

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

MISCELLANEOUS APPLICATION DIARY NO(S).22553/2023

[ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 12-05-2023
IN C.A. NO. NO. 2482/2014 PASSED BY THE SUPREME COURT OF INDIA]

AURELIANO FERNANDES

PETITIONER(S)

VERSUS

THE STATE OF GOA & ORS.

RESPONDENT(S)

WITH

MA 1688/2023 IN C.A. NO. 2482/2014 (III)
(FOR CLARIFICATION/DIRECTION ON IA 131628/2023
FOR EXTENSION OF TIME ON IA 248631/2023
FOR EXEMPTION FROM FILING O.T. ON IA 114246/2024
IA NO. 131628/2023 - CLARIFICATION/DIRECTION
IA NO. 114246/2024 - EXEMPTION FROM FILING O.T.
IA NO. 248631/2023 - EXTENSION OF TIME)

W.P.(C) NO. 1224/2017 (PIL-W)
(IA NO. 74098/2019 - EARLY HEARING APPLICATION
IA NO. 127408/2022 - EXEMPTION FROM FILING O.T.
IA NO. 107538/2022 - EXEMPTION FROM FILING O.T.
IA NO. 95766/2018 - EXEMPTION FROM FILING O.T.
IA NO. 29686/2018 - EXEMPTION FROM FILING O.T.
IA NO. 12835/2018 - INTERVENTION/IMPLEADMENT)

Date : 12-08-2025 These petitions were called on for hearing today.

CORAM : HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE K.V. VISWANATHAN

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UPON hearing the counsel the Court made the following
O R D E R

We have heard Sri Sanjay Parikh, learned senior counsel for the petitioner; Ms. Rashmi Nand Kumar, learned counsel appearing for National Legal Services Authority (for short, "NALSA"); and Ms. Padma Priya, learned Amicus, who has been appointed by this Court to assist this Court in the matter.

Learned counsel for the NALSA has submitted a note on behalf of NALSA containing directions pursuant to the orders issued by this Court which have been disseminated to the State Authorities and also on the Website of NALSA the relevant information has been made available for the implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for brevity "POSH Act") explaining as to how the

aggrieved women have to approach the legal services institutions for free legal aid and also for the lodging of a complaint under the provisions of the POSH Act and such other information for coming to the aid of the aggrieved women in order to register a complaint under the provisions of the said Act. She has also drawn our attention to the creation of National Woman Helpline-181, Cyber Crime Helpline-1930 and Toll Free National Legal Aid Helpline-15100, which could be of assistance to an aggrieved woman to register her complaint or seek legal-aid and advice under the provisions of the said Act.

Annexure-A8 is the list of District Officers appointed under Section 5 of the Act in respect of 27 States and Union Territories. She submitted that insofar as the remaining States are concerned, as and when the information is provided, the same will be put on the website of NALSA.

Learned senior counsel appearing for the petitioner with response to his earlier note pointed out that insofar as the implementation of the directions issued by this court on 03.12.2024 insofar as a survey to be conducted for the purpose of ascertaining whether there has been constitution of the Internal Complaints Committee in the various private organisations are concerned, drew our attention to the earlier order dated 19.10.2023 reported in *"Initiatives for Inclusion Foundation and another vs. Union of India and others"* (2024(1)SCC 779) and to direction No.G(xvii), which reads as under:

"G. Monitoring of ICs and compliance by employers

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(xvii) The District Officer must be supplied a list of establishments (compiled by the relevant departments of the State/UT Government) that fall within the scope of Section 2(o), so that they may write to them and ensure that they are well versed with the provisions relating to employers, and their duties (including constitution of ICC under Section 4, duties under Section 19, etc.) and are implementing them in letter and spirit. This will also enable collection of annual reports, as contemplated under Section 21. The consequent direction to all private sector workplaces under Section 2(o)(ii) can be passed once the District Officer is able to discern an exhaustive list of entities."

Learned senior counsel submitted that in order to assist the Deputy Commissioners/Collectors/District Magistrates to comply with the direction of this Court for conducting a survey as directed by this Court, the Chief Labour Commissioner of each State could ensure that the relevant data is collected by the Labour Commissioner or of the equivalent designation and officer in each of the Districts of the States so that the said collection of data by the said Officer could in turn be submitted to the District Officer, and the District Officer could in turn transmit the said data to the Chief Secretaries of the States and the Union Territories who would in turn place the relevant data before this Court. This is in order to ensure that the Internal Complaints Committees are established in terms of Section 4 and in terms of Section 6 the Local Committees are established in the private sector.

Learned Amicus Curiae also drew our attention to the fact that there has been no compliance as such from all the States and Union Territories with regard to the direction issued by this court on 03.12.2024 insofar as the conduct of survey by the Deputy Commissioners/District Magistrates/Collectors in each of the Districts of the States/Union Territories are concerned. She also endorsed the submission of learned senior counsel to the effect that the concerned Labour Commissioner/Labour Officer or the equivalent officer in each District of the Department of Labour could be directed by the Chief Secretary as well as the Chief Labour Commissioner in the State to ensure that this Data is collected from the respective Districts and Union Territories and forwarded to the District Officers appointed under Section 5 of the Act and also through the Chief Labour Commissioners and the Chief Secretaries so that the data is placed before this Court.

In this regard, we wish to draw the attention of all concerned to Section 2(o), which defines a 'workplace' and also Section 2(p), which defines 'unorganised sector' of the POSH Act, which read as under:

"2(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;

(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;

(iii) hospitals or nursing homes;

(iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;

(v) any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey;

(vi) a dwelling place or a house;

2(p) "unorganised sector" in relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.

Therefore, it becomes the duty of an employer to ensure that in a workplace an Internal Complaints Committee is constituted in terms of Section 4 of the Act. It is hence the responsibility of the Labour Department to ensure that the Internal Complaints Committee is constituted by every employer of a workplace and if no such Committee has been constituted to take steps under the provisions of the POSH Act. In order to ascertain as to whether the Employer of a workplace as defined under the POSH Act has constituted the Internal Complaints Committee in terms of Section 4 of the POSH Act, it is necessary to have the aforesaid data and to take steps wherever there has been no such constitution of the

Committee. It is for this purpose that the survey was directed *vide* order dated 03.12.2024.

Learned counsel for the respective States and Union Territories submitted that the survey has not been completed in terms of the earlier order dated 03.12.2024. Since a direction is now issued to have the survey conducted with the assistance of the Labour Commissioners in the District and the Chief Labour Commissioner of the State, the said exercise shall be conducted within a period of six weeks from today if not already completed.

The said information shall be provided to the learned Amicus by the learned counsel for the respective States and Union Territories. Learned Amicus to compile the said data for the purpose of perusal by this Court and for issuance of further directions in that regard.

We expect learned counsel for the respective States and Union Territories to issue necessary advice on the aforesaid directions and to impress upon the concerned authorities referred to above to comply with the directions issued regarding the survey to be conducted and completed.

In this regard, we also refer to Section 26 of the Act which deals with penalty for non-compliance with provisions of the Act and for immediate reference is extracted as under:

"26. Penalty for non-compliance with provisions of Act.— (1) Where the employer fails to—
(a) constitute an Internal Committee under sub-section (1) of section 4; 1. Subs. by Act 23 of 2016, s. 3 and the Second Schedule, for "Local

Complaints Committee" (w.e.f. 6-5-2016). 13

(b) take action under sections 13, 14 and 22; and

(c) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder, he shall be punishable with fine which may extend to fifty thousand rupees.

(2) If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to—

(i) twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence: Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment;

(ii) cancellation, of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be, by the Government or local authority required for carrying on his business or activity."

The States may also ensure that the data that has already been collected is on-boarded in the she-box platform which has been created by the Department of Women and Child.

List on 14.10.2025.

(B.LAKSHMI MANIKYA VALLI)
COURT MASTER (SH)

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