

IN THE COURT OF AJAY GOEL, PRESIDING OFFICER
INDUSTRIAL TRIBUNAL-01, ROUSE AVENUE COURT,
D.D.U. MARG, NEW DELHI.

RCA DJ NO. 5/23

Dr. R. K. Pachauri (Deceased)

Through LRs

- i) Dr. Saroj Pachauri
- ii) Dr. Ash Pachauri
- iii) Dr. Rashmi Pachauri
- iv) Dr. Shonali Pachauri

All at : 160, Golf Links, New Delhi.

..... Appellants

Versus.

1. Union of India

Through Ministry of Women & Child Development

Through Mr. Chaman Sharma, Advocate

2. The Energy & Resource Institute (TERI)

Through its Director General,

Darbari Seth Block, India Habitat Center

New Delhi.

Through Counsel on record.

3. The Complainant (Identity Withheld)

.....

.....

.....

....Respondents

Date of Institution : 27.05.2015

Date of Assignment to this court : 10.03.2023

Date of Arguments : 07.06.2023

Date of Judgment : 03.07.2023

1. This is an appeal U/s 18 (1) of the Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013 which has been preferred by the appellant against the final inquiry report dated 19.05.2015 submitted by the 'Office of the Chairperson, Internal Complaints Committee, hereinafter referred to as 'ICC'.
2. The facts relevant for disposal of present appeal are that above named appellant was the Director General of The Energy Research Institute (TERI) whereas respondent No.1 (R1) is the Ministry of Women & Child Development; respondent No.2 (R2) is The Energy & Resource Institute (TERI) and respondent No.3 (R3) was employed as Research Assistant with the appellant.
3. It is averred that appellant and respondent No.3 shared a very cordial and respectable relationship since beginning and Respondent No. 3 used to accompany the appellant for making several foreign trips for addressing conferences by him. Even family of Respondent No. 3 also came in close contact with appellant and they used to have meals together on various locations including home of Respondent No. 3. It is further averred that Respondent No. 3 developed some ailment due to which she was not able to give her 100% to work and she was advised by appellant to take proper medical assistance and he started delegating work to other employees but Respondent No. 3

raised objections to the same vide e-mail. Thereafter, Respondent No. 3 was asked to contact Dr. Adholeya for an assignment in TERI but she refused the same by another e-mail to which appellant responded that he is not able to assign any work to her so she should speak to Dr. Adholeya.

4. It is averred that thereafter, Respondent No. 3 filed complaint before ICC on 09.02.2015 and appellant came to know about the same on 17.02.2015 that too through e-mail dated 16.02.2015 sent by one journalist of Economic Times. Appellant also discovered that Respondent No. 3 had also filed a criminal complaint against him at PS-Lodhi Colony vide FIR No. 52/2015. Thereafter, appellant approached the Hon'ble High Court of Delhi and he was granted interim protection. Appellant, in the meantime, was admitted in hospital as he got critically ill so he sought time from ICC to file his reply stating that his mobile phones, laptops etc. have been seized by the investigating officer but no heed was paid to his repeated requests. It is stated that appellant also requested the ICC to provide him the contents of statements made by the witnesses produced by Respondent No. 3 during proceedings to rebut the same but his request was also turned down and in the light of evidence provided by complainant and respondent; statement of parties and evidence of witnesses ICC found the complaint against the appellant 'confirmed'.
5. Feeling aggrieved by the report of ICC, appellant has preferred the present appeal on following grounds:

- I. Report of ICC is abuse of principles of natural justice and the enquiry was conducted in predetermined and haste manner as report does not disclose as to which witness has disclosed what while they attribute some statement or face to it.
- II. ICC has considered the statement of witnesses as gospel truth, therefore, it did not consider it appropriate to test the statement by affording appellant an opportunity to allay the same.
- III. ICC has relied upon SMS (text message) and e-mails without confirming the principle of Evidence Act as no certificate under Section 65B of Evidence Act was produced during enquiry proceedings.
- IV. The appellant was never apprised about the contents of the statement made by the witnesses therefore he was given no opportunity to rebut adverse statement made by the witnesses.
- V. ICC completely ignored that there was a mutual friendship between appellant and Respondent No. 3 and there have been instances when Respondent No. 3 herself sent messages to him that she wanted to hug him.
- VI. ICC completely ignored the statement of witnesses who stated that their personal interaction with appellant was friendly and respectful towards women and encouraging at work place and only considered what has been stated by the Respondent No. 3 as gospel truth.
- VII. It was further stated that ICC itself records that report is premised upon the perception of respondent no. 3/complainant

and not the intention of appellant and under no interpretation of principle of natural justice a person can be held guilty on the basis of perception of complainant.

VIII. The credibility and genuineness of the test messages and e-mails relied upon by the ICC has been sent for test to the Gujrat Forensic Science Laboratory by the police in case FIR No. 52/2015, therefore, the ICC erred in placing extensive reliance upon the alleged messages between the appellant and respondent No. 3.

IX. ICC never informed what is the material against the appellant nor provided any opportunity to rebut any of the statements which glaringly violates the principles of natural justice.

X. The entire complaint filed by the respondent is malafide and same is fortified from the fact that despite having opportunity to work in other departments, the respondent No. 3/complainant refused all the offers and stayed with the appellant to implicate in this frivolous and malicious charge of sexual harassment.

6. On the basis of above grounds, the present appeal was preferred and it was prayed that findings in the impugned report dated 19.05.2015 submitted by ICC may be set aside.

7. During proceedings of the appeal, the appellant expired and an application for bringing on record his Lrs was filed and after hearing the arguments on said application, the Lrs of

appellant were brought on record vide order dated 20.04.2023.

8. In response to appeal, the respondents No. 1, 2 and 3 have filed their separate replies thereby denying the contents of appeal.
9. Respondent No. 1 in its reply stated that present appeal deserves to be rejected as no cause of action is subsisting amongst the parties as respondent No. 1 has no interference in the internal matters of any employer. It was also stated that ICC is mandated to be an independent body discharging quasi-judicial functions and the ICC has also taken advise from various lawyers who were neither associated with the ICC or the TERI which is directly in teeth of the independence of the ICC. It was also stated that Ministry of Women and Child Development is the nodal Ministry for administering the Sexual Harassment of Women at Workplace Act, 2013 and respond to individual /organizations seeking any clarifications about the provisions of Act and at no point of time, Ministry of Women and Child Development is mandated nor intervenes in any ongoing inquiry undertaken by any ministries/departments/organizations under this Act and in the aforesaid circumstances, the appeal needs to be dismissed against respondent No. 1. The other contents of appeal were denied that it was prayed that appeal of the appellant may be dismissed in the interest of justice against the answering respondent No. 1.
10. Respondent No. 2 in its reply stated that entire enquiry by the ICC on the allegations leveled by the complainant was conducted with scrupulous compliance of the laws in their letter

and spirit and due process was followed by ICC. It was also stated in reply that appellant had requested for the copy of complainant which was provided to him in accordance with law by the ICC as per records on 17.02.2015. It was also stated that ICC has conducted an inquiry into the allegations levelled by the complainant without any bias or favour towards either of the disputing employees and ICC had no motive to conduct the enquiry in pre-determined or hasty manner other than the time frame mandated by law. The other contents of claim petition were denied.

11. Respondent No. 3 in its reply stated that appeal has been filed by appellant only to delay, harass and frustrate the course of justice as well as to get an opportunity to continue to be Director General of TERI for as long as the appellant can be. It was averred that appellant was holding the highest post in the organization where the respondent No. 3 was working and the appellant had a fiduciary relationship with the respondent No. 3 and appellant misused the said position to sexually harass, mentally and physically torture the respondent No. 3 with a view to make the respondent No. 3 have sexual relations with him. It was further averred that act of transferring work and eventually telling her that she would be transferred, was a highly vindictive act of the appellant and act of appellant was an arm-twisting tactic to make respondent No. 3 agree to his illegal and humiliating demands. It is also submitted in reply that ICC has been subjected to a very hostile environment with pressure and

intimidation from certain individuals within TERI including visits to internal ICC members' homes at late hours. It was also averred that there is absolutely no grounds available to the appellant to prefer the appeal under reply and all the grounds raised by appellant are contrary to facts and settled principles of law. The other contents of appeal were denied.

12. Rejoinders were also filed by appellant separately to the replies of respondents wherein contents of appeal were reiterated and reaffirmed and those of replies were denied.
13. I have gone through the records and the report of ICC and have heard the arguments as advanced by respective counsels for appellant and respondents.
14. It is pertinent to mention here that sexual harassment is the expression of unhealthy human relationship. It is not just the violation of dignity, right to social security and right to equality guaranteed to human beings in every social system but it is also a violation of right to life and peaceful existence guaranteed by law. It is a universal problem and its gravity is felt by all concerned around the world. Nations have gone for various legal approaches to curb harassment issues. With the new law in India relating to safety of women in work place with all stringent provisions for awareness and preventive measures, every woman at the place of work and study, who fall within the jurisdiction of educational institution, including its academic, non-academic staff and students should be protected from sexual harassment, intimidation and exploitation while they are associated with the

campus/organization.

15. The AR for appellant during the course of final arguments has specifically argued that report of ICC is abuse of principles of natural justice and the enquiry was conducted in predetermined and haste manner as report does not disclose as to which witness has disclosed what while they attribute some statement or face to it. It is also specifically argued that ICC has considered the statement of witnesses as gospel truth, therefore, it did not consider it appropriate to test the statement by affording appellant an opportunity to allay the same.

16. Contrary to the same, the AR for respondent No. 3 has totally denied this argument and in this regard, reliance is placed upon judgment passed by **Hon'ble Supreme Court in case titled as Kanungo and Co. Vs. Collector of Customs, (1973) 2 SCC 438** wherein the petitioner had contended that prior to imposing penalty upon him under the Customs Act, Rules of natural justice were not followed in as much as he was not allowed to cross-examine the witness. In this regard, the Hon'ble Supreme Court negated the contention of petitioner therein in the following words:

“12. We may first deal with the question of breach of natural justice. On the material on record, in our opinion, there has been no such breach. In the show cause notice issued on August 21, 1961, all the material on which the Customs Authorities have relied was set out and it was then for the appellant to

give a suitable explanation. The complaint of the appellant now is that all the persons from whom inquiries were alleged to have been made by the authorities should have been produced to enable it to cross-examine them. In our opinion, the principles of natural justice do not require that in matters like this the persons who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities. Accordingly, we hold that there is no force in the contention of the appellant.”

17. It is submitted that cross-examination of witnesses by a person facing charge in an inquiry is not essential to principles of natural justice and natural justice cannot be cast into rigid module of universal application. It is settled law that a statutory body cannot travel beyond the statute and has to follow the procedure laid down in the Act. The concerned Act of 2013 does not provide for procedure to be followed by ICC but leaves it to the rules framed under the Act. The relevant rules of 2013 framed by Ministry of Women and Child Development via Rule 7 state that ICC will carry out proceedings as per principles of natural justice. Therefore, right to cross-examination of a witness by a respondent has not been provided by the statute.
18. It is important to take into consideration that ICC is a fact

finding body which gives recommendations on allegations of sexual harassment at work places. The very object of the statute states of providing a speedy and hassle free remedy to the victims which is devoid of procedural complexities and rigors of courts and tribunals. The Act of 2013 states that the ICC is not bound by technical procedures but is only to ensure natural justice to parties and thus ICC is a free to devise its procedure depending on peculiar circumstances of the case before it while ensuring natural justice. Non-applicability of rules of evidence imply that technicalities of mode of proof and standard of proof do not apply to ICC. So the ICC is to come to conclusions based on holistic view of materials before it by weighing probabilities of a case. Further application of natural justice depends from case to case and protection of witnesses is a valid consideration for excluding cross-examination of witnesses particularly when they refuse to depose due to fear of person answering the charge.

19. It has to be kept in mind that the interference of the courts should be limited to ensuring that there are no procedural irregularities or violations of principles of natural justice and once the ICC has adequately and appropriately addressed a complaint of sexual harassment, it is not open to the courts to look into the merits of the matter.

20. The reliance is placed upon judgment passed by **Hon'ble Bombay High Court in "Vidya Akhave Vs. Union of India & Ors. bearing writ petition No. 796/2015**, wherein it was held that *"it would not interfere with an order of punishment*

passed by the internal complaints committee in relation to a sexual harassment complaint, unless the order is shockingly disproportionate’.

21. From the reports of ICC and the documents available on record, it is apparently clear that the punishment inflicted are based on deposition and testimonies of witnesses examined in proceedings and the grounds raised in the appeal are not sufficient to set aside the findings of ICC. The report and proceedings of ICC further depict that ICC has followed all principles of natural justice and served as a neutral body and conducted proceedings in a fair manner.

22. It is further important to note here that the minutes of meeting records the questions asked by ICC to appellant and his answers to those questions. The said answers clearly show that the appellant admits most of the conversations as alleged by complainant.

23. The para No. 3 of the complaint made by complainant/respondent no. 3 to ICC states as under:-

“On many occasions, against my wishes and despite knowing that I am totally against any such behaviour/act, Dr. Pachauri has forcibly grabbed my body by hugging me, holding my hands, forcibly kissing me and touching my body in an inappropriate manner. I kept pleading with him and telling him clearly not to do such things, as I found it extremely vulgar and repulsive to be touched in that manner, but it has had no effect on Dr. Pachauri. He

would always engage in sexually laden conversations with me over telephone calls, e-mails and messages.”

24. The perusal of same shows that there are allegations of sexual conversation and inappropriate conduct and touching by appellant at workplace. These allegations are further supported and corroborated by various e-mails and text messages exchanged between appellant and complainant on various dates.

25. In support of her allegations, the attention of this Tribunal has been drawn by respondent No. 3 to the various text messages and e-mails exchanged between the parties on different occasions. Some of the relevant conversations are reproduced herein:-

SMS sent by appellant on 01.10.2013 at 9.23 p.m.

“I never thought I was so repulsive to you, and never in the past few days have I thought that you would not believe me when I tell you that I love you! I never have lied and never will lie to you!

SMS sent by complainant on 01.10.2013 at 9.38 p.m.

“I never said you were so repulsive. I came all the way just to keep my word and do wat. I best do – talk genuinely. As a woman and a 21st century woman deserve the right to say that you kindly should not try and or just hold me close or kiss me”.

E-mail dated 14.11.2013 sent by appellant.

“.....Not letting me touch you, even through I have always

treated your body with reverence and as sacred. Perhaps, you regard a physical relationship as a matter of expediency and convenience. Well I don't and certainly not with your body which I worship, as you should have found out by now. Even when I grabbed your body, I had my left hand over your right breast. Did I make even the slightest attempt to hold it in my hand or fondle you there?"

....I am truly heartbroken and very very sad, but I will stay around for a while. And I will hold your hand and kiss it, even though that is so repulsive to you. Perhaps some day you would appreciate the wealth of emotion behind that gesture of mine. But at this stage, it may be too late, because PNT would have flown away into the wilderness, not necessarily to a fertile pasture. Its 4.30 am now, and I should get a couple of hours of sleep. Around you for now, but not for long and still deeply in love".

E-mail dated 25.02.2014 sent by appellant

"...On the subject of sincerity and exclusivity, I think the next time we are alone together, I would cut myself and write in my own blood a pledge that I would provide sincerity and exclusivity to an extent that even you would not be able to anticipate and believe. I really do not know how else to convince you than to write such a pledge in my own blood. I find every gesture, every smile, every touch of yours as a boon from heaven."

E-mail dated 06.12.2014 sent by appellant

“I would have preferred not to respond to your e-mail. But what I will say is that you should reflect on the massive insult you heaped on me by indicating that I was so toxic that you would prefer not to sit next to me on the plane. If that be the case there is no room for any interaction between us. And that has nothing to do with personal distaste. To me that act of yours represented the ultimate in haughtiness, arrogance and insulting behaviour. If you had any human sensitivity you would have realised what you have done, and possibly apologised. You are welcome to remain a paid guest of TERI. I really would not burden you with any work in future.”

26. The above conversation shows physical and mental exploitation of complainant by appellant and despite expressing her discomfort and disinterest, the appellant continued to send her messages. It has come on record that on showing her discomfort and disinterest, the appellant started creating pressure upon complainant being senior officer of the organization and further started assigning her work to other colleagues. So it is clear that appellant was misusing his designation and his behaviour was causing discomfort and harassment to complainant. The clear picture which emerges is that a “**Man**” should know the difference amongst explicit consensus by woman and her explicit “No” or her implied consent. In the present matter, the whole conversation and evidence points towards nothing but to the fact that appellant was thrusting on the

complainant which was not at all appreciated by complainant. No other way was left with complainant as to how to show her trauma and she has rightly taken the shelter of the impugned Act. If it was the consent of complainant, she would never had come forward with the complaint. Numerous instances are available which are not repeated in the judgment but have been gone through by the Tribunal. The appellant has physically as well as emotionally blackmailed complainant. The words used by the appellant clearly shows the sexual harassment of complainant which were not to be liking of complainant. The appellant was at very good position and should have been extra vigilant in his conduct. He should have been setting example in the institution but to the contrary, he had rather violated the dignity of the woman by committing sexual harassment which cannot be ignored by the court and cannot be endorsed. So the arguments of appellant are not tenable.

27. It has also been argued by appellant that principles of natural justice have not been followed. In this regard, it is observed that after para No. 26, there is specific mention in the report of ICC which describes as to how principles of natural justice and statutory compliances were made and were kept in mind while conducting proceedings in fair and impartial manner. The perusal of report further shows that ICC has carefully examined and perused the SMSs and e-mails exchanged between both the parties and concluded that such repeated attempts to foster personal relationships with reporting employees is not only

a conflict of interest and misuse of designation, it also amounts to a violation of the prevention of sexual harassment policy.

28. Accordingly, in these circumstances, this Tribunal comes to the conclusion that impugned findings and recommendations dated 19.05.2015 against the charged official/appellant does not warrant any interference as there is no illegality and infirmity in same and appeal is dismissed being without any merits.
29. File be consigned to Record Room.

**Announced in open Tribunal
on this 03.07.2023**

**(AJAY GOEL)
POIT-I/Rouse Avenue Courts, New Delhi**