liberty was not granted to Mrs. Deshpande and Mrs. Wakale although they were female witnesses. In fact in the order dated 16-08-2004 itself, this Court has recorded a liberty to proceed "in camera" if necessary. "In camera" proceedings are aimed at honouring the decency and modesty of a woman while giving her liberty to render her evidence. While recording statements of three complainants, the Committee would have been justified in requesting the male members (except male members in the Committee) to leave the inquiry room. Mr. Rangnath Jadhav inspite of being a male member could not have been asked to leave. From the report, it appears that even Mrs. Deshpande and Mrs. Wakale are asked to leave. "In camera" trial thus seems to have been stretched to the extent of

complainants speaking only to the adjudicating authority. Mrs. Deshpande and Mrs. Wakale also being female witnesses, there was no reason why their request for deposing "in camera" was refused. The rules of decency and modesty ought to have been available equally to the delinquents as to the complainants.

[ii] From the contents in the report, it appears that in the anxiety to provide "in camera" hearing to the complainants, the delinquents are denied the opportunity of hearing the depositions of complainants. As already observed in the above sub-para, even Mr. Rangnath Jadhav could not have been disassociated from the hearing, he being the person facing the charges in the pretext of "in camera " hearing.

[iii] The report depicts that statements of complainants were recorded in the absence of delinquents. It is the allegation of delinquents that inspite of repeated demands, even by written applications, they were not allowed copies of depositions. Annexed to the affidavit filed by respondents No. 12 and 13 on 07-07-2005 in writ petition No. 282 of 2004 at Exhibit-H and Exhibit-I, there are applications of Principal and Vice Principal dated 03-12-2004 and 08-12-2004 expressing grievance for not having received the copies of any documents inspite of having shown readiness to pay the requisite fees. In the report, the Committee has gone to record that observing the bickerrings taking place between the parties outside the inquiry hall, the Committee had unanimously decided not to hand over any part of the proceedings, including minutes of the proceedings, documents placed before the Committee, etc. to either parties and thus there is room to infer that delinquents were required to face the charges without knowing as to what is deposed against them by the complainants and what documents are placed before the Committee on behalf of the prosecuting side. It must, therefore, be said that the Committee proceeded to a quite considerable extent, by observing the principles of natural justice in breach. Reliance was also placed upon the judgement of this Court in the matter of Shri Vijay Kisan Karanjkar Vs. The State of Maharashtra and Others, and more particularly following observations in paragraph No. 20:-

In our considered opinion, when there were three members and the order passed by all three members, all of them ought to have afforded hearing to the petitioner.... Hence, the action taken by the Committee of affording hearing by two members and passing an order by three members cannot be upheld, and must be set aside.

It was a case of verification of caste claim and although there was a Committee of three members, hearing was given to the claimant only by two members whereas the order was passed by three members. In the matter at hands, the reliance is tried to be placed on the same, because Mr. P.K. Nalawade, the Administrator and thereafter Mr. Gajanan Surase who succeeded the Administrator, did not attend atleast last four meetings. Similarly, Mrs. Nalawade, female representative of the Management did not attend after she felt offended by the attitude of the other members of the Committee on 03-12-2004. It was,

therefore, contended that hearing was not accorded by all the members, and therefore, the report stands vitiated. We are not inclined to place much reliance on the matter relied upon for the purpose of drawing similarity and following the ratio laid down. The Caste Scrutiny Committee is a statutory Committee constituted under the relevant Legislation. Present Special Committee was like a "Court Commissioner" and had the composition of the Committee been different than it was, still the same could not have been faulted with. The observations that the decision vitiates when the entire Committee had not accorded hearing to the parties, therefore, is not applicable to the matter at hands.

29. Learned Counsel for the respondents have also commented upon the evidentiary value of the report. They have submitted that even if this Court arrives at a conclusion that the procedure followed by the Committee was not in breach of principles of natural justice, still the findings are not of such a status that this Court can act upon the recommendations. *T.T. Antony Vs. State of Kerala and Others*, was relied upon by learned Counsel Shri V.D. Sapkal and reliance was placed on following observations from paragraphs No. 30 and 31. Of course the court in that case was dealing with a report of Inquiry Commission under the Commissions of Inquiry Act (60 of 1952). The observations are as follows :-

30. A Division Bench of the Nagpur High Court in *M.V. Rajwade, I.A.S., District Magistrate v. Dr. S.M. Hassan* AIR 1954 Nag 71 following the said judgement of the Privy Council, held that the Commission was a fact finding body meant only to instruct the mind of the Government without producing any document of a judicial nature and that findings of the Commission of Inquiry were not definitive like a judgement. It was also pointed out that there was no accuser, no accused and no specific charges for the trial; nor was the Government, under the law, required to pronounce, one way or the other, on the findings of the Commission. That judgement was approved by various judgements of this Court.

31. In *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, a Constitution Bench of this Court while considering the constitutional validity of the Commissions of Inquiry Act indicated that the Commission is merely to investigate, record its findings and make its recommendations which are not enforceable proprio vigore and that the inquiry or report cannot be looked upon as judicial inquiry in the sense of its being an exercise of judicial function properly so called. The recommendations of the Commission of Inquiry are of great importance to the Government in order to enable it to make up its mind as to what legislative or administrative measures should be adopted to eradicate the evil found or to implement the beneficial objects it has in view, it would be appropriate to notice the following observations of the Constitution Bench :

But seeing that the Commission of Inquiry has no judicial powers and its report will purely be recommendatory and not effective proprio vigore and the statement made by any person before the Commission of Inquiry is, u/s 6 of the Act, wholly inadmissible in evidence in any further proceedings, civil or criminal,

there can be no pint in the Commission of Inquiry making recommendations for taking any action "as and by way of securing redress or punishment" which, in agreement with the High Court, we think, refers, in the context, to wrongs already done or committed, for redress or punishment for such wrongs, if any, has to be imposed by a court of law properly constituted exercising its own discretion on the facts and circumstances of the case and without being in any way influenced by the view of any person or body, howsoever august or high powered it may be.

On comparison of Section 6 of the Commissions of Inquiry Act, 1952 and Section 13 of the MSCW Act, 1993, the provisions can be seen to be *pari materia*. Both include a bar to use the statement made before the Commission to be used against the maker in any civil or criminal proceeding. Shri Sagar Killarika, learned advocate has placed reliance on the observations in the matter of *Aparel Export Promotion Council v. A.K. Chopra*, reported at AIR 1999 SCW 274 Although Shri Killarika relied upon this case for other purpose also, we intend to refer to the observations relied upon by him pertaining to appreciation of Inquiry Report. (there is no debate over the proposition that sexual harassment of a woman at work place violates Articles 14 and 21 and that in the cases involving violation of human rights, the courts forever have to remain alive to the international instructions and convention, which were tried to be supported by learned advocate Shri Killarika on the basis of this reported judgement and contents in paragraphs No. 27 and 28, respectively). Regarding the appreciation of evidence, reliance was placed on following observations in paragraph No. 29.

29. In a case involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities or dictionary meaning of the expression "molestation".

In the reported matter, the respondent was held guilty of sexual harassment in the Departmental Inquiry and penalty of removal from service was imposed upon him. The respondent filed writ petition in the High Court, before the Staff Committee could decide his appeal. The High Court allowed the writ petition directing the Company to act upon the decision of the Committee. The Supreme Court set aside the decision of the High Court and directing the Committee to take a decision. The Committee confirmed the decision of removal and dismissed the Departmental Appeal filed by the respondent. High Court in the second round of writ petition (Single Judge), held that it was an attempt to molest and writ petitioners had not in fact molested female employee. In the Letters Patent Appeals filed by the Company as well as the respondent, decision of Single Judge was confirmed. The Supreme Court allowed the appeal filed by the Company and confirmed the penalty imposed by disciplinary authority and appellate authority. The observations regarding appreciation of evidence were made by the Apex Court on the background of above facts. The observations are pertaining to appreciation of evidence recorded by the Inquiry Committee and approach of the

High Court during judicial review of decisions of Inquiry Committee. Those do not touch the aspect whether findings and recommendations of the Inquiry carried out at the orders of this Court can be directly acted upon by this Court 2005 (5) All M.R. 143 Shri Sunil Kotkar v. State of Maharashtra was in fact relied upon by learned advocate Shri V.D. Sapkal to demonstrate that the PIL is based on the material as appeared in the Press and such statements in the newspapers have appeared at the behest of the petitioners in PIL who had called for Press Conferences. This was in fact relied upon for the purpose of demonstrating the conduct of the petitioners in PIL. In the reported matter, the Division Bench of this Court has held that the fact cannot be considered and proved by the record such as cuttings of newspapers or some pamphlets published or distributed by the candidates at the election. The newspaper cuttings were relied upon for the purpose of persuading this Court to direct an inquiry, and therefore, there is no question of Press Reports being considered as piece of evidence.

30. While the judgment was in progress, we had orally directed Advocate Shri R.S.Deshmukh for the Commission to make us the record of enquiry available. Accordingly, the same was made available by him through Mr. Pravin Hiranman Chaudhary, Councillor-cum-Project Officer of the Commission, who reported on 18.9.2006 while we were sitting in different courts, at about 10.30 a.m. We, therefore, assembled after court hours at about 6.00 p.m. and have scanned the record. We have confirmed our inferences from the record to the effect that, when the complainants were allowed "in camera" hearing, all the delinquents were asked to leave the enquiry room. The complainants and their witnesses do not appear to have been cross examined. The statements of Respondents appear to have been recorded in question - answer form. Shri Pravin Chaudhary was discharged with the entire record at about 6.50 p.m. In the absence of cross examination of any of the complainants or their witnesses, the enquiry and its report cannot be treated at par with the judicial, quasi judicial enquiry. It can be given status, at the most, of investigation or preliminary enquiry.

31. On the issue of locus of the Petitioners in PIL (in addition to averments dealt with by us in paragraph 17, regarding maintainability, including for the reasons of locus-standi of the Petitioners), reliance was placed by Advocate Shri Sapkal also on the observations of the Hon'ble Supreme Court in the matter of Bhartiya Homoeopathy College, Bharatpur Vs. Students Council of Homoeopathy Medical College, Jaipur and Others, . In the reported matter, order of Vice Chancellor of the University of Rajasthan passed on 13th May, 1995 was under challenge. The Vice Chancellor, by the said order, directed that the examinations of 2nd, 3rd and final year of B.H.M.S. students admitted in Homoeopathic College, Bharatpur and Homoeopathic College, Alwar, be conducted by University, without granting affiliation for these examinations, as per the existing syllabus of the University prescribed for these examinations in order to avoid hardship to the students and also keeping in view the fact that the Rajasthan Homoeopathy Board which was conducting examination of these two colleges has now been rendered ineligible for conducting examinations and awarding Degrees. The Students Council of the

Homoeopathic College at Jaipur filed a public interest litigation, challenging the order of the Vice Chancellor, which was dismissed by learned Single Judge of Rajasthan High Court, holding that the Council had no locus standi to file public interest litigation. In the appeal, however, the Division Bench of the High Court set aside the order of the Vice Chancellor and upheld the locus of the Students Council of Jaipur, to file such a petition. While allowing the appeals and setting aside the judgment and order of the High Court and dismissing the Writ Petition filed before the High Court, the Supreme Court observed in paragraph 25 thus;

25. The Students Council has now filed an affidavit disclosing its status and its constitution. It does not disclose whether the Council was authorised to file the present litigation, and if so, by whom,; whether it has the funds to indulge in this litigation and whether it had the backing of a majority of its members for this litigation. Since on merits also we find that the action must fail, we are not examining these questions any further except for the purpose of indicating that such organizations, without disclosing any material regarding their nature and functions and funding, should not be allowed lightly to undertake litigation in the name of public interest which can cause a lot damage to others.

It was contended that, the petitioners in PIL have not filed before the court sufficient material to demonstrate that they were authorised by respective organizations to file the Writ Petition. We have referred a copy of the joint affidavit filed by the two petitioners before the special committee of the Commission and more particularly paragraph 12(D) and (F). It is recorded that that on 10.8.2003, Aurangabad branch of Indian Bahujan Teachers Association, took a meeting of its office bearers and resolved to record a protest against sexual harassment of lady teachers, as also to agitate against such tendencies. On 11.8.2003, Petitioner No. 1 invited a meeting of as many as 13 associations and similar resolution was passed. In Writ Petition No. 282 of 2004, there is no inkling of the action by the two petitioners in filing PIL, being supported by such associations and their resolutions. There is no copy of any such recorded resolution filed by the Petitioners. However, the petitioners in PIL, although have identified themselves as office bearers of their association, have not claimed that the PIL is being filed on behalf of and under the authority of the association. We believe that they have filed it in their individual capacity, without expecting of being funded by the Association.

32. In para 18, of the judgment, we have quoted principles which emerged from the case law relied upon by all the parties and discussed in earlier part of the judgment. We have found that there is no rule that Writ of mandamus under Article 226 cannot be issued against a private body or a person. It can be issued against a private body, charged with public function. 1984 Mh.L.J. 254 Dr Tatyrao v. Marathwada Shikshan Prasarak Mandal, Aurangabad, a judgment delivered by Division Bench of this Court, was relied upon by learned Counsel for the Respondents to propound that writ cannot be issued against the management. In para 6 of the judgment, the Court has observed that, the

contention of the petitioners that the Mandal cannot be treated as "other authority" within the meaning of Article 12 of the Constitution, cannot be sustained. However, reliance on this old judgment was successfully countered by the learned Counsel for the petitioner, by relying upon observations of this High Court in the matter of Dalsing s/o Shamsing v. State of Maharashtra 2006 (3) Mh.L.J.592, to following effect:

The text of Article 226 of the Constitution of India indicates that writ can be issued for enforcement of any of the rights conferred not only by Part III of the Constitution of India, but also for any other purpose. Therefore, writ can be issued against cooperative society, even though it is not a State as defined by Article 12 of the Constitution of India.

While observing as above, this Court had placed reliance on the observations of the Supreme Court in the matter of Gayatri v. s Mousami Cooperative AIR 2004 SCW 2654 Although Advocate Shri Killarikar relied upon the judgment in the matter of Suhas Dasrathe v. State of Maharashtra 2001 (2) All M.R. 1984 for the purpose of propounding that writ petition under Article 226 is maintainable, when there is no alternate remedy and because M.S.C.W. Act, 1993, also does not empower the Commission to provide any remedy, writ petition under Article 226 is maintainable. We do not think the petitioners need such support. Respondents have mainly opposed maintainability of PIL as such and locus of petitioners to file PIL. Maintainability of Writ Petition No. 4170 of 2004 filed by the lady teachers, is not at all under challenge.

33. On the issue of protection, further to details already discussed in paragraph 23 ante, we may also refer to internal page 15 of the report, wherein deposition/ statement of Mrs. S.J. is reproduced in brief. About the incident dated 8.2.2002, when Mrs. S.J. was called by Mrs. Wakle at her place and Mr. Rangnath Jadhav is said to had been present and also to have made advances towards Mrs. S.J., it is also added that on returning home, she informed the incident to her husband. Thereafter, her husband, father, maternal uncle and other relatives immediately rushed to the place of Mr. Rangnath Jadhav. They not only questioned Mr. Rangnath about his behaviour but also beat him, consequently Mr. Rangnath apologized. This is one more eloquent circumstance that supports our inference that, there was no situation that complainants and their witnessess really needed security for their personal safety. The prayers for police protection really appear to have been used as an instrument to increase apparent gravity of the fact-situation.

34. As a result of discussion hereinabove and more particularly paras 17 onwards, we arrive at following conclusions, based on which, we are required to answer the points formulated for consideration in para 16, and then decide the fate of the two writ petitions by passing orders/granting relief etc. or otherwise, in the light of findings so recorded on the points for determination. The PIL (W.P. 282 of 2004) although seeks redressal of legal injury alleged, it cannot be said to be for a class of persons, who by reason of being socially or economically in a

disadvantaged position, are not in a position to take up legal battle themselves and hence is not maintainable. Either PIL or the other writ petition also cannot be considered favourably for grant of compensation from the alleged wrong doers, as those do not satisfy conditions prescribed by the Supreme Court in the matter of M.C. Mehta and another Vs. Union of India and others, and the same can be considered, if at all at the end of enquiries prayed for by surviving prayer Clause (B) (second) from PIL and prayer Clause (B) from Writ Petition No. 4170 of 2004 (paras 17 and 18). The issue of compensation cannot be considered in these Writ Petitions, because compensation as public remedy is awardable on the basis of established (and not alleged) violation of fundamental rights (para 20). Prayers (A) and (B) in Civil Application No. 7578 of 2005 are not maintainable, if Writ Petition No. 282 of 2004 itself is not maintainable, civil application being filed in the said Writ Petition. Otherwise also, Civil Application No. 7578 of 2005 prayed for removal of Principal / Vice Principal and withdrawal of powers of Mr. Rangnath Jadhav and Mr. Surase, only as interim relief. Such a relief, apart from being beyond the prayers in parent Writ Petition, can only be considered in the light of conclusion of enquiry sought. If we grant such relief, while disposing of Writ Petitions then directions to hold enquiry would be absurd. (paras 17 and 18 ante). The PIL must be said to be one filed by two petitioners in their individual capacity and personal responsibility, as the same is not backed by copies of resolutions of respective associations authorising them to prosecute the cause. (para 31). From the details in the joint affidavit of the two petitioners submitted before MSCW, we have also found clear signs of the Petitioner No. 2 having an axe to grind against the management (para 22 ante). Conduct of the petitioners in PIL of calling bandh, and making it effective by putting lock on the entrance of the school, was an act of taking law into their own hands and PIL filed in December 2003, after all the authorities had initiated appropriate actions is illustrative of the desire of the petitioners to keep on hounding, the alleged wrong doers. By calling press conferences, repeatedly and releasing the information of allegations by lady teachers and contents from the report of Special committee of MSCW to press, petitioners have subjected the alleged wrong doers to "media-trial" which practice is deprecated by the Supreme Court in M.P. Lohia's case AIR 2005 SCW 767 All these actions were unnecessary and uncalled for. The aim of bringing wrong doers to due punishment could have been achieved without resorting to any of these two measures, with little more patience. (paras 21/22 ante). The press conferences earlier due to which the grievances of the lady teachers were reported in press, have thrown the caution to wind, so far as decency and modesty of those lady teachers is concerned, and also observed guide-line No. 7 regarding maintenance of confidentiality in Vishaka's case with scant respect. There is enough material, as discussed in paras 23 and 33 that, the complaining lady teachers and their witnesses/well wishers, including petitioners in PIL were not at all in need of any protection-prayers for that purpose, either to this Court or to Commission, were only an attempt to create an atmosphere that they were under threats. It can be said that in spite of lapse of nearly a decade since pronouncement of judgment in

Vishaka's case, attitude of one and all (State as well as MSCW) is either totally insensitive or at least not adequately sensitive (paras 24 and 26 ante). From paras 25 to 27 in which the recommendations of the Special Committee constituted by MSCW, as enlisted in para 13 ante, as also general recommendations/observations are discussed, it is evident that, some of the problems could have been solved by the MSCW itself, which it has not i.e. holding enquiry at Aurangabad, in stead of at Bombay, controlling the number of witnesses, and moving the State for additional infrastructure to assist the commission in providing relief to victims of sexual harassment. Observations suggesting need to dispense with principles of natural justice are required to be turned down with a warning. One of the recommendations enlisted in para 13 ante, serial Nos. 4 and 7 are beyond purview and the scope of enquiry, No. 6 is not sustainable after conclusion of enquiry and in view of discussion about conduct of complainants and their witnesses (4-permanency to Mrs. S.J. and S.C., 7 enquiry into administration of management about other aspects and 6-police protection). Sr.No.8 recommending reinstatement of suspended staff (Mrs. Ashwini Jadhav and peon Lone) was without considering the material against them which may possibly be justification for such suspension. And sr. No. (3) directing suspension of Mrs. Deshpande and Mrs. Wakle and their departmental enquiry was in ignorance of the fact that they were already suspended and also reinstated as the enquiry was frustrated due to denial of sixty witnesses to depose one by one. The committee has conducted the enquiry by not being serious about principles of natural justice. At least, female delinquents are discriminated by disallowing in camera hearing to them, which was allowed to complainants. The delinquents are neither allowed to hear the statements of the complainants, nor they are supplied copies of those, nor they are allowed access to record. They are thus invited to explain without allowing them to know the allegations precisely. Cross-examination of complainants and witnesses does not seem to have been allowed. The enquiry, therefore, cannot be given status of even a quasi-judicial enquiry and the committee cannot be said to have done anything more than separately recording statements of both sides and drawing inferences on the basis of the same, without having anything to help it, to ascertain the truth. Therefore, it is unsafe to act upon the recommendations of the commission. Points No. 1 to 3 framed in paragraph 16 will, therefore, have to be answered in accordance with the conclusions discussed hereinabove. The PIL (W.P.282/2004) is not maintainable and the Petitioners therein are liable to be imposed with exemplary costs. The committee constituted by MSCW, has not followed the principles of natural justice, which ought to have and consequently, the enquiry is relegated to the process of recording statements of both sides and nothing more. Naturally, this Court cannot act upon such a report and recommendations therein for either recording finding against any of the respondents, or for directing payment of compensation by them to the complainants.

35. On reference to Vishaka's case, it is evident that, the Hon''ble Supreme

Court expected initiation of appropriate action in accordance with law, by making a complaint to the appropriate authority, where such conduct (sexual harassment) amounts to specific offence under the IPC or under any other penal law. Although, in fact, every employer is expected to assist the sexually harassed female worker in initiating prosecution, in the matter at hands a member of the management being one of the accused and officers of the school/junior college also being under allegations, this had not happened in the manner expected by the Apex Court. However, it is an admitted fact that, the complaint of Mrs. U.G. was registered by the police on 9.8.2003 itself and they had acted upon the same. Complaint of Mrs. S.C. is also registered on 16.10.2003, when she leisurely approached the police station in spite of having obtained a court order on 23.9.2003. We are informed that, criminal cases registered as S.C.C. Nos. 6166 of 2003 and 6441 of 2003 on the basis of complaints of these two lady teachers, are pending in the courts of competent Magistrates. The prosecutions will take their own course and we may only direct the Magistrate concerned to consider these cases for final disposal with due priority and urgency. So far as complaint of Mrs.S.J. is concerned, it is evident that her complaint is also registered as an offence by the police station, but it has not been processed further, because of failure on the part of the complainant to respond, in spite of three communications by the police station requesting for further information. In case, the said investigation has not reached its logical and legal conclusion, because of failure on the part of Mrs. S.J. to respond, it is desirable that Mrs. S.J. cooperates with investigation machinery and assist to take the investigation to its conclusion. Criminal cases will take their own course and it may be open for the complainants to pray for compensation from the accused persons, even in those criminal proceedings. The Principal and Vice Principal, being employees of the school/college, could be subjected to departmental enquiry. But as the report by the committee constituted under M.E.P.S. Rules, 1981, indicates by its report dated 6.4.2004, or so, Shri Rangnath Jadhav, by his communication dated 16.2.2004, had refused to participate in the enquiry, by challenging its competence to conduct an enquiry against him, because he was not an employee. On the contrary, he had threatened the committee of taking legal action against it. Subsequently, by that enquiry, only Principal and Vice Principal were subjected to enquiry, which frustrated because of refusal of witnesses to depose. In case an enquiry about his conduct of alleged sexual harassment is ordered, such an enquiry cannot be objected on the ground of double jeopardy. In view of Section 41D of the Bombay Public Trusts, 1950 ("BPT Act" for short), we have not been able to agree with the learned Counsel for the petitioners that the existing law does not provide for action against Mr. Rangnath Jadhav in his capacity as a member of the management. Admittedly, the management is a registered public trust and relevant portion of Section 41-D reads thus:-

41D. Suspension, removal and dismisal of trustee. The Charity Commissioner may, either on an application of a trustee, or any person interested in the trust, or on receipt of a report u/s 41B, or suo-motu may suspend, remove or dismiss

any trustee of a public trust, if he a).xxxxxxxxxxxxxxxxxxxxxxxxxxxx

(b).xxxxxxxxxxxxxxxxxxxxxxxxxxxx

(c). continuously neglects his duty, or commits any mal-feasance or mis-feasance, or breach of trust in respect of the trust;

(d).xx

(e).xx

(f). is convicted of an offence involving moral turpitude.

We are confident that, if the criminal trial ends in conviction, Section 41D (1)(f) would come into play and conviction should be sufficient to persuade the Charity Commissioner to suspend/remove/dismiss the person guilty of the offence of sexual harassment, which would attract provisions of IPC, such as, Section 354. The word "mal-feasance" is explained thus, by law lexicon. "Mal-feasance:-Evil doing, ill conduct, the commission of some act, which is positively unlawful, the doing of an act, which is wholly wrongful and unlawful, the doing of an act, which a person ought not to do at all or the unjust performance of some act, which the party had no right or, which he had contracted not to do. Comprehensive term, including any wrongful conduct that affects, interrupts, or interferes with the performance of the official duties. "

As can be seen from the complaints of lady teachers, it was alleged that, sexual favours were expected of them, in return to giving them benefits in their service conditions. If the allegations are true, sexual harassment does not remain an isolated act, or an immoral behaviour on the part of trustee, but that would also amount to causing adverse effect, interruption or interference with the performance of the official duty. This is because, without getting positive response from lady teachers, the trustee concerned was not going to take appropriate steps, in his capacity as a trustee, for proposing confirmation etc. of the lady teachers. Therefore, if, at the conclusion of the enquiry, it is found that the sexual harassment was linked with performance of the official duty of the trustee, Clause (c) of Sub-section (1) of Section 41D of the BPT Act, would be attracted and a report of duly constituted committee for conducting an enquiry against the trustee would be sufficient for Charity Commissioner to suo-motu take action u/s 41D of the BPT Act.

We have taken a note of submission by the learned Advocate for the Petitioner that this committee constituted under Rule 36 of M.E.P.S. Rules, 1981, did not conform to the para meters laid down by the Supreme Court in Vishaka's case, regarding composition of the committee. Guideline No. 7 requires the committee to be headed by a women and having at least 50 per cent women members. The committee under M.E.P.S. Rules, as is evident from the report, was a four members committee, including the convener and consisted of only one female member. Requirement of the fact-situation, as alleged by the complainants, being an enquiry into allegations of sexual harassment by the trustee and

abetment of the same by a couple of officers of the school/junior college, it was pleaded that the enquiry conducted by the committee constituted under M.E.P.S. rules, is no enquiry in the eye of law. On reference to Rule 28(5) of M.E.P.S. Rules, 1981, it can be seen that, the rule enlists conduct on the part of the employee for which, an employee can be subjected to a disciplinary action and penalties, as prescribed in Rule 31, if found guilty. The employee guilty can be punished for one or more of the following grounds i.e. misconduct, moral turpitude, willful and persistent negligence of duties and incompetence. Moral turpitude, for the purpose of rule, is defined within the rule itself, to include following acts, namely, immodesty, or immoral behaviour with a female or male student or an employee and an act of similar nature. The committee constituted under Rule 36, therefore, could have suitably dealt with Principal and Vice Principal, if they were found guilty of such conduct. It was not necessary to seek an assistance of a committee constituted as per the guidelines for the purpose of dealing with the allegations against Principal and Vice Principal. The enquiry is frustrated and two delinquents are reinstated by withdrawing the suspension, for which the complainants and employees have to blame themselves. They refused to depose before the committee, by expressing apprehension of murder and due to absence of police protection. We have already discussed in para 23 and 33 hereinabove that, none of the complainants or their witnesses were in need of police protection and there is material on record to indicate that, they were capable of threatening hostility. So far as complainants Mrs.U.G. and Mrs. S.C. are concerned, they were present before the committee, but they had audacity to express that they had no faith in the committee and since the matter was subjudice, they would produce the evidence before the court, and accept the verdict of the court. In these circumstances, if the Principal and Vice Principal are exonerated, the complainants and witnesses have to blame themselves and taking into consideration their conduct of just keeping the delinquents hooked to the allegations, but not cooperating with the enquiry committee, we are not inclined to direct fresh enquiry as against the Principal and Vice Principal, merely because committee constituted was one under Rule 36 of M.E.P.S. Rules, and not as per the guideline No. 7 in Vishaka's case. After all, the Supreme Court has expressed that the guidelines should be used as law, where existing law does not provide a suitable mechanism or a remedy.

36. However, since, Mr. Rangnath Jadhav defied the enquiry conducted, we are inclined to direct enquiry to be conducted into the conduct of Mr. Rangnath Jadhav on the basis of complaints tendered by these two lady teachers, by " _____ " constituted by Government Resolution dated 3.8.2004. We may record here itself that, the said committee, while constituting a committee for enquiring into the allegation of sexual harassment by Shri Rangnath Jadhav, shall comply with guideline No. 7, by having a committee headed by a female member and having at least 50 percent female members. The report of such a committee should be submitted to the Joint Charity Commissioner, Aurangabad, if inculpatory, for the purpose of action u/s

41D of the BPT Act, against Mr. Rangnath Jadhav, whereupon, the Joint Charity Commissioner, Aurangabad, should take suo-motu action under the said provisions. The committee should complete the proceedings and submit report, if inculpatory, to the Joint Charity Commissioner, Aurangabad, within a reasonable time i.e. six months from the date of this judgment and the Joint Charity Commissioner, Aurangabad, should act upon the same and conclude the action within six months from the date of receipt of report from the committee.

37. As a result of discussion of reasons in paragraphs 17 to 33 and conclusions, as arrived at in paragraphs 34 and 35 hereinabove, PIL (Writ Petition No. 282 of 2004) is required to be dismissed, and by imposing exemplary costs upon Petitioners. The PIL is, accordingly, dismissed. Rule discharged. Each of the Petitioners shall pay cost of Rs. 10,000/-. The cost shall be deposited in this Court within a period of one month from the date of this judgment and on receipt, it shall be credited to the Government. In case of failure on the part of the petitioners to deposit the cost, the Collector, Aurangabad, shall recover the same as arrears of land revenue. Writ Petition No. 4170 of 2004 is partly allowed. Criminal cases instituted by Smt. U.G. and Smt. S.C. shall take their own course, by expedite hearing and they shall have liberty to pray compensation, even before criminal court (Section 357 of Code of Criminal Procedure, 1973). An enquiry be conducted by Mahila Takrar Niwaran Samiti constituted under Government Resolution dated 3.8.2004, by constituting a special committee in accordance with guideline No. 7 in Vishaka's case, into the allegations of sexual harassment by Shri Rangnath Jadhav, against him, and if the said committee arrives at a finding of guilty, the report should be forwarded to Joint Charity Commissioner, Aurangabad, for action u/s 41D of the BPT Act, 1950 against the said trustee. (The enquiry by the committee shall be quasi-judicial enquiry, the committee shall observe all the principles of natural justice, including service of charges upon and supply of documents to the delinquent, inviting his written statement, recording evidence by allowing cross examination of witnesses examined by either party, to the other side.) Prayer (C) for quashing the report of the committee constituted under Rule 36 of the M.E.P.S. Rules, 1981, cannot be considered favourably, due to conduct of the complainants and other witnesses, which has frustrated the same. Whether Principal and Vice Principal should be dismissed, or Shri Rangnath Jadhav should be removed as trustee, will have to be considered by competent authorities, upon conclusion of criminal cases and/or enquiry by Mahila Takrar Niwaran Samiti. For the purpose of communicating these directions to competent Magistrates, Mahila Takrar Niwaran Samiti and if need be, to the Collector, Aurangabad, copy of paragraphs 36 and 37 of this judgment may be forwarded, and the authorities may be instructed about liberty to refer to the record with the permission of the court, if necessary. Rule made absolute, accordingly, in Writ Petition No. 4170 of 2004. Accordingly, Civil Application Nos.1307, 1308 and 1309 of 2005, which appear to be pending, as also, Civil Application Nos. 2364, 2660 and 7578 of 2005, which are pending, shall stand disposed of.