

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 26677 of 2023



Versus

**Gender Sensitization and Internal
Complaint Committee & Ors.**

For the petitioner : Mr. Prमित Bag,
Ms. Amani Kayan

For the Union of India : Mr. Dhiraj Trivedi,
Mr. Arunava Ganguly

For the respondent no.7 : Mr. Arjun Ray Mukherjee,
Ms. Sarada Sha

Hearing concluded on : 15.04.2024

Judgment on : 24.04.2024

Sabyasachi Bhattacharyya, J:-

1. The petitioner joined as a trainee officer of the Coast Guard as Assistant Commandant. She was employed as a Deputy Commandant of the Coast Guard, Mumbai and subsequently retired from her services on December 25, 2021. She was posted in 88 ACV Squadron, Haldia during the relevant point of time when the subject incidents allegedly took place. The respondent no. 7 was the Commanding Officer of the Coast Guard at Haldia at the relevant juncture. The petitioner complains that she was sexually harassed by respondent no. 7. The complaint was taken up by the Internal Complaints Committee (ICC). The ICC, upon giving opportunity of hearing to all

concerned, dismissed the complaint on all counts, against which the present writ petition has been preferred by the writ petitioner.

- 2.** At the outset, the respondents raise an objection as to maintainability of the writ petition since a previous writ petition preferring the same challenge was dismissed for default. It is argued that the principle embodied in Order IX Rule 9 of the Code of Civil Procedure is applicable to writ petitions as well. Since at the time of dismissal of the previous writ petition, the respondents were represented but the petitioner was not, the petitioner is debarred from preferring a similar challenge in the present writ petition.
- 3.** Dealing with the said objection, learned counsel for the petitioner argues that during pendency of the present writ petition, the previous petition was restored at the instance of the petitioner and was subsequently dismissed for non-prosecution. Thus, there is no bar to the present case being decided on its own merits. The maintainability of the present writ petition was left open by the co-ordinate Bench restoring the previous writ petition to be decided by this Court. Moreover, it is argued that there was no decision arrived at on merits in the previous writ petition.
- 4.** Learned counsel for the petitioner argues that the respondent no. 7 harassed the petitioner in several ways. The respondent no. 7 used to stare at the petitioner inappropriately and tried to peep into her room. At one instance, when the petitioner was operating a craft from the pilot's seat, the respondent no. 7, who was the co-pilot, blocked an instrument called the Inclinator from the petitioner's sight. The

said blockage was deliberate and also formed a component of the harassment. The respondent no. 7 had allegedly held that the petitioner's hand and tried to put his arm around her shoulder.

5. Another component of the alleged harassment was that the respondent no. 7 addressed the petitioner inappropriately as "baby" and "sweetie". When confronted by the petitioner, the respondent no. 7 admittedly did not repeat the same. However, it is submitted that there were sexual overtones in the said utterances.
6. It is next contended by the petitioner that the respondent no. 7 attempted to recall the petitioner from leave on November 25, 2019 and also on May 2, 2019. That said attempts coincided with the petitioner's birthday and her date of marriage. It is argued that the said attempts were deliberate, to harass the petitioner.
7. The respondent no. 7, the petitioner alleges, had deliberately ensured that the petitioner fails in an assessment carried out for the position of "Captain of Craft". A Board Officers was constituted for such test deliberately, which acted on the dictates of the respondent no. 7 to see to it that the petitioner did not pass the examination. Duty rosters were also fixed deliberately to cause inconvenience to the petitioner.
8. It is argued that the efforts of the respondent no. 7 all along were to hinder the petitioner's progress in her profession deliberately in view of his attempts at sexual harassment having been thwarted by the petitioner.
9. Learned counsel for the petitioner argues that the respondent no. 7 also saw to it that a complaint was lodged against the petitioner for

not embarking a vessel, which was motivated by the mal-intentions of the respondent no. 7.

- 10.** It is argued that admittedly the respondent no. 7 sought to portray in evidence that he was not in the ward-room when the alleged incident of peeping and staring occurred, but was in a hotel. Despite having taken note of the fact that the said defence of the respondent no. 7 was frivolous and he took his meals at the ward-room during the relevant juncture, the ICC failed to draw adverse inference against respondent no. 7.
- 11.** It is argued that the that the use of the offending words “baby” and “sweety” were entirely overlooked by the ICC merely on the ground that those were never repeated, although observing that the words were inappropriate and absolutely condemnable. It is next argued that once the petitioner had used the phrase “hugging the coast”, which was repeated by the respondent no. 7 inappropriately, with sexual overtones. The said incident was also glossed over by the ICC in its judgment.
- 12.** Learned counsel for the petitioner cites an unreported judgment of the Madhya Pradesh High Court dated January 31, 2023 in *Review Petition No. 77 of 2023 [Raj Kumar Pateriya –Versus- State of Madhya Pradesh & Ors.]* where it was held by a learned Single Judge of the Jabalpur Bench of the Madhya Pradesh High Court that the intention of the Legislature is not to require the court to necessarily follow the provisions of the Code of Civil Procedure while deciding a writ under Article 226 of the Constitution of India. The matter is left to the

discretion of the court to either dismiss a writ petition for default or dispose it of on merits, it was held. Thus, it is contended that the bar of Order IX Rule 9 of the Code of Civil Procedure pleaded by the respondents is not applicable to the present writ petition.

- 13.** Learned counsel appearing for the petitioner also cites *Puran Singh and others -Versus- State of Punjab and others*, reported at (1996) 2 SCC 205, where the Supreme Court considered Section 141 of the Code of Civil Procedure, the explanation to which clearly excludes applications under Article 226 of the Constitution from the expression 'proceedings', thus making it clear that the Code of Civil Procedure does not apply to petitions under Articles 226 and 227 of the Constitution of India.
- 14.** Initially, the complete copy of the decision of the ICC was not available to the petitioner and/or the respondent no. 7 but during the course of hearing the same was supplied by learned counsel for the respondent-Authorities to the parties and all parties advanced their arguments on the said complete decision.
- 15.** Learned counsel appearing for the respondent no. 7, apart from taking the objection of maintainability as discussed above, argues that for adjudication of the present matter, re-appreciation of detailed evidence is necessary and the writ court ought not to interfere on such disputed questions of fact.
- 16.** It is argued that insofar as the allegation of staring and peeping is concerned, there were admittedly CCTV cameras installed all around the building where the petitioner resided at the relevant juncture, as

borne out by the statement of Shri Avijit Dasgupta, Commanding Officer, a witness. The petitioner deliberately chose not to raise the allegation at the relevant juncture. The CCTV footage, as in many other institutions, was retained only for a limited period. Since the allegations were made much after the alleged happenings, there was no scope of the allegations being proved or disproved by the CCTV footage.

- 17.** The respondent no. 7 denies all the allegations and submits that those were figments of imagination of the petitioner. Insofar as blocking the inclinometer is concerned, the respondent no. 7 relies on the sketch map of the craft which is annexed to a compilation filed by the ICC. It is seen therefrom that the said instrument is situated on the left of the co-pilot's seat and would typically be obstructed if someone was seated in the co-pilot's seat due to the space constraints in the cabin. As to the allegations of holding of hand and trying to put arms around the shoulder of the petitioner, not a single witness was produced by the petitioner while the statement of one Aneesh Kumar Singh Adhikary, who was present and witnessed the petitioner's behaviour with the respondent no. 7, did not corroborate such allegation. Moreover, it remains unexplained as to why the petitioner waited for eleven months from the date of such incident to lodge the complaint for the first time.
- 18.** The terms "baby" and "sweety" were never addressed with any sexual intention. Moreover, the petitioner herself admitted that once she

expressed her discomfort, those were never repeated by the respondent no. 7.

- 19.** The respondent no. 7, it is argued, was not instrumental in the petitioner not passing her assessment for 'Captain of Craft'. A Board of Officers was constituted not for the petitioner alone but also for other officers namely, Shri Amit Hooda, Commandant [JG] and Shri C.K. Singh, Commandant [JG] who had qualified their assessments.
- 20.** There are no guidelines for constituting a Board but in order to ensure fairness and transparency, the respondent no. 7 had constituted such Board for the petitioner as well which cannot be said to have any *mala fide* intention for doing so.
- 21.** Insofar as the attempt to recall the petitioner from leave on November 25, 2019 is concerned, she was required to participate in the Republic Day parade preparation but she chose to enjoy the entire leave period granted to her. On May 2, 2019, a recall from leave was also sought but the same was subsequently revoked, allowing the petitioner to enjoy the entire leave period granted to her.
- 22.** It is argued that the arrangement of roster in the Indian Coast Guard is not fixed due to the very nature of the job, which operates round the clock. Service members are required to be prepared to be called upon at any time to safeguard the security and interests of the nation. In such a service, there is no set schedule for duty.
- 23.** Learned counsel for the respondent no. 7 further argues that in the compilation provided by the respondent-Authorities, it is seen that the petitioner did not complete Section 1B of her Annual Confidential

Report (ACR) dated December 31, 2018. In Section 1C of the ACR, the respondent no. 7, accordingly, wrote that the Officer was reluctant to write three achievements on the column thereinabove on many occasions and had been counseled / warned by letter and that there was scope of improvement.

- 24.** Due to the recurring misconduct of the petitioner, the respondent no. 7 had to send a letter on April 16, 2019 to the Headquarters in which he advocated her removal from his squadron and suggested the need for psychological treatment of the petitioner. The petitioner had ongoing psychological issues which are also apparent from the affidavit-in-reply filed by the petitioner.
- 25.** Another Commanding Officer, Shri A. Ganguly, had filed a complaint with the Headquarters against the petitioner on December 10, 2019 for refusing to embark on a craft as a co-pilot. The petitioner has unnecessarily sought to attribute such action to the respondent no. 7, although he had nothing to do with it. Such misconduct resulted in initiation of a Disciplinary Proceedings against the petitioner.
- 26.** It is argued that the timing of the complaint of sexual harassment was more than a coincidence. The same was lodged on December 19, 2019, only after disciplinary proceedings were initiated on the complaint of Shri A. Ganguly dated December 10, 2019.
- 27.** Learned counsel for the respondent no. 7 places reliance on *Tata Cellular-Versus-Union of India and Ors.*, reported at AIR 1996 SC 11 to argue that the scope of judicial review of an administrative decision is limited to specific tests regarding the decision-making authority

having exceeded its power, which are not satisfied in the present case. As such, it is argued that the writ petition be dismissed.

- 28.** The first question which arises for consideration here is whether the present writ petition is barred on the principle of Order IX Rule 9 of the Code of Civil Procedure in view of the previous dismissal for default of another writ petition filed by the petitioner on the self-same cause of action.
- 29.** It is to be taken note of that Order IX Rule 9 of the Code of Civil Procedure is not applicable in terms to a writ petition. As held by the Supreme Court in *Puran Singh (supra)*, Section 141 of the Code, in its Explanation, clearly excludes writ petitions from the purview of the said Section, which enables other procedural provisions to apply to miscellaneous proceedings.
- 30.** However, the Writ Rules of this Court provide that where there is no specific provision, the principles embodied in the Code may be imported.
- 31.** We have to take note of the fact that the bar under Order IX Rule 9 of the Code is based on principles of equity, to ensure that a person cannot be vexed twice on the self-same cause of action.
- 32.** In the case at hand, the previous writ petition was not decided on merits, but dismissed for absence of the petitioner on the relevant date. Subsequently, the same was restored duly. The learned Single Judge restoring the same noted that the question of maintainability of the present writ petition was to be agitated before this Court. Thus, the petitioner showed her *bona fides* by not pressing the previous

application, thus leaving it open for this Court to decide the matter on merits. Hence, by applying the principles of justice, equity and good conscious, the bar under Order IX Rule 9 cannot be said to be strictly applicable to the present case. As such, the said objection of the respondents is turned down and the writ petition is being taken up for adjudication on its merits.

- 33.** One of the questions raised by the petitioner is that the constitution of the ICC was vitiated since one Rekha Kumari, an Assistant Commandant, was a witness but made a part of the Committee. However, the said issue was addressed by the ICC in its decision and it was held that Rekha Kumari was not present during any of the alleged incidents, nor was she produced as a witness either by the complainant or by the respondents. Thus, the said Rekha Kumari being not cited as a witness by either of the parties, nor having any direct knowledge, her appointment as a female member of the ICC could not be vitiated in any manner. The ICC, it is noted, was chaired by a lady, namely Commandant Usha Gour and comprised of one male member and two other female members. Hence, the constitution of the Committee squarely met the requirements of the Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as, “the 2013 Act”).
- 34.** The petitioner, in order to vindicate her complaint, has alleged that a charge-sheet has been filed against the respondent no. 7. However, it is well-settled that in Indian Criminal Jurisprudence, an accused is presumed to be innocent unless proved guilty. Mere filing of a

charge-sheet, that too on the complaint of the petitioner herself, is not conclusive evidence of her allegations at all. Moreover, we cannot lose sight of the fact that the complaint on the basis of which the charge-sheet was filed was lodged by the petitioner only after she failed to obtain a favourable order before the ICC. Thus, much stress cannot be laid on such charge-sheet to indict the respondent no. 7 on the charges of sexual harassment.

- 35.** On the merits of the matter, the ICC has elaborately dealt with all the allegations made by the petitioner and has given sufficient opportunity of hearing to the petitioner, adverting to and appreciating the entire evidence adduced by both sides in the process.
- 36.** The petitioner has laid much stress on the attempt of respondent no.7 to suppress that he had his meal in the ward room at the ICGS by contending that he was in a hotel at the relevant juncture. The ICC has taken note of the fact, it has been argued by the petitioners, but failed to draw adverse inference against respondent no. 7.
- 37.** In such context, the petitioner undoubtedly has a point in that adverse inference could be drawn on such issue, but it is required to be examined as to how far such adverse inference vitiates the defence of the respondent no. 7. Irrespective of adverse inference drawn for suppression of any material by the respondents, it is for the complainant in the first place to substantiate the allegation, thereby discharging her initial onus, only after which the onus shifts on the respondent to answer the same. Adverse inference, moreover, is a rule of evidence and does not automatically prove the case of the

complainant. The complainant has to independently substantiate her case. It is to be noted that the principle of adverse inference, which is merely a rule of evidence, is only valid at the initial juncture of assessment of evidence and becomes academic after the entire evidence is led and placed before the judicial/quasi-judicial authority for final adjudication on merits. In the present case, thus, the mere suppression by the respondent no.7 of the fact that he had his meals at the ward room of the ICGS itself does not vitiate the defence, let alone substantiate the case of the petitioner.

- 38.** The allegation of staring and peeping in the room of the petitioner could not be substantiated by any witness. The respondent no.7 has a point in arguing that there was CCTV footage all around, which was stated by an independent witness as well. The CCTV footage, it has been stated, is retained only for a limited period. It is well known that such footage cannot be retained forever due to constraints of technology and storage space. The very fact that the petitioner waited for almost a year after the alleged incident to lodge her complaint robs the adjudicating body of the opportunity to look into such footage to ascertain the veracity of the allegation.
- 39.** It is not the case of the petitioner that the respondent no.7 peeped into her room or stared at her at a time when she was in a compromising or embarrassing position. It is not quite credible that in the living quarters where there may be others as well, including CCTV coverage, such action of the respondent no.7 would go unnoticed. 'Staring' has various shades and does not always

necessarily lead to sexual harassment as contemplated in the 2013 Act.

- 40.** Insofar as putting the arms of the respondent no.7 around the shoulder of the petitioner, eye witness evidence, considered by the ICC, substantiates that the door of the room was not closed and as such, nobody having witnessed such action itself dampens the sting of the allegation.
- 41.** The use of the expressions “baby’ and “sweety” has been held by the ICC itself to be inappropriate. However, it is to be noted that once the petitioner informed the respondent no.7 about her discomfort in that regard by WhatsApp and otherwise, the petitioner never repeated the terms of endearment to address the petitioner. Such expressions may be prevalent in certain social circles and need not always be sexually coloured.
- 42.** Section 2(n) of the 2013 Act defines “Sexual Harassment”. Sexually coloured remarks and other unwelcome verbal conduct of sexual nature also comes within the purview of the same.
- 43.** However, *per se*, the use of the above two expressions need not be construed necessarily to be sexually coloured.
- 44.** Moreover, the verbal use of the words having been once expressed by the petitioner to be unwelcome to her, the petitioner never repeated the same, thus taking away the element of “unwelcome” from such verbal use of the words. Thus, although inappropriate, the petitioner never repeated the words, which itself shows that those could not

have been intended to deliberately irritate the petitioner or to sexually harass the petitioner.

- 45.** Insofar as the use of the expression “hugging the coast” is concerned, it has been corroborated by all witnesses as well as not denied by the petitioner that the said expression is in common usage in Coast Guard jargon. What is noteworthy is that it is not the respondent no.7 but the petitioner who used the expression first, apparently for technical purposes to convey some operational manoeuvre. It is argued by the petitioner that the same was repeated back by the respondent no.7 with inappropriate overtones. There were other witnesses at the relevant point of time who have denied such sexual overtones which itself belies the allegation. Such terminology being usual in Coast Guard circles and having been used by the petitioner first, a repeat of the same, even if any, without sexual overtones, as corroborated by witnesses, defeats the allegation itself.
- 46.** The petitioner has insinuated that audio recording of the incident was not taken on record by the ICC. However, the said act of the ICC, even if true, is not fatal to its decision, since the ICC proceeded on the premise that the words were actually used and even labelled the terms “baby” and “sweetie” as inappropriate.
- 47.** There is a more serious aspect to the issue. The conduct and chronology of events speaks volumes against the petitioner. There were several prior charges against the petitioner by her colleagues across the board. Thus, the possibility of the petitioner using the allegation of sexual harassment as a ruse and afterthought to save her

skin from such allegations cannot be ruled out. The psychological ill-health of the petitioner is corroborated not only from her affidavit-in-reply but is also borne out by several materials on record, which have been placed on record by the ICC in its compilation.

- 48.** On December 31, 2018, an appraisal report was given which went against the petitioner. In the said report, the respondent no.7 stated that the officer (petitioner) was reluctant to write three achievements on a column above on many occasions. The officer, it was stated, had been counseled / warning had been issued. There was scope of improvement. Such comments of the respondent no.7 are corroborate by the fact that in Section 1B of her ACR, captioned “SELF APPRAISAL”, the petitioner made no comment and left it vacant. The said form has been annexed to the documents filed by the respondent-authorities themselves.
- 49.** In January, 2019, the petitioner denied to sail during the Gangasagar Mela, 2019 which has been corroborated by one Ravi Kumar, a Commandant and her Commanding Officer at the relevant juncture, who is also a witness before the ICC.
- 50.** In April, 2019, the petitioner was guilty of misbehaviour with senior officers, having arguments and making loose comments and directing insults towards her senior officers, which were indicated to be psychological behavioural issues. It was also flagged that the petitioner had failed to take the craft for hovercraft entries every time when she was asked.

- 51.** On July 1, 2019, there was suspicious behaviour on the part of the petitioner and the petitioner said that she would teach hard lesson to male officers, especially her Commanding Officer.
- 52.** The above incidents of April, 2019 and July 1, 2019 are not figments of imagination of respondent no. 7 but find place in two separate confidential reports given by a lady Officer, namely Sneha Kathayat, a Deputy Commandant and Staff Pilot for Commanding Officer at the relevant juncture. Such contemporaneous reports against the petitioner by another woman cannot be disbelieved, in the absence of any rebuttal evidence whatsoever. Those were submitted much before the filing of the complaint by the petitioner and could not have been pre-meditated to meet her complaints.
- 53.** That the petitioner was unwilling to embark a craft as a co-pilot on December 10, 2019 was mentioned in the complaint not by the respondent no. 7 but by an independent Commandant, who was the Commanding Officer at the relevant point of time, namely one Shri A. Ganguly. As a result, disciplinary action was initiated against the petitioner.
- 54.** It is too much of a coincidence that immediately thereafter on December 19, 2019, the petitioner lodged the sexual harassment complaint with the ICC, training her guns on the respondent no. 7. The above chronology of events and conduct of the petitioner, which has been borne out by the evidence of several independent officers, including lady officers, go on to show that the petitioner's allegations of sexual harassment against the respondent no. 7 were clearly

motivated, to save her own skin and deviate attention from her own indiscipline and several instances of dereliction of duty in an immensely responsible field of service.

- 55.** The history of psychological problem of the petitioner, as borne out by the records, apparently border on misandry. Hence, the possibility of malice on the part of the petitioner and a bid to protect herself from the disciplinary action she faced due to her repetitive, argumentative and indisciplined conduct cannot be ruled out.
- 56.** There is another underlying context in the present matter. In allegations of sexual harassment, which are sensitive by their very nature, one has to be careful that a reverse bias does not operate against the involved male accused. Since the Statute itself provides sufficient protection (quite rightly so, in view of the harassments often faced by women at their workplaces), a double layer of protection, if extended by adjudicating forums to the complainant, might be counterproductive, since excessive abuse of the provisions of the statute will create more glass ceilings than they remove, creating fetters in the employment of genuinely competent and hard-working female persons.
- 57.** Moreover, the writ courts, in judicial review, have to be careful so as not to substitute their own opinions for those of the adjudicating authorities unless there is any patent unreasonableness, arbitrariness, *mala fides*, perversity and/or illegality evident on the face of the record. I do not find any bias operating in the minds of the ICC or reflected in the impugned decision. Rather, the ICC complied

with all principles of natural justice by giving adequate opportunity of hearing and carefully assessing the entire body of evidence before dismissing the complaint of the petitioner. Thus, the principles of natural justice were adhered to and there was no flaw whatsoever in the decision-making process adopted.

- 58.** Hence, there is no scope of interference whatsoever with the impugned decision of the ICC.
- 59.** Accordingly, WPA No. 26677 of 2023 is dismissed on contest, confirming the impugned decision of the ICC absolving respondent no. 7 of the allegations of sexual harassment made against him by the writ petitioner.
- 60.** It is, however, made clear that this court has not entered into the merits of the impending criminal trial against respondent no. 7, if initiated on the basis of the charge-sheet filed against him. It will be open to the concerned criminal court/forum, if so called upon, to decide all questions involved therein independently on their own merits and in accordance with law, without being prejudiced in any manner by any of the observations made herein.
- 61.** There will be no order as to costs.
- 62.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)