

Writ Appeal Nos.516 to 519 of 2019

DR.VINEET KOTHARI,J,
AND
C.V.KARTHIKEYAN,J

ORDER

Dr.Vineet Kothari,J

Heard Mr.AR.L.Sundaresan and Mr.R.Thiyagarajan, learned Senior Counsel, assisted by Ms.Abitha Banu, learned counsel appearing for the appellant, Mr.Vijay Narayan, learned Advocate General, assisted by Mr.A.N.Thambidurai, learned Special Government appearing for the respondents 2 to 4 and Mr.V.Selvaraj, learned counsel appearing for the first respondent/complainant Mrs.H.Jayalakshmi, who was also present in Court.

2. The aforesaid four writ appeals directed against the common order passed by a learned Single Judge on 14.02.2019, disposing of W.P.Nos.25213, 23292, 23293 and 23846 of 2018 have come up before us.

3. This litigation is between the two parties, complainant

Mrs.H.Jayalakshmi, who holds the position of a Superintendent of Police in the State of Tamil Nadu and the Appellant Dr.S.Murugan is Joint Director, Directorate of Vigilance and Anti Corruption, Chennai. The above writ appeals filed by Dr.S.Murugan, arise out of a complaint of sexual harassment made by Mrs.H.Jayalakshmi, against the Appellant Dr.S.Murugan.

4. The said complaint was made on 04.8.2018. Upon receipt of the complaint, the second respondent, Home Secretary to Government, constituted an Internal Complaints Committee (ICC) on 17.08.2018, under Section 4 of the **Sexual Harassment of Woman at Work Place (Prevention, Prohibition and Redressal) Act, 2013**, (hereinafter referred to as the "Act"). Ever since the constitution of the said Internal Complaints Committee (ICC), a spree of litigation in the form of writ petitions, complaints and even a First Information Report, namely **FIR No.2 of 2018**, have ensued and the aforesaid four writ petitions filed by these parties finally came to be disposed of by a learned Single Judge on **14.02.2019** against which the present four writ appeals filed by Dr.S.Murugan have come up before us.

5. We may briefly note here that the *ex parte* interim order dated 10.9.2018 granted by a Coordinate Bench of this Court in these appeals was vacated by the order dated 03.01.2019. The operative portion of the said order dated **03.01.2019** passed by the Division Bench is quoted below for ready reference.

"23. In fact, an objection has been raised by the Registry on 10.09.2018 to the maintainability of the writ petition filed by Dr.Murugan, and the listing of the same before the Division Bench. However, the Writ Petition in S.R. stage appears to have been listed before the Bench on the same day and interim directions issued by this Court prior to overruling of that office objection and numbering of the writ petition and listing of the same in regular course. The procedure followed, in regard to listing of cases and obtaining of interim orders at S.R. stage, appears mysterious, to say the least, apart from being irregular. The maintainability of the matters has thus not been adjudicated upon at all. Since W.P.Nos.23292, 23292 and 23846 of 2018 filed by H.Jayalakshmi and W.P.No.25213 of 2018 filed by Dr.Murugan and all connected miscellaneous petitions relate solely to matters concerning service of the petitioners therein, as seen from the prayers sought, we

are not inclined to entertain these petitions, as apparently, they pertain to the jurisdiction of the single Judge.

24. In the aforesaid circumstances, the writ petitions filed by Ms.H.Jayalakshmi (W.P.Nos.23292, 23293 and 23846 of 2018) be transferred back to the file of the learned Single Judge after obtaining orders from the Hon'ble The Chief Justice and W.P.No.25213 of 2018 filed by Dr.S.Murugan also be placed before the Hon'ble Chief Justice for appropriate orders in regard to listing of the same.

25. The interim orders dated 10.09.2018 have been obtained in a writ petition and miscellaneous petitions that were yet unnumbered as on that date, prematurely, and upon an erroneous representation of the petitioner about the category of cases, connecting it to a PIL, which we have found not bonafide. We have also in the earlier paragraphs set out the manner in which the matters have been listed, concluding that all the remaining Writ Petitions, except W.P.No.22533 of 2018, which stands dismissed, ought to be placed before the Hon'ble Chief Justice to be placed before the appropriate Bench. Thus, the interim directions issued on 10.09.2018 stand vacated with immediate effect.

26. We also clarify that though arguments have advanced before us in regard to the merits of the writ petitions, we have not adverted to the same in the light of our conclusions as above."

6. The learned Single Judge, in the order dated 14.02.2019 impugned before us, disposed of the aforesaid four writ petitions with the following observations:

"106. In view of the adjudication made in the aforementioned paragraphs, this Court is inclined to pass the following orders:

(1) The Internal Complaints Committee/fifth respondent in WP No.25213 of 2018 constituted under Section 4 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 by the Director of Vigilance and Anti Corruption in proceedings Rc.No.A5/3572/2018 dated 4.10.2018 consists of Smt.Srilakshmi Prasad, IPS, Additional Director General of Police, Smt.P.Kannammal, IPS, SP, CR, DVAC, Chennai, Smt.M.Kanaga, Manager, Confidential Branch, DVAC, Chennai, Thiru S.Ramadoss, DSP, HQRS, DVAC, Chennai and

Smt.K.M.Valsalakumari, Advocate, Madras High Court stands confirmed.

(2) The ICC constituted is directed to proceed with the enquiry by following the procedures contemplated under the Sexual Harassment Act and by affording opportunity to all the parties concerned and submit a report, within a period of two weeks from the date of receipt of a copy of this order. If any further time is required, the Internal Complaints Committee is at liberty to approach this Court by filing appropriate petitions, seeking extension of time.

(3) The CBCID, Headquarters is directed to proceed with all further actions pursuant to the registration of FIR No.2 of 2018 by commencing the investigation and to proceed with the case by following the procedures contemplated under law.

(4) The Chief Secretary to Government/first respondent in WP No.25213 of 2018, is directed to initiate all required further actions against Dr.S.Murugan, IPS under the relevant Service Rules, which are necessary under the facts and circumstances of the case and, with reference to the complaint dated 4.8.2018 submitted by Smt.H.Jayalakshmi as well as the FIR No.2 of 2018 registered by the CBCID

Headquarters;

(5) This Court strongly recommends to the Chief Secretary to Government/first respondent in WP No.25213 of 2018, for installation of CCTV Cameras inside the official Chambers and office rooms of all the higher officials, in order to avoid all such allegations/complaints against the higher officials and to safeguard the interest of women officers and women employees from the offences of sexual harassment.

107. With the above directions, the writ petitions stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

The Registry, High Court of Madras, is directed to list the matter under the caption ?For Reporting Compliance? on 6.3.2019."

7. In the aforesaid Writ Appeals, a Coordinate Bench of this Court passed an order of stay on 20.02.2019. The said order is quoted below:

"These appeals are posted before us today for admission.

2. The appellants are represented by

Thiru.AR.L.Sundaresan and Thiru.R.Thiyagarajan, learned Senior Counsels, the State is represented by learned Advocate General and the first respondent is represented by Mr.V.Selvaraj, learned counsel.

3. The learned Senior Counsels for the appellants, the learned Advocate General for the State and the learned counsel for the first respondent jointly submitted that instead of arguing the matter for admission, it would be in the interest of both parties to take up the appeals itself.

4. When a query was posed to the learned counsel for the parties with regard to the convenient date, the counsels jointly submitted that the matter could be taken up on 27.02.2019.

5. The parties jointly submitted that they have no objection in maintaining status quo as on today in the mean time.

6. Let status quo as on today be maintained by the parties till 27.02.2019.

Post on 27.02.2019."

8. The above interim order was extended by the same Bench on 27.02.2019 and the same is also quoted below, for ready reference.

"The intra court appeals are directed against the common order dated 14.02.2019 in W.P. Nos.25213, 23292, 23293 and 23846 of 2018, whereby and whereunder, the learned Single Judge confirmed the appointment of the Committee constituted by the Head of the Department under Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and issued a Mandamus to the said committee to proceed with the enquiry by following the procedure contemplated under the Act. There is a further direction to the CBCID to proceed with the case in Crime No. 2 of 2018, by commencing the investigation and file a report. The Chief Secretary of the State was directed to initiate required further action against Dr.S.Murugan, IPS, the appellant in W.A.No.516 of 2019, taking into account the complaint dated 04.06.2018, submitted by the complainant.

2. The learned Single Judge further directed the Chief Secretary to the Government to install CCTV cameras inside the official chambers and office rooms of all the higher officials, in order to avoid any kind of allegations/ complaints against the higher officials henceforth and to safeguard the interest of women

officers and women employees from the offences of sexual harassment.

3. In order to show bonafides, the learned Single Judge also directed the Registrar (Administration) to install a closed circuit CCTV camera in His Lordship's chamber.

4. Feeling aggrieved by the common order, string of appeals were filed by the respective appellants.

5. The intra court appeals came up for hearing on 20 February 2019. The complainant was represented by Thiru.V.Selvaraj, Advocate.

6. The learned counsel appearing on either side on 20 February 2019, jointly submitted that instead of issuing notice and taking up the matter later, it would be in the interest of both the parties to hear the writ appeals itself for final disposal. It was also submitted that status quo shall be maintained till the appeals are decided one way or the other. We therefore directed the Registry to list the matter today, the 27 February 2019. The parties were directed to maintain status quo.

7. When the appeals are taken up for hearing today, Thiru.V.Selvaraj, learned counsel appearing on behalf of the complainant, by producing a copy of the writ petition filed in W.P.SR No. 28311 of 2019

submitted that the complainant has now filed a writ petition impleading Thiru.Edappadi K.Palaniswami, Chief Minister of Tamil Nadu, Thiru.O.Paneer Selvam, Deputy Chief Minister of Tamil Nadu, and Tmt. Sri Lakshmi Prasad, Additional Director General of Police, Chair person of the Internal Complaints Committee, in their personal capacity. 8. Thiru V.Selvaraj, learned counsel submitted that the complainant is not in favour of the appointment of Tmt.Sri Lakshmi Prasad as the Chair Person of the Committee for the reasons mentioned in the affidavit filed in support of the Writ Petition which is yet to be numbered. According to the complainant, Tmt.Sri Lakshmi Prasad called her over phone on 19 August 2018 and advised to treat the incident as an accident and to forget it. It was alleged that the Chair Person is shielding the accused along with the law officers of the State. The learned counsel submitted that corruption cases against the Hon'ble Chief Minister, the Deputy Chief Minister, Thiru.S.P.Velumani, Hon'ble Minister and Thiru.Natham Viswanathan, former Minister, are now pending before the accused and as such, the complainant would not get justice. The learned counsel submitted that the investigation of the case should be

monitored by this Court.

9. *Thiru.Vijay Narayan, learned Advocate General contended that the complaint was given to the Director, Vigilance and Anti Corruption. The said complaint was forwarded by the then Chair Person, Internal Complaints Committee, to the Director General of Police, who in turn forwarded it to the CBCID. According to the learned Advocate General, the complaint proceeds as if it was made for invoking the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The question of entertaining such complaint would arise only in case the committee arrives at a prima facie satisfaction that there are materials to proceed further. The learned Advocate General further submitted that even now it is open to the complainant to prefer complaint to the jurisdictional police for moving the criminal machinery.*

10. *Thiru.AR.L.Sundaresan, learned counsel of the appellant in W.A.No.516 of 2019, contended that the whole procedure adopted by the then Chair Person, Internal Complaints Committee was in violation of the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act,*

2013. *The Committee should arrive at a prima facie finding after conducting enquiry, with the participation of both the parties, that there is a case made out for lodging a complaint. According to the learned Senior Counsel, the complaint was forwarded in a mechanical manner, without there being either an enquiry or an order regarding prima facie satisfaction of the case made out against the opposite party under the provisions of the Act.*

11. *Thiru.A.N.Thambi Durai, learned Special Government Pleader filed an affidavit of Mrs.Sri Lakshmi Prasad, Chair Person, Internal Complaints Committee and submitted that the Chair Person has no personal interest in the matter and there was no attempt made by her to precipitate the matter as reported earlier.*

12. *Thiru.V.Selvaraj, the learned counsel thereafter contended that the State is supporting the case of the accused and as such, the Writ Petition should be taken up at the first instance. The learned counsel submits that the accused is still functioning as a superior officer of the Vigilance and Anti Corruption Department and the political masters are afraid of him and that is the reason for not taking any action for his*

transfer to another wing.

13. When it was pointed out that even after numbering, it would not be possible for this Court to entertain the Writ Petition in view of the roster, the learned counsel submitted that he would move the Registry for passing appropriate orders for tagging all the cases together.

14. To a query as to whether this Court should extend the interim order of status quo, the learned counsel for the complainant submitted that in view of the pendency of the appeals and the Writ Petition now filed by the complainant, it would be in the interest of both the parties to maintain the status quo until further orders.

15. We also made it clear to the learned counsel on either side that it was pursuant to their request to maintain status quo that we have passed an order on 20 February 2019 directing the parties to maintain status quo till 27 February 2019. 16. Thiru.Selvaraj, learned counsel for the complainant very fairly submitted that it was pursuant to his consent only, earlier order of status quo was passed. The learned counsel submitted that status quo shall be continued till the disposal of the appeals.

17. In view of the consensus arrived at among the parties, let the appeals be posted tentatively on 6 March 2019.

18. Status quo with respect to all the directions issued by the learned Single Judge shall be preserved in the meantime. "

9. Thereafter, both the Hon'ble Judges of the said Bench recused in this matter vide order dated 18.3.2019.

10. On 13.08.2019, when the matter was placed before this Bench, this Court directed the Advocate General to take instruction from the State Government for transferring all the proceedings in the present case, to any neighbouring State or to New Delhi and all the three parties, namely complainant, the appellant and the State were directed to file their Affidavits in this respect.

11. The complainant, H.Jayalakshmi, wife of K.Jeyakumar, aged 44 years, has filed an affidavit today, agreeing to transfer the proceedings in **FIR No.2 of 2018 and the proceedings under the provisions of the Act, to the State of Kerala or any other**

neighbouring State or New Delhi, as the Court may deem fit and proper.

12. However, the appellant Dr.S.Murugan has filed his affidavit today to the effect that there is no sound legal basis to transfer the proceedings under the Act from one State to another, more so, when the Act does not contemplate to do so. He further submitted that there is no substantial reason for transfer of the proceedings from the State of Tamil Nadu.

13. The learned Advocate General, Mr.Vijay Narayan, also submitted before us that the State is also not agreeable to transfer of the said proceedings from the State of Tamil Nadu to any other neighbouring State, as it is submitted that the State's image in this regard, may be adversely affected.

14. In the alternative, the learned Advocate General suggested that if both the parties are not satisfied with the constitution of the Internal Complaints Committee, which has been constituted and the constitution has also been modified at the request of the complainant,

an alternative Committee may be constituted by this Court to be headed by either serving Senior IAS Officer or even former IAS / IPS Woman Officer in the State. The learned Advocate General also submitted that even a former Lady Judge of this Court may be appointed as Chair Person of such Internal Complaints Committee.

15. Upon objective and dispassionate consideration of the matter and the Affidavits of the parties filed today and also the stand taken by the learned Advocate General on behalf of the State, we are of the view that to ensure fair, independent and unbiased investigation into the matter, looking to the nature of serious allegations of the sexual harassment by a Senior Lady Officer of the Police Department against another very Senior Officer of the same Department, the enquiry by the Internal Complaints Committee under the provisions of the Act as well as the investigation into the FIR No.2 of 2018 filed by the complainant should be undertaken in another neighbouring State.

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16. We feel that the authorities of the State of Telangana at Hyderabad can be requested to undertake the said procedure. This direction is being given after taking into account the stand taken by

the State as well as the parties concerned and we are not inclined to transfer the proceedings to the State of Kerala, as preferred by the complainant in her Affidavit filed today.

17. We are conscious of the fact that the enquiry and investigation out of a State is not envisaged under the provisions of the Act. But, looking to the nature of positions of both the parties, the complainant as well as the appellant, both belonging to Police Department of the State of Tamil Nadu and the nature of allegations, sought impleadment of parties including Chief Minister etc., the spree of litigation which has ensued between the parties on account of the allegations of sexual harassment, we are inclined to ensure complete fairness and independence in the internal enquiry under the Act of 2013 as well as the investigation in the FIR No.2 of 2018.

18. We, therefore, exercising our extraordinary powers under Article 226 of the Constitution of India, including the powers under Article 226(2) of the Constitution, direct that all the proceedings in the present case for enquiry into the complaint of sexual harassment made by the complainant H.Jayalakshmi under the Act of 2013 as well as the

investigation into the FIR No.2 of 2018 filed by the complainant shall stand transferred to the State of Telangana at Hyderabad.

19. We request/direct the Chief Secretary of the State of Telangana as well as the Director General of Police of the State of Telangana to undertake the necessary steps for constitution of a separate Internal Complaints Committee at Hyderabad, as per the provisions of the Act of 2013, headed by a Senior Lady Officer as per Section 11 of the said Act, which shall undertake the enquiry into the said complaint and also the investigation of the FIR No.2 of 2018 by a Senior and independent Official of the Police Department of the State of Telangana. The report of the said Internal Complaints Committee and the report of the investigation of the said FIR No.2 of 2018 may be transmitted back to this Court within a period of six months from today.

20. The relevant records in this regard, shall be transmitted by the concerned authorities of the State of Tamil Nadu, to the Chief Secretary of the State of Telangana forthwith.

21. We are keeping these Writ Appeals pending, awaiting the aforesaid Report of the Internal Complaints Committee as well as Investigation Report from the concerned Investigating Officer of the State of Telangana, within the aforesaid period of six months.

21. We make it clear that our aforesaid order of transfer of proceedings to the neighbouring State of Telangana shall, in no way, be treated as any adverse expression by this Court on the image of the authorities of the State of Tamil Nadu in this respect.

22. The matter may be listed before the Court, once the aforesaid reports are received from the State of Telangana.

(V.K.J.) (C.V.K.J.)
28.8.2019

C.V.KARTHIKEYAN,J

During the first effective hearing date, I had put it to the learned Advocate General and Mr.R.Thiagarajan, learned Senior Counsel appearing for Dr.S.Murugan and also Mr.V.Selvaraj, learned counsel

who appearing for complainant H.Jayalakshmi, the fact that while I was functioning as the Director of the Tamil Nadu State Judicial Academy, Dr.S.Murugan had appeared as a Resource Person for the Judicial Officers and I enquired whether any of the counsel/parties had any reservation to me continuing to hear the matter.

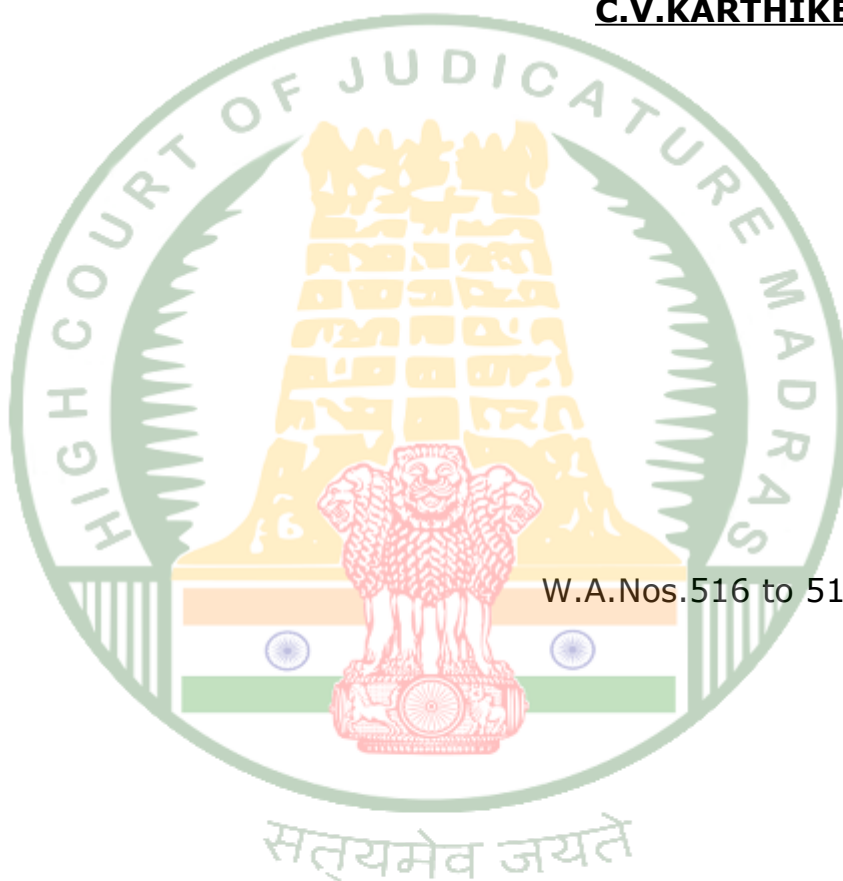
2. On instructions, both Mr.R.Thiyagarajan, learned Senior Counsel and Mr.V.Selvaraj, learned counsel stated that neither they nor their clients have any reservations on me continuing to hear the matter. Similar view was also expressed by the learned Advocate General. This is placed on record.

28.8.2019.

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DR.VINEET KOTHARI, J,
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