

ITEM NO.6

COURT NO.8
S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SECTION III

MISCELLANEOUS APPLICATION Diary No(s) . 22553/2023

[Arising out of impugned final judgment and order dated 12-05-2023
in C.A. No.2482/2014 passed by the Supreme Court of India]

AURELIANO FERNANDES

Petitioner(s)

VERSUS

THE STATE OF GOA & ORS.

Respondent(s)

(Ms. Padma Priya, learned counsel has been appointed as Amicus
Curiae.)

WITH

MA 1688/2023 in C.A. No. 2482/2014 (III)
(FOR CLARIFICATION/DIRECTION ON IA 131628/2023
FOR EXTENSION OF TIME ON IA 248631/2023
FOR EXEMPTION FROM FILING O.T. ON IA 114246/2024
IA No. 131628/2023 - CLARIFICATION/DIRECTION
IA No. 114246/2024 - EXEMPTION FROM FILING O.T.
IA No. 248631/2023 - EXTENSION OF TIME)

W.P.(C) No. 1224/2017 (PIL-W)
(IA No. 74098/2019 - EARLY HEARING APPLICATION
IA No. 95766/2018 - EXEMPTION FROM FILING O.T.
IA No. 29686/2018 - EXEMPTION FROM FILING O.T.
IA No. 127408/2022 - EXEMPTION FROM FILING O.T.
IA No. 107538/2022 - EXEMPTION FROM FILING O.T.
IA No. 12835/2018 - INTERVENTION/IMPLEADMENT)

Date : 03-12-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE NONGMEIKAPAM KOTISWAR SINGH

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UPON hearing the counsel the Court made the following

O R D E R

We have heard learned senior counsel for the petitioner(s), learned A.S.G. and learned counsel appearing for the Union of India, learned counsel for NALSA and learned Amicus Curiae and also other senior counsel/counsel, who are appearing for the respective States and Union Territories.

Learned counsel for the NALSA, with reference to her note has brought to our notice the three ways in which an aggrieved woman can approach the Legal Services Institutions for the purpose of making her complaint or to seek advice in such matters. They are: (i) through Legal Services Clinics and para Legal Volunteers (PLVs); (ii) Legal helpline (15100 - NALSA helpline number); and (iii) through the Legal Services Management System, the details of which are available on NALSA'S web-site.

She submitted that any aggrieved women who is not in a position to access the Internal Complaints Committee or the Local Committee could seek advice or file her complaint through the aforesaid modes. She further submitted that if any aggrieved woman approaches any of the legal services institutions, the personnel at those institutions would assist such an aggrieved woman to file the complaint either before the Internal Complaints Committee or

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before the Local Committee, as the case may be, and in cases where necessary, will also assist such an aggrieved woman to approach the local police station.

During the course of submissions, learned Amicus Curiae pointed out that having regard to Sections 5 to 7 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short, 'the 2013 Act'), there is a need for the appropriate Government notifying the District Magistrate or Additional District Magistrate or Collector or Deputy Collector, which would also include the Deputy Commissioner of a district as a District Officer for every district to exercise powers or discharge functions under the Act; that every District Officer has to constitute in the district concerned, a Committee known as the Local Committee to receive complaints of sexual harassment from establishments, where the Internal Committee has not been constituted due to having less than ten workers or if the complaint is against the employer itself. Further, the District Officer has to facilitate one Nodal Officer in every Block, Taluka and Tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned Local Committee within a period of seven days. The jurisdiction of the Local Committee extends to the areas of a district, where it is constituted.

Learned Amicus also pointed out that the composition, tenure and other terms and conditions of the Local Committee are delineated in Section 7 of the 2013 Act. Therefore, there is a

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need for implementation of this provision in the States and Union Territories where they are not yet implemented. She further submitted that this Local Committee is in addition to the Internal Committee particularly where they have not yet been constituted owing to less than ten workers or the Local Committee would be assisting the complainant if the complainant is against the employer itself. For ease of reference, Sections 5 to 7 of the 2013 Act are extracted as under -

"5. Notification of District Officer. - The appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act.

6. Constitution and jurisdiction of Local Committee.- (1) Every District Officer shall constitute in the district concerned, a committee to be known as the "Local Committee" to receive complaints of sexual harassment from establishments where the Internal Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.

(2) The District Officer shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned Local Committee within a period of seven days.

(3) The jurisdiction of the Local Committee shall extend to the areas of the district where it is constituted.

7. Composition, tenure and other terms and conditions of Local Committee. - (1) The Local Committee shall consist of the following members to be nominated by the District Officer, namely: -

(a) a Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women;

(b) one Member to be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district;

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(c) two Members, of whom at least one shall be a woman, to be nominated from amongst such non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, which may be prescribed:

Provided that at least one of the nominees should, preferably, have a background in law or legal knowledge:

Provided further that at least one of the nominees shall be a woman belonging to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or minority community notified by the Central Government, from time to time;

(d) the concerned officer dealing with the social welfare or women and child development in the district, shall be a member ex officio.

(2) The Chairperson and every Member of the Local Committee shall hold office for such period, not exceeding three years, from the date of their appointment as may be specified by the District Officer.

(3) Where the Chairperson or any Member of the Local Committee -

(a) contravenes the provisions of section 16; or
(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
(c) has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
(d) has so abused his position as to render his continuance in office prejudicial to the public interest, such Chairperson or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

(4) The Chairperson and Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) shall be entitled to such fees or allowances for holding the proceedings of the Local Committee as may be prescribed.

Having regard to the mandate of Section 5, the Chief Secretary of every State and the Union Territories to ensure that the District Magistrate or Additional District Magistrate or the

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Collector or Deputy Collector or the Deputy Commissioner, as the case may be, be appointed and notified as District Officer ex officio for every district in the States and Union Territories to exercise powers or discharge functions under the provisions of the Act.

Further, the District officer of every district has to in turn constitute a Committee to be known as Local Committee to receive complaints of sexual harassment as stipulated in sub-Section 1 of Section 6 of the Act.

The District Officer shall also designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and to forward the same to the concerned Local Committee within a period of seven days from the date of receipt of such complaint. The jurisdiction of the Local Committee shall extend to the areas of the district where it is constituted.

Further, the District Officer shall constitute a Local Committee in terms of sub-Section 1 of Section 7 of the Act wherever such Local Committee has not yet been constituted in a particular district.

In order that the aggrieved women may be able to make the complaint to the Local Committee, the names of the nodal officer and their designation for each Block, Taluka and Tehsil in the rural or tribal areas and ward or municipality in the urban areas, who would receive the complaints and forward the same to the Local Committee shall be notified on the website of the District Officer,

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who is none other than the District Magistrate or Additional District Magistrate or the Collector or Deputy Collector or the Deputy Commissioner, as the case may be, ex officio.

In whichever States or Union Territories the Sexual Harassment electronic Box (SHe-Box) portal has been instituted by the Government of the States or the Union Territories the same shall also indicate the name and designation of the nodal officer for each district.

The District Officer shall also comply with the duties as mentioned in Section 20 of the 2013 Act.

For ease of reference, Section 20 is extracted as under -

"20. Duties and powers of District Officer.-The District Officer shall, -

(a) monitor the timely submission of reports furnished by the Local Committee;

(b) take such measures as may be necessary for engaging non-governmental organisations for creation of awareness on sexual harassment and the rights of the women."

In addition, the Chief Secretaries of each State shall also direct the Deputy Commissioners, District Magistrates or Additional District Magistrates, Collector or Deputy Collector of each district to survey the number of organisations, both public sector as well as private, within the district, which have already constituted the Internal Complaints Committee and seek information in that regard. Further, wherever the Internal Complaints Committee have not been constituted, the District Officer shall take steps to ensure that such Committees are constituted by sending the

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necessary advisories/directions to the said entities. This may be done having regard to Section 26 of the Act, where a penalty is envisaged when an employer fails to constitute the Internal Committee under sub-Section 1 of Section 4.

The Internal Complaints Committees have to be constituted by the employer in respect of a work place . This is a statutory duty. Work place is defined under Section 2(o) of the 2013 Act, which reads as under -

"2(o) "workplace" includes -

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

(ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;

(iii) hospitals or nursing homes;

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

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

(vi) a dwelling place or a house;"

The aforesaid direction has also been issued in order dated

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It is further observed that the Ministry of Labour of the Union of India as well as the Departments of Labour in the respective State Governments in consultation with the Department of Women and Child Development both at the Union as well as at the State Level shall take steps to ensure that the provisions of the Act are effectively implemented by issuing directions for the constitution of the Internal Complaints Committees where they have not yet been constituted and also for ensuring the said Committees work in accordance with law in letter and spirit of the Act and train the employees in the form of giving training and creating awareness about the rights of the women in workplaces.

It is also expected that the Department of Labour, Department of Women and Child Development in all the States as well as the Union of India shall render all assistance to the National and State Legal Services Authorities respectively for effective implementation of the Act."

Learned A.S.G. submitted that vide order dated 22.10.2024, this Court has noted the institution of the She-Box portal and the information on the said portal is being filled-up and the States and Union Territories could also access the She-Box to indicate the relevant information in compliance with the provisions of the Act.

The District Officer appointed for every district could also upload the requisite details for the effective implementation of Sections 4 and 6 of the Act in the matter of constitution of the Internal Complaints Committee in a work place by every employer as well as the Local Committee which has been constituted for each

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district through the Labour Department/Department of Women and Child of each State which shall in turn upload the details to the She-Box which has been instituted by the Union of India. Every state could also think of instituting a She-box for the purpose of registering complaints, either before the Internal Complaints Committee of a work place or through a Local Committee of a district as a means of access to make such a complaint and if any such She-box is or has been constituted by the State Government/Union Territory, the same shall be activated and the complaints received shall in turn be referred to the respective Internal Complaints Committee or the Local Committee, as the case may be.

The above observations are for the purpose of facilitation to make a complaint by an aggrieved woman.

For the purpose of conducting a survey by the District Officer as notified above, the said survey shall be conducted and the report shall be submitted to this Court on or before 31.03.2025 on behalf of every State/Union Territory. Thus, the following directions -

(1) The Chief Secretaries of every State shall take steps to identify and notify the Officer to be the District Officer of every District on or before 31.12.2024, if not already done.

(2) The District Officer shall constitute the Local Committee wherever such committees have not yet been constituted or there has to be a reconstitution of such committees already constituted on or before 31.01.2025.

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(3) The Chief Secretaries of States/Territories shall ensure that the Internal Complaints Committee shall be constituted or re-constituted, as the case may be, having regard to the Section 4 of the 2013 Act in respect of their Government Departments, instrumentalities and agencies of the State Government and public sector units and other units coming under the supervision and control of the State Governments/Union Territories by 31.01.2025.

(4) Similarly, Union of India/Central Government, shall take steps to constitute or re-constitute, as the case may be, the Internal Complaints Committee in respect of a work place, wherever the same has not yet been accomplished on or before 31.01.2025 in respect of its Departments, instrumentalities and agencies.

(5) The respective States/Union Territories to file the affidavits in compliance of these directions and copies of the said affidavits shall be e-mailed to learned ASG, learned Amicus Curiae, learned AOR for the petitioner(s) in W.P. No. 1224/2017. The said affidavits shall be filed in the first week of February, 2025 indicating the compliance of the aforesaid directions.

(6) The Legal Services Institutions at the Central, State, District and Taluka levels shall assist an aggrieved woman to make a complaint under the provisions of the 2013 Act as and when approached.

The Registry of this Court is directed to provide Login-ID to learned Amicus Curiae assisting this Court in this case so as to have access to all the pleadings, affidavits and other documents

etc. filed by the respective counsel in this case.

The Registry of this Court to send a copy of this Order to the respective Chief Secretaries of the States/Union Territories for compliance.

List on 11.02.2025.

(NEETU SACHDEVA)
ASTT. REGISTRAR-cum-PS

(ANU BHALLA)
COURT MASTER (NSH)