

Supreme Court of India reiterates importance of due process in IC proceedings, and issues directions for implementation of compliances under the POSH Act

With the objective of creating safe and inclusive work environments for women, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“**POSH Act**”) mandates employers with 10 (ten) or more employees to, *inter alia*, set up an internal committee (“**IC**”) at workplace¹ and broadly sets out a grievance redressal mechanism and procedure to address matters of sexual harassment at workplace. Despite the statutory prescriptions, several establishments have failed to implement the said legislation in letter and in spirit. Factors including lack of general awareness and holistic understanding of the due process to be considered in conducting IC proceedings, inadequate training of the IC, *etc.* have plagued proper implementation and effectiveness of the grievance redressal mechanism under the POSH Act.

The Supreme Court of India (“**Supreme Court**”), in the recent case of *Aureliano Fernandes v. State of Goa and Ors.*², took note of the lack of proper enforcement and implementation of compliances under the POSH Act, and passed a slew of directions in this regard. This case discusses the concept of ‘principles of natural justice’ in IC proceedings and highlights certain key directions passed by the Supreme Court.

Brief facts

The appellant, Mr. Aureliano Fernandes, was dismissed from services and barred from future employment with government authorities in Goa, pursuant to findings of the IC constituted by Goa University, inquiring into multiple complaints of sexual harassment filed against the appellant. The Supreme Court considered the appellant’s challenge to his dismissal order by evaluating, *inter alia*, compliance by the IC with due process under applicable laws.

Analysis and findings

The Supreme Court observed that the IC displayed “*undue haste*” in conducting its inquiry in an effort to expeditiously adjudicate complaints received against the appellant. Noting procedural irregularities in IC proceedings instituted against the appellant including, *inter alia*, failure of IC to provide the appellant with reasonable time to prepare his defence, the Supreme Court observed that due process, an important facet of the principles of natural justice was seriously compromised and ordered fresh IC proceedings to be instituted against the appellant, setting aside the earlier findings of the IC.

¹ Section 2(o) of the POSH Act defines a ‘workplace’ as, *inter alia*, “(ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service”.

² CA 2482/2014 (SC).

Directions issued by the Supreme Court

The Supreme Court expressed its disappointment over the failure of several state functionaries, public authorities and private undertakings in implementing the POSH Act at workplace. Highlighting the importance of compliance with the POSH Act in ensuring success of its objects, including providing women with a safe and dignified working environment, the Supreme Court has directed central and state governments to undertake a timebound exercise to verify that concerned institutions have constituted ICs/local committees, as the case maybe, in accordance with the POSH Act. Further, it has directed institutions to ensure, *inter alia*, the following:

- 1) Display of information relating to the constitution and composition of ICs including e-mail IDs and contact numbers of designated persons; procedure prescribed for submission of online complaints; rules, regulations and internal policy on the website of each institution (including bodies of professionals such as doctors, lawyers, chartered accounts and other professionals), and updating such information from time to time;
- 2) Immediate and effective steps to be taken by authorities, managements, employers to familiarize IC members with their duties and manner of conducting inquiry into complaints of sexual harassment, *i.e.*, procedure to be followed from the point of time when complaint is received till the inquiry is concluded and report is submitted; and
- 3) Authorities, managements, employers are directed to conduct regular orientation programs, workshops, seminars and awareness programs to upskill members of the ICs and to educate women employees and women's groups about provisions of the POSH Act.

JSA Comment

An IC is entrusted with the responsibility of inquiring into written complaints of sexual harassment received. The POSH Act, while setting out the manner of conducting such inquiry, stipulates that IC should conduct an inquiry in "*accordance with the principles of natural justice*".³

Principles of natural justice have evolved over time through judicial precedents as envisioned under Article 14 and Article 21 of the Constitution of India, which grants individuals the right to equality, dignity and non-discrimination. As noted by the Supreme Court in several cases, the two-pronged test of *Nemo Judex In Causa Sua* – *i.e.*, no person will be a judge in his own cause and *Audi Alteram Partem* – *i.e.*, an individual must be afforded an opportunity of hearing before any decision is taken, form the basis of the principles of natural justice. These principles prohibit decision-making authorities from taking arbitrary procedural action against individuals. The Supreme Court also noted that "*a person accused of misconduct must be informed of the case, must be supplied the evidence in support thereof and be given a reasonable opportunity to present his version before any adverse decision is taken*". Decision making authorities are required to ensure fairness, transparency and integrity while handling complaints of misconduct, to prevent serious consequences of unfair penalization, discrimination and arbitrariness.

As such, an IC is required to ensure that a respondent is, *inter alia*, well-acquainted with the nature of allegations levelled against him; afforded an opportunity to present his reply in defence and cross examine witnesses; and lead evidence, in his own defence. IC proceedings held in non-conformity with these requirements are likely to be challenged and set aside by courts on account of arbitrariness, and failure to adhere to the due process of law.

³ Rule 7(4), Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.

Employment Practice

JSA has a team of experienced employment law specialists who work with clients from a wide range of sectors, to tackle local and cross-border, contentious and non-contentious employment law issues. Our key areas of advice include (a) advising on boardroom disputes including issues with directors, both executive and non-executive; (b) providing support for business restructuring and turnaround transactions, addressing employment and labour aspects of a deal, to minimize associated risks and ensure legal compliance; (c) providing transaction support with reference to employment law aspects of all corporate finance transactions, including the transfer of undertakings, transfer of accumulated employee benefits of outgoing employees to a new employer, redundancies, and dismissals; (d) advising on compliance and investigations, including creating compliance programs and policy, compliance evaluation assessment, procedure development and providing support for conducting internal investigations into alleged wrongful conduct; (e) designing, documenting, reviewing, and operating all types of employee benefit plans and arrangements, including incentive, bonus and severance programs; and (f) advising on international employment issues, including immigration, residency, social security benefits, taxation issues, Indian laws applicable to spouses and children of expatriates, and other legal requirements that arise when sending employees to India and recruiting from India, including body shopping situations.

JSA also has significant experience in assisting employers to ensure that they provide focused and proactive counselling to comply with the obligations placed on employees under the prevention of sexual harassment regime in India. We advise and assist clients in cases involving sexual harassment at the workplace, intra-office consensual relationships, including drafting of prevention of sexual harassment (POSH) policies, participating in POSH proceedings, conducting training for employees as well as Internal Complaints Committee members, and acting as external members of POSH Committees.

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