

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO.115 OF 2017**

**DISTRICT: THANE**

Shri Hiralal Rama Jadhav, )  
Occ : At present Nil, )  
Residing at Superintendent's )  
Bungalow, Near Thane Central )  
Prison, Thane. )...**Applicant**

**Versus**

1. The Additional Chief Secretary, )  
Home Department, )  
Government of Maharashtra, )  
Mantralaya, Mumbai. )
2. The Principal Secretary, )  
Home Department, (Prison), )  
Government of Maharashtra, )  
Mantralaya, Mumbai. )

**...Respondents**

Dr. Shri G. Sadavarte, learned Advocate for the Applicant;  
probono.

Shri M.D Lonkar, Special Counsel with Ms Savita  
Suryawanshi, learned Presenting Officer for the Respondents.



**CORAM** : **SHRI JUSTICE A.H. JOSHI,**  
**CHAIRMAN**

**SHRI RAJIV AGARWAL,**  
**VICE-CHAIRMAN**

**RESERVED ON** : **07.06.2017**

**PRONOUNCED ON** : **10 .07.2017**

**PER** : **SHRI JUSTICE A.H. JOSHI,**  
**CHAIRMAN**

### **J U D G M E N T**

1. Heard party in person and also Dr. Shri G. Sadavarte, learned Advocate for the Applicant and Shri M.D Lonkar, Special Counsel with Ms. Savita Suryawanshi, learned Presenting Officer for the Respondents.

2. Applicant is serving as superintendent of Central Jail at Thane. The Original Application was amended from time to time. Various grounds and averments have been incorporated by applicant.

3. The O.A. is opposed by the Respondents by filing reply. Respondents No.3 and 4, as originally arrayed, were latter on deleted by the Applicant.

4. The present Original Application contains various prayers, which read as follows:-

**"IX. Relief sought:**

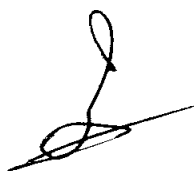
- (a) Rule be issued, record and proceedings be called for;

- (b) This Hon'ble Court be pleased to quash and set aside the impugned Letter dated 15.11.2016 alongwith chargesheet bearing No.DE 1916/1457/OW 340/TRG-1, issued by Home Department, State of Maharashtra annexed at Annexure 'E' hereto;
- (c) That this Hon'ble Tribunal be pleased to order an enquiry by the C.I.D. or by a special constituted Investigating Team to unearth the conspiracy hatched against the Petitioner and to book the conspirators for the crime committed by them.
- (d) That this Hon'ble Tribunal be pleased to quash the set aside the order dated 2.9.2016 issued by the Respondent No.3 herein (annexed as Annexure "G" hereto) the same being illegal and contrary to the rules governing transfer of Government servants."

(Quoted from page 24 and 25 of the O.A. paper book.)

5. During the pendency of Original Application, the Applicant had amended the O.A. and prayed for consequential service benefits and also sought for direction for imposing penalty against the Respondent for failure to observe mandatory provision contained in Section 26 of the Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013 (This Act is herein referred to as **The Act.**)

6. During all hearings except the last hearing, the applicant has tendered written notes of submissions and had personally argued the case, and on last date of hearing i.e. on 07.06.2017, the applicant as well as Learned Advocate Shri G. Sadavarte, also advanced submissions.



7. The prayer for enquiry through C.B.I. and action under Section 26 of the Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013 are not pressed, though a specific concession to that effect was not made before us.

8. Summary of submissions advanced by and on behalf of Applicant is as follows:-

(a) The complaint by Smt. Praja R. Choudhary, Woman Prison Guard at Thane Central Prison, and action thereon are part of a conspiracy hatched by Smt. Swati Sathe, Deputy Inspector General of Prisons at Head Quarters in Pune, and all actions are malafide.

(b) By virtue of Section 9(1) of Act complaint ought to be made to the Internal Complaints Committee or local committee.

(c) Applicant falls within the definition of employer as defined in clause (g) of Section 2 of the Act. He is also head of the establishment under relevant law, rules etc.

(d) The Internal Committee at Thane Central prisons cannot conduct the enquiry into the grievance against the Applicant, since Applicant is '**employer**' within the meaning of Section 2(g) of the Act. Therefore complaint of sexual harassment if any by Smt. Praja R. Choudhari, Women Prison Guard at Thane Central Prison was liable to be made to Local Committee at Thane as would be or would have to be constituted by the Collector of Thane, District.

(e) Therefore the complaint submitted by the complainant to Smt. Swati Sathe, Deputy Inspector General of Prisons at Head Quarters in Pune, does not deserve any cognizance and no enquiry whatsoever can be conducted furtherance thereto.

(f) Internal Complaints Committee constituted for or at the headquarters of Prisons Department does not have power and jurisdiction to hold enquiry against the Applicant, because Applicant is placed at Thane which is not a part of establishment of the headquarters.

(g) The Committee at the level of headquarters of Prisons Department shall have its jurisdiction only to the extent of employees working at the headquarter.

(h) Smt. Praja R. Choudhari, Women Prison Guard at Thane Central Prison did not make a complaint either to the Internal Compliant Committee at Thane prisons or to the Local Committee in Thane District. Therefore there does not exist any complaint to be legally made or to be enquired into.

9. The Complainant's submissions are answered by the Respondent, summary whereof is as follows:-

(a) Applicant's contention that Internal Compliant Committee at the headquarter level is not competent to enquiry is wrong and based on misreading of the scheme of the Act and in particular Section 4 of the Act.

(b) The provisions of Section 2(g), 4 and 6 of the Act have to be harmoniously construed. After harmonious reading of the provisions of the Act, it will be evident that the Internal Committee as against the Applicant is to be the internal Committee constituted at the level of Prisons Department Head Quarter.

(c) Smt. Swati Sathe, Deputy Inspector General of Prisons at Head Quarters in Pune is Presiding Officer is of the Internal Complaints Committee constituted at the headquarter. The Applicant had impleaded Smt. Swati Sathe, Deputy Inspector General of Prisons by name in the O.A.No.919 of 2016, In this peculiar fact and background, Government thought it proper to appoint a person other than Smt. Swati Sathe to preside over



Internal Complaints Committee to enquire into the complaint of sexual harassment made against the applicant.

(d) Therefore, Smt. Ashwini Dorje, Chairman, Women Redressal Committee, & Addl. C.P., Mumbai, is appointed to preside on the Internal Complaints Committee, by Government Resolution dated 23.12.2016.

The Government has clarified by corrigendum dated 28.02.2007 that the disciplinary enquiry is separated from the complaint of sexual harassment, and enquiry which is being conducted now, shall relate only to sexual harassment. Thus, now the disciplinary proceedings are kept in abeyance awaiting the report of the internal complaint.

(e) It is not necessary that the complaint against an officer who falls within the definition of the term employer be made to local committee only. The aim, object and focus of having a local committee is to provide a forum for complaints where a department or any office would not have a control and authority over an individual who is the '**employer**' who is himself the delinquent, or the cases which fall outside the purview of powers of an internal committee.

(f) The Applicant has raised hyper technical issues, without showing that any prejudice is caused to him by the action of the Respondents with, a sole object of avoiding the process of enquiry under the said Act, which may eventually lead to D.E against him under the Maharashtra Civil Services (Conduct and Discipline) Rules, towards the misconduct.

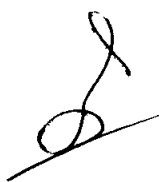
(g) It is bound to happen that when the delinquent himself, is a senior officer and internal committee at the level of head officer has to enquire, the presiding officer of the internal committee may eventually be an officer who may be higher in the rank, who in exceptional case could also be junior in rank. The enquiry being made by an officer higher in rank cannot and does not in any manner offend the scheme of Act or principles of natural justice.

(h) The allegations of conspiracy and malafides are baseless however, applicant has to wait till the enquiry is completed, for enabling him to have a grievance in that regard, through it could have been possible for the applicant to have disclosed his apprehensions about conspiracy etc. While disclosing his defense or while making his submission, had he to choose to do so.

### **DISCUSSION**

10. We have given peaceful consideration to various submissions made by Applicant and replied by the Respondents. We proceed to discuss the points canvassed before us as in paras to follow.

11. Through present O.A., the Applicant has challenged the charge sheet dated 15.11.2016 issued by the Respondent No.1, and he has also sought directions to the Respondents to consider his representation against the order dated 2.9.2016 by which Applicant was placed under suspension. Another Original Application No.919/2016 challenging same suspension order is pending, therefore, we do not propose to consider any relief regarding his prayer for relief as regards suspension in present Original Application.



12. The Applicant's claim is that he is an **'employer'** as defined in Section 2(g)(i) and (ii) of the Act, as he being the Superintendent of Thane Prison is in-charge of entire administration and management of the establishment of the Prison a unit of Prison Department, as per Rule 4 of the Maharashtra Prison Manual.

This factual and legal aspect of the matter is not a matter in dispute.

13. The Applicant as well as Learned Advocate have conceded the following position:-

The Applicant has argued that whenever the employer himself is the delinquent, the enquiry must be conducted by Local Committee. However, this legal proposition relied upon by the Applicant is not based on any precedent.

14. Now we have to deal with the Applicants claim that in his case, the enquiry should be entrusted to the Local Committee constituted under Section 6 of the said Act, because the Internal Complaints Committee at Head Quarters of Prison Department is competent to deal with complaints of sexual harassment against employees only at the headquarters, and the jurisdiction of said committee does not extend to officer at distant location, who is an **"employer"** within the compass and definition of the term as provided is S.2(g) of the Act, and who is serving at a location distant from the headquarters.



15. At the cost of repetition, Applicant's submission as regards separate powers and jurisdiction of internal Committee and local committee are summarized as follows:-

- (a) There has to be an Internal Complaints Committee at every work place.
- (b) There has to be a Local Committee for every District to be constituted by Collector concerned to receive complaints of sexual harassment from the establishments where Internal Committee has not been constituted or where the complaint is against employer himself.
- (c) In the present case the complaint is against the delinquent who himself is an employer within the meaning of said term defined in clause (g) of Section 2 of the Act the complaint is to be enquired into only by the Local Committee at the District level, and not by internal committee at the level of Head Quarters.

16. In order to examine applicant's submission referred to in foregoing paras, it is necessary to appreciate the aims and objects as well few provisions of the Act.

17. The Act aims at providing safe, secure, and equitable environment for women, at place of work.

18. In para 6 of the 'Statement of objects and Reasons' of the said Act, it is stated that:-

- "6. It is, thus, proposed to enact a comprehensive legislation to provide for safe, secure and enabling environment to every woman, irrespective of her age or employment status (other than domestic worker working at home), free from all forms of sexual harassment by fixing the responsibility on the employer as well as the District Magistrate or Additional District Magistrate or the Collector or Deputy Collector of every



District in the State as a District Officer and laying down a statutory redressal mechanism.”

(Quoted from page 2 of the Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013.)

19. It is necessary to consider the text of the definition of the term “**employer**” as given in that Act as well as Scheme enunciated by S.4 of the Act. Section 4(1) refers to the term Constitution of Internal Complaints Committee. Text of S.4(1) reads as follows:-

“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 unites of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.”

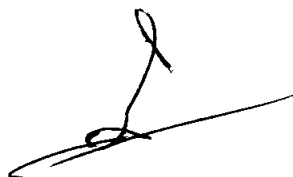
20. The proviso to subsection (1) of Section 4, quoted referred to in forgoing quotation is to be attended to. It contemplates possibility of ‘offices of administrative head’ of the workplace to be located into different places or divisional or sub-divisional level, and in such event law contemplates possibility of constitution of an Internal Committee to deal with complaints which essentially has to be in Internal Committee, other one internal committee contemplated 1<sup>st</sup> part of Section 4(1) before its proviso.

21. The object and scheme of Constitution of Local Committee is thus vivid. It has compass of powers which is comprehensive, but it will not cover cases of delinquency which fall within the pyramid of any establishment or department at any specified location, and under the control of any department where constitution of internal committee is provided by Section 4(1) & also by proviso of Section 4(1), any and every complaint of Sexual harassment which shall remain outside the purview of all such Internal Committee or Committees, shall be matters to be inquired into by the Local Committee.

22. As a corollary, the compass of Local Committee operates in totally different range of complaints and totally different arena unoccupied by, the Internal Committee under Section 4(1) & or by the proviso to Section 4(1) within the administrative pyramid of any department with its widest import and connotation.

23. If the interpretation which is demonstrated in foregoing paragraph is considered, it will be in no manner operate to upset or defeat the scheme of the Act.

24. It is seen that Internal Complaints Committees under S.4 of the Act are required to be constituted in every Government office. If the senior most officer in that office is not a woman, the Presiding Officer of that Committee could be a relatively junior officer.

A handwritten signature in black ink, consisting of a stylized, cursive script that is difficult to decipher. It appears to be a personal name or initials.

25. In a hypothetical case where the complaint is against the Collector/District Magistrate himself, Internal Committee in the Collectorate or the Local Committee will not be able to inquire into that complaint. Only an Internal Committee Constituted by Government will be able to inquire into such a complaint. The case of the Applicant has to be dealt with on similar lines.

26. The Applicant has raised an issue that the complainant Smt. Praja R. Choudhary, Woman Prison Guard at Thane Central Prison has not made a complaint to Internal Committee at Thane Central Prison or the Local Committee at Thane District. He claims that under Section 9 of the said Act, no cognizance of her complaint can be taken by any other Committee.

It is an admitted fact, that Smt. Praja R. Choudhary, Woman Prison Guard at Thane Central Prison and Smt. Swati Sathe, Deputy Inspector General of Prisons at Head Quarters in Pune, who is the senior most woman officer in the Prison Department, and Smt. Swati Sathe is also to be the Presiding Officer of the Internal Complaints Committee at the Head Quarters of the Prison Department.

27. The Respondents have submitted that on 1.3.2017 that the Government has issued corrigendum dated 28.2.2017 to G.R dated 23.12.2016 and has restricted the operation of that G.R to complaint under the said Act.

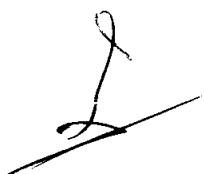
28. Internal Committee at the level of the department of prison headquarter is headed by a D.I.G level woman officer, viz. Smt. Swati Sathe at present. In the normal course,

enquiry against the Applicant would have been held by the Committee presided over by Smt. Swati Sathe. However, as the Applicant has made various allegations against Smt Sathe, Government had appointed another Internal Complaints Committee headed by Smt. Ashwati Dorje I.P.S., who is a senior woman officer.

29. In so far as applicant's grievance that the alleged victim has not filed/lodged a complaint which can be treated as a compliant capable of cognizance, because it was made to Smt. Swati Sathe.

30. In the light of our discussion that there can be multiple tiers of Internal Committees, the complaint made by the victim to Smt. Swati Sathe fully satisfies the requirement of section 9 of the said Act. A complaint made to any senior officer forwarded to appropriate Committee will meet the requirement of Section 9.

31. Genuineness & fact of the complaint is crucial than its form and channel lest it would defeat whole purpose of enactment and precedent in lease vishakha which cannot be disregarded in any manner whatsoever. The Applicant's contention in this regard is based on a too narrow interpretation and is based on self-centered perspective. The applicant may be entitled to advance the interpretation which he is trying to do, but the compass of law cannot be allowed to be too narrow to defeat the very object of the Act. Hence we reject the said submission being devoid of merit.



32. In case, the Internal Committee concludes that the allegations against the present Applicant are proved, it would be competent to recommend action under Section 13(i) or 13(ii) or both of the said Act against the Applicant.

33. We are of the considered view and we hold that the Committee constitution whereof is under challenge squarely fits into the concept of an Committee at the level of Prisons Department to conduct enquiry in a complaint against an employer who is an **“employer”** qua the **“establishment”** under his contract is concerned in view of express provision contained in proviso to subsection (1) of S.4 of the Act.

34. The word ‘employer’ assumes importance in present case. The Committees are required to be appointed either by ‘employer’ or the Collector. In the present case, the Government as ‘employer’ has appointed the Internal Complaints Committee and we are satisfied that on harmonious construction of section 2(g), 4 & 6, the said Committee can inquire into the complaint of sexual harassment against the Applicant.

35. In the background of foregoing discussion, we are convinced and are inclined to accept the Respondents interpretation on having an internal committee at the level of Head Quarter of the department for covering the delinquent who falls within the definition of employer, for two more reasons viz.

- (a) No prejudice can be said to cause to the applicant, in eye of law if the enquiry against him is conducted by the Committee constituted by G.R dated 23.12.2016, and
- (b) Constitution of Internal Complaints Committee at Head of Department/Government level is inevitable in many cases as would be clear from the discussion herein before.

35. Having regard to the aforesaid facts and circumstances of the case and discussion, this Original Application is dismissed.

Sd/-

**(Rajiv Agarwal)**  
**Vice-Chairman**

Sd/-

**(A.H Joshi, J.)**  
**Chairman**

**Place : Mumbai**

**Date : 10.07.2017**

**Dictation taken by: N.M. Naik.**