

BEFORE

THE HON'BLE MR JUSTICE MICHAEL ZOTHANKHUMA

Heard Mr.G.N.Sahewalla, learned senior counsel assisted by Ms. P. Chakraborty learned counsel for the petitioner. Also heard Mr. M.K. Misra, learned counsel for the respondent Nos. 1 & 2, Mr. A. Choudhury, learned counsel appearing for respondent No. 3, Mr. M. K. Choudhury learned senior counsel appearing for respondent No. 4 and Mr. U.K. Nair, learned counsel for respondent No. 5.

2. The dispute in the present case is whether the Director of Higher Education or the Governing Body has the power to constitute an Internal Complaint Committee as per Section 4 of Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act, 2013 (in short referred to as the 2013 Act.).

3. The brief facts of the case is that the Librarian of the Women College, Silchar on opening her E-mail on 05.09.2013 found a link and on opening the link found some objectionable message. The Librarian disclosed the said incident to some of her colleagues of the College on 18.09.2013. Subsequently on 06.01.2014, some employees of the College filed a complaint before the President, Governing Body of the college regarding the objectionable message received in the E-mail of the Librarian. The President of the Governing Body informed the Principal of the college who is the respondent No. 5 herein. The respondent No. 5 submitted an FIR before the police with regard to the objectionable message received by the Librarian while opening the link to her E-mail on 5.9.2013.

4. Thereafter in pursuance to the Governing Body resolution dated 15.1.2014 vide notification dated 22.1.2014, an enquiry committee was constituted by the President of the Governing Body of the College to investigate into the allegation regarding sending of objectionable E-mail data to the Librarian, who was a female employee of the college. Thereafter in pursuance to the Governing Body resolution dated 3.4.2014, an Internal Complaint Committee, was constituted by the Governing body vide notification dated 4.4.2014, which included the two writ petitioners herein. The term of the Internal Complaint Committee (in short ICC) was for a term of three years w.e.f. the date of the 1st meeting of the Committee. One of the terms of reference of the ICC was to take cognizance of the incident of receiving controversial Email by the Librarian of the college. The other terms of reference referred to the ICC was the allegation made by the teachers of the college against the Principal of the college and also to probe into the counter allegation made by the Principal of the college against the teachers of the college. In pursuance to the FIR submitted by the Principal of the college with regard to the objectionable E-mail received by the Librarian, the police made an enquiry and the enquiry report dated 3.4.2014 was submitted by the CID, Assam Police which reads as follows:

with reference to the subject cited above I am submitting the report regarding hacking/ misuse of mail id manoj-paul 47 @ rediffmail.com of Dr. Manoj of Dr Manoj Kumar Paul , Principal of Woman's College of Silchar. In complaint, it is written that one email was sent from mail id manoj paul47@ rediffmail. Com on 5th of September 2013 to complaint's email-id swc-llb@rediffmail.com <mailto:swc-llb@rediffmail.com> . In this regard correspondence was made with rediff mail authority to provide the login details of email id manoj paul47@ rediffmail. Com. From the log details of the email it is found that there is no login activity on 5th September 2013 of mail id monoj paul 47@ rediffmail. Com. Therefore the email id was not operated on 5th September 2013. It is to be mentioned that bitly.Com is a networking website based on New York, USA, which promotes various business by sending sms and emails to people all around the world . Therefore it is likely to be a spam mail which was received by librarian in her email-id swc-lib@ rediffmail. Com and the email was not sent from the email id monoj paul 47@ rediffmail. Com which is of Dr. Manoj Kumar Paul.

5. Thereafter the President of the Governing Body of the college sent a letter dated 10.5.2014 to the Presiding Officer of the ICC informing her that a clean chit had been given to the Principal(respondent No.5) by the CID Branch of Assam Police with respect to allegation made against the Principal. The President of the Governing Body thus requested the Presiding Officer, ICC not to hold any

meeting of the ICC till the Governing Body resolved the matter. It may be stated here that there was a suspicion that the respondent no.5 had sent the objectionable material to the librarian as he had deleted the said objectionable material from the computer.

6. The Director of Higher Education wrote a letter dated 6.6.14 to the President of Governing Body of the college stating that the respondent No. 5 had been exonerated by the police enquiry report regarding the alleged email containing objectionable materials to the Librarian. However as there were various sexual harassment allegations made against the respondent No. 5 by women at the work place, the Director had decided to constitute a ICC as per the 2013 Act. The Director thus requested the President of the Governing Body to submit a proposal of at least three names for constitution of an ICC. Subsequently vide order dated 11.7.14, the Director of Higher Education, Assam constituted an ICC as per 2013 Act.

7. That despite the Governing Body requests to the ICC not to hold any meeting of the ICC till the Governing Body resolved the matter regarding the allegation made against the respondent No. 5, the ICC went ahead with the proceeding in the enquiry initiated against the respondent no.5 and gave a final report dated 20.7.14. The final report basically indicted the respondent no.5.

8. The learned senior counsel for the petitioners submits that the ICC that had been constituted by the Governing Body on 4.4.14, had sent its report to the Governing Body on 20.7.2014. The petitioners however came to learn of the constitution of new ICC by the Director only after the earlier ICC had submitted their report against the respondent no. 5.

9. The petitioners counsel submits that the constitution of the subsequent ICC by the Director vide order dated 11.7.14 is liable to be set aside and quashed in view of the fact that the constitution of the latter ICC is in violation of the 2013 Act. He also submits that the term of office of the petitioners as ICC Members being three years, the term of the petitioners as ICC members will end only in the year 2017.

10. The learned counsel for the petitioners submits that a perusal of Section 2(G), 2(O), 4 and 19 of the 2013 Act makes it clear that the Governing Body is the employer of the college and as such, constitution of the ICC by the Governing Body is valid and the said provisions of law quoted above do not empower the Director of Higher Education to constitute an ICC.

11. Learned Counsel for the petitioners also submitted that Section 2 (d) read with the proviso Section 6 of the Assam College Employees (Provincialisation) Act, 2005 (in short 2005 Act) has to be read with Rule 7 A and Rule 27 of the Assam College Employees (Provincialisation) Rules 2010 (in short 2010 Rules) alongwith Rule 3 and Rule 18 (iv) of the Assam Provincialisation College and the Assam Non-Government College Management Rules 2001 (in short 2001 Rules).

12. Learned senior counsel for the petitioners submits that the above provisions of the 2005 Act, 2010 Rules and 2001 Rules clearly go to show that the Governing Body is the employer who can constitute a ICC as per 2013 Act. He thus submits that the ICC constituted by the Director vide order dated 11.7.14 has to be set aside.

13. Mr. M.K. Choudhury, learned senior counsel for the respondent No. 4 submits that on perusal of the provisions of law quoted by the petitioners counsel, in fact go to show that the Director, Higher Education is the employer who can constitute an ICC as per 2013 Act and not by the Governing Body of the college. He further submits that the 2001 Rules is not applicable to the present case, inasmuch, as the 2001 Rules was made applicable only for a transitory period, that is, before the 2010 Rules came into force.

14. Learned counsel for respondent No. 4 submits that as per Section 6 of the 2005 Act, appointment of both teaching and non-teaching posts of a college has to be made by the Director, Higher Education. He also submits that Rule 5 of 2010 Rules would have to be taken into consideration while deciding the issue in hand, as to whether, the appointing authority was the employer as envisaged in the Acts and Rules and also in the 2013 Act. Learned senior counsel for respondent No. 4 submits that as per Rule 8 of Assam Services (Disciplinary and Appeal) Ru

les, 1964, the disciplinary authority is the appointing authority. He also submits that as per FRSR, SR 4(4) read with Appendix 5, the Director of Higher Education is the head of the department.

15. Learned senior counsel for respondent No. 4 thus submits that in view of the fact that the ICC constituted by the Director of Higher Education was a valid constitution and as the earlier constitution of the ICC by the Governing Body was dehors the Act, the report made by the earlier ICC is not valid in the eyes of law and the same cannot be considered as a valid report. He also submits that the writ petition should be dismissed as the petitioners are not the aggrieved persons.

16. Learned senior counsel for the respondent No. 4 also submits that no fundamental or legal right of the petitioners has been violated. The petitioners have no locus standi to file the present petition and the present petition is not maintainable and same has to be dismissed.

17. Mr. U.K. Nair, learned counsel for respondent no. 5 besides relying upon the submissions of the counsel of the respondent No. 4 has also submitted that constitution of the ICC by the Governing Body is against the provision of Section 4(2) of the 2013 Act. He submits that as per Section 4(2) of 2013 Act, the Presiding Officer is to be a women employee at a senior level. However the Presiding Officer in the ICC constituted by the Governing Body was a retired person at the time of constitution of the same. He thus submits that in view of the above violation of Section 4(2) of the 2013 Act, the constitution of the ICC constituted by the Governing Body cannot be given recognition and any act done by the said ICC is bad in its very inception.

18. Mr. M.K. Misra and Mr. A. Choudhury learned counsel have submitted on the same lines as the counsels for the respondent Nos. 4 & 5.

19. I have heard the learned counsels for the parties. To adjudicate the present case, the relevant provisions of law would have to be reproduced. Accordingly Section 2(G), (1) (2), 2(O), Section 4(1) and (2) of the 2013 Act are reproduced below:

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

(g) employer means-

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

(ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the work place.

Explanation-For the purpose of this sub-clause management includes the person, board or committee responsible for formulation and administration of policies for such organisation;

(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.

4. Constitution of Internal Complaints Committee- (1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the Internal Complaints Committee.

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall consist of the following members to be nominated by the employer, namely:-

(a) A Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:

Provided that incase a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the

workplace referred to in sub-section (1):

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;

20. A reading of Section 2(g)(1) shows that the employer has to be in relation to a department, organization, institution etc of the appropriate Government or local authority. In the present case the college in question being a provincialised college, which is funded by the State Government, it is very clear that the said college has to be deemed to be an institution under the appropriate government. It cannot be deemed to be an institution under the local authority. As per Section 6 of the 2005 Act, appointments of both teaching and non-teaching posts in colleges has to be made by the Director of Higher Education. Also as per Section 7 (a) of the 2010 Rules, all appointments either by direct recruitment or by promotion to a provincialised College has to be made by the Director on the basis of the recommendations of the Governing Body. It may be stated herein that the 2005 Act and 2010 Rules pertain to the services of provincialised employees.

21. A perusal of the Section 2 (o) shows that a workplace includes department, organization, institution, etc funded directly or indirectly by the Government or the local authority or Government company, etc. The College being a provincialised College, the funds are directly provided by the Government. Though the petitioners' counsel has stated that the College has to be considered to be a local body under a local authority, the said interpretation does not have any basis. The Women College, Silchar is not funded by any local authority and is funded by the Government. Thus, here also the employer can only relate to the Government and not the Governing Body.

22. Section 6 of the 2005 Act states as follows:

6. Selection and appointment of employees- Appointments of both teaching and non-teaching posts in the Colleges shall be made by the Director of Higher Education, Assam on the basis of selection and recommendation of the Governing Body of the respective College in accordance with the Rules and Procedure of the Government in force.

Section 7(a) of the 2010 Rules states as follows:

7 (a)-All appointment either by direct recruitment or by promotion shall be made by the Director on the basis of recommendations of the Governing body based on the recommendations of the Selection Committee/Departmental Promotion Committee duly constituted.

Rule 15, 25 and 27 of the 2010 Rules are as follows:

15. Discipline & appeal- All employees of the Assam Provincialised Colleges shall be governed under the provisions of Assam Services (Discipline & Appeal) Rules 1964, Assam Civil Services Conduct Rules 1965 and guidelines made thereunder.

25. Authority for acceptance of Resignation/Voluntary Retirement- The Director, on the recommendations of the Governing Body shall be the authority for accepting or rejecting requests for resignation and voluntary retirement.

27. Residual power of Appointing Authority - The Governing Body of the College shall exercise all other powers of the Appointing Authority as per usual norms.

23. S.R. 4 (4) of the Assam (Discipline & Appeal) Rules states as follows:-

4. Head of a Department means any authority which the Provincial Government may by order declare to be the Head of a department for the purposes of these rules. A list of the authorities who have been declared to Heads of the Departments is given in Appendix 5.

24. A reading of the Appendix 5 shows that the Director of Higher Education is the head of the Department.

25. The disciplinary authority is the Appointing Authority as per Rule 8 of the Assam Services (Discipline and Appeal) Rules, 1964.

26. A reading of the above provisions of the Rules and Acts clearly goes to show that the Director is the appointing authority and as such is the employer of the employees of the College. Even for the post of Principal, the Director is

the authority to issue orders of appointment as per Rule 5 of the 2010 Rules.

27. It is submitted at the bar that the Assam College Employees (Provincialisation) Act, 2005 (2005 Acts) provides for provincialisation of the services of employees of non-Government Colleges in receipt of grant-in-aid from the State Government and which is applicable to the present case.

28. With respect to whether the 2001 Rules would apply to the provincialised College with effect to a provincialised College, I find that with the coming in to force of the Assam College Employees (Provincialisation) Rules, 2010, which has been made in exercise of the powers conferred under sub-Section 1 of Section 12 of the Assam College Employees (Provincialisation) Act, 2005, the 2001 Rules cannot be made applicable to the present case in hand.

29. In view of the reasons stated above, I hold that the Director is the employer with regard to the Women College, Silchar as per Section 2 (g) of the 2013 Act. Accordingly, the constitution of the ICC can be validly made by the Director and not by the Governing Body of the College.

30. It is also to be noted that as per Section 4 (2) of the 2013 Act, the Presiding Officer of the ICC is to have a Presiding Officer, who shall be a Women employee at a senior level at the workplace from amongst the employees. It is also provided that if a senior level women employee is not available, the Presiding Officer has to be nominated from other officers or administrative units of the workplace. It is further provided that in case, the other officers or administrative unit of the workplace do not have a senior level employee, the Presiding Officer shall be nominated from any other workplace of the said employer or other department or organization. With respect to the ICC constituted by the Governing body, there is no denial by the petitioners that in the ICC constituted by the Governing Body vide notification dated 04.04.2014, a retired person has been nominated as the Presiding Officer.

31. This is not in consonance with the requirement of Section 4 (2) of the 2013 Act. In view of the reasons stated above, I hold that the ICC constituted by the Governing body is not a validly constituted ICC and cannot be recognized as such.

32. In view of the fact that this Court has already held that the ICC constituted by the Governing Body is not a validly constituted ICC, this Court finds that there is no need in going into the question of maintainability of the writ petition. Consequently, in view of the reasons stated above, the report of the ICC constituted by the Governing Body cannot have any valid sanctity.

33. In view of the reasons stated above, this writ petition is dismissed.