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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 88/2023**

CA NITESH PARASHAR

..... Petitioner

Through: Mr J.K. Mittal, Ms Vandana Mittal,
Ms. Aashna Suri and Mr. Vasu P.
Jain, Advocates.

versus

INSTITUTE OF CHARTERED ACCOUNTANTS

OF INDIA ICAI & ORS.

..... Respondents

Through: Mr Robin Ratnakar David and Mr
Febi M Varghese, Advocates for R-1,
2 and 4.
Mr Ashwini Kumar and Ms Arham
Tanvir, Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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05.01.2023

CM APPL. NO. 287/2023 (Exemption)

1. Allowed, subject to all just exception.
2. The application stands disposed of.

CM APPL. NO. 286/2023 (Interim Relief)

3. Issue notice. The learned counsels above named accept notice on behalf of the respondents.
4. The petitioner is a qualified Chartered Accountant and is the elected Vice Chairman of the Faridabad branch of NIRC Institute of Chartered Accountants of India (hereinafter "ICAI"). The petitioner has received the

impugned hearing notice by email dated 23.12.2022 (Annexure P-12) from the Internal Complaints Committee (hereinafter “ICC”), constituted under the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter “POSH Act”) by the ICAI, calling upon him to appear in person before it on 06.01.2023 at 02.30 PM in connection with an inquiry under Section 11 of the said act being conducted with reference to the complaint filed by the respondent no. 3.

5. Aggrieved by the same, the petitioner has filed the present writ petition seeking following relief:

“A) issue a Writ of certiorari/ mandamus or any other appropriate Writ/ order/ direction against the Respondents by quashing the impugned hearing notice by the email dated 23.12.2022 from the Respondent No.2 communicating to the Petitioner for hearing to be held on 06.01.2023 at 02.30P.M (at Annexure P-II) in respect of second undated complaint filed by the Respondent No.3 under the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013;

B) issue a Writ of certiorari/ mandamus or any other appropriate Writ/ order/ direction against the Respondents by quashing the impugned second undated complaint filed by the Respondent No. 3 (at Annexure P-9) under the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 as served upon the Petitioner by email dated 30.11.2022 by the Respondent No. 2 along with PDF attachment of the undated Complaint;

C) issue a Writ of certiorari/ mandamus or any other appropriate Writ/ order/ direction against the Respondents by quashing the impugned unsigned complaint dated 03.06.2022 filed by the Respondent No.3 (at Annexure P-9) under the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 as served upon the Petitioner by email dated 16.09.2022 by the Respondent No. 2 along with word attachment of the unsigned Complaint dated 03.06.2022;

D) issue a Writ of certiorari/ mandamus or any other appropriate Writ/ order/ direction against the Respondents in the facts and circumstances of the case, causing serious harassment and to malign the reputation of the Petitioner and also impose exemplary cost on the concerned Respondents;

6. The petitioner's case is that the petitioner submitted an affidavit dated 10.09.2022 to the Internal Complaints Committee (R-2) in which she stated that she had made a complaint dated 24.03.2022 to the respondent no. 4 under POSH Act but no action has been taken even after lapse of more than 60 days. According to the learned counsel for the petitioner, in the complaint dated 24.03.2022, the petitioner was not named and no act of Sexual Harassment has been alleged.

7. In the said affidavit it has also been stated that as no response was received, the respondent no. 3 made another complaint dated 03.06.2022 before the Chairman of the disciplinary Committee outlining the relevant instances and occurrences in full detail.

8. According to the learned counsel for the petitioner, as the complaint dated 03.06.2022 was time barred, the respondent no. 3 was asked to file an affidavit for condonation of delay vide email dated 05.09.2022 [Annexure P-6, Page 105], pursuant to which the respondent no. 3 filed the affidavit dated 10.09.2022 for condonation of the said delay.

9. The learned counsel for the petitioner submits that the delay has been condoned by the ICC but no order condoning the said delay has been supplied to the petitioner.

10. The learned counsel for the petitioner further submits that in connection with the complaint dated 03.06.2022, the petitioner had also received a notice for hearing which was held on 23.09.2022.

11. The grievance of the petitioner is that a second complaint has now been filed by the petitioner on 12.10.2022 (Annexure P-10), the said complaint is undated. He submits that the second complaint filed on 12.10.2022 is on the same subject and pertains to the alleged incident which is the subject matter of the complaint dated 03.06.2022.

12. The learned counsel for the petitioner submits that two proceedings with regard to the same incident are not permissible in law. He further submits that the petitioner cannot be vexed twice by initiation of two inquiries against the petitioner for the same cause of action. Referring to the provision of sub-section (4) of 11 of the Act, he contends that the inquiry had to be completed within a period of ninety days. The learned counsel further urged that as 90 days have elapsed from the date of the complaint dated 03.06.2022, the entire proceedings of the ICC are vitiated.

13. *Per Contra*, the learned counsel for the respondent no. 1, 2 and 4, Mr. Robin Ratnakar David, submits that the communication dated 24.03.2022 was only a grievance made by the petitioner and not a complaint in terms of the Act. He further submits that the complaint dated 03.06.2022 was not within a period of three months from the date of the incident, therefore, the respondent no. 3 was asked to file an affidavit seeking condonation of delay in terms of the second proviso to sub-section (1) of Section 9 of the Act, which affidavit was filed by the respondent no. 3 and the delay was accordingly condoned by ICC.

14. He further submits that the hearing held on 23.09.2022 was a preliminary hearing in which an effort was also made for conciliation. He further submits that the complaint dated 12.10.2022 is not a different complaint. According to him, the contents of the complaint dated 03.06.2022 and 12.10.2022 are identical.

15. The learned counsel appearing for the respondent no. 3 clarifies that six copies of complaint were required to be given, therefore, the hard copies of the same complaint were submitted, which was received by the respondent no. 1 on 12.10.2022. He submits that the earlier complaint was sent through Email on 03.06.2022 followed by another Email dated 08.06.2022 by the respondent no. 3 stating that this is the only process she knows about the filing of the complaint and further inquiring whether anything else is required from her. He further submits that there is only one complaint and only one inquiry is being conducted.

16. The court has considered the aforesaid contentions. At the outset, it is relevant to note that the contents of the complaint dated 03.06.2022 and the written complaint dated 12.10.2022 are identical and it is with regard to the same incident. *Prima facie*, I find force in the contention of the learned counsel for the respondents that the inquiry which has been initiated by the Internal Complaints Committee is in fact, with regard to the complaint dated 03.06.2022 and the hearing already held on 23.09.2022, and the one proposed to be held on 06.01.2023, are part of the same inquiry. There is no question of the petitioner being subjected to two separate enquiries.

17. It is also not the case of the petitioner that the inquiry into the complaint dated 03.06.2022 has been concluded or it has culminated into

a report. It therefore, appears that the hearing held by the ICC on 23.09.2022 was a preliminary hearing in which the efforts for conciliation were possibly made by the ICC in terms of Section 10 of the Act. The hearing which is now fixed for 06.01.2022 is part of the same inquiry proceeding which have been initiated pursuant to complaint dated 03.06.2022.

18. *Prima facie*, there also appears to be merit in contention of the respondents that the complaint submitted on 12.10.2022 was in fact, given in six sets as per the rules so that each member of the Internal Complaints Committee could have copy of the same.

19. There is, however, no substance in the contention of the petitioner that as the inquiry proceeding has not been concluded within a period of 90 days, the same will be vitiated. The petitioner has not pointed out any prejudice caused to him on account of delay. It is not the case of the petitioner that the delay is attributable to the respondent no. 3. I am *prima facie* of the view that the complaint of sexual harassment and the inquiry proceeding emanating therefrom cannot be quashed merely for the reasons that the internal complaints committee failed to complete the inquiry within the time frame given in Section 11(4) of the Act. Needless to say, that such complaints containing allegations of sexual harassment deserves to be treated with a certain amount of seriousness and responsibility and accordingly, the same have to be inquired into and taken to their logical conclusion for it is both in the interest of the complainant as well as the person against whom the allegations of sexual harassment have been leveled.

20. Seen in this backdrop, the provisions of Section 11(4) of the Act cannot be said to be mandatory. Reference can advantageously be made to the decision of the High Court of Tripura in ***Vinay Kumar Rai Vs. The Union of India and Ors., W.P.(C) 596/2019***, decided on 17.09.2021, wherein it was observed that the time limit provided in Section 11(4) cannot be seen as a terminal point beyond which the inquiry cannot be continued. Para 13 of the said decision reads as under:

“The contention that the inquiry was not completed within ninety days as provided in sub-section (4) of Section 11, therefore, must be set aside does not stand to logic at all. Section 11 of the Act pertains to inquiry into complaint. Sub-section (1) of Section 11 provides that subject to the provisions of Section 10, the Internal Committee or the Local Committee with the provisions of the service rules and if prima facie case exists, forward the complaint to the police within seven days for registering the case under Section 509 of the Indian Penal Code. Sub Section (4) of Section 11 provides that the section (4) of Section 11 nowhere provides the consequences for not completing the inquiry within ninety days. Ordinarily as per the principles of statutory interpretation when a provision which provides for a time limit is not coupled with any penal or adverse consequences in completing the task so envisaged under the statute, is not considered mandatory. In any case, it would be wholly illogical that for the inability of the committee to complete the inquiry into the complaint of sexual harassment the aggrieved person would suffer the fate of the complaint being terminated without conclusion. In plain terms, the legislative intent is very clear namely that such complaint should be treated with seriousness and should be completed as soon as possible so that if the allegations are correct the aggrieved person may get justice and respite from further harassment and if allegations are found to be untrue the person against whom such complaint is made may get honourable exoneration. However, this time limit provided in sub-section (4) of Section 11 cannot be seen as a terminal point beyond which the inquiry cannot continue.”

21. The petitioner also places reliance on the decision of Supreme Court in *Popat Bahiru Govardhane etc v. Special Land Acquisition Officer & Anr*, (2013) 10 SCC 765 to contend that where a period of limitation has been provided, it cannot be condoned unless there is a provision for the same. The decision relied upon by the petitioner is on the point that the period of limitation for filing application under Section 28A of the Land Acquisition Act, 1894 is three months from the date of award and the same cannot be condoned. The said judgment does not apply to the facts of the present case as the question raised in the present case is not of condonation of delay but pertains to whether the inquiry proceedings before the ICC will vitiate after the inquiry of stipulated period of 90 days. Therefore, the benefit of the said decision will not enure to the petitioner.

22. In view of the above, no *prima facie* case is made out for grant of interim relief. Accordingly, the application for interim relief is dismissed.

23. Counter affidavit be filed within a period of four weeks.

24. Rejoinder, thereto, if any, be filed before the next date of hearing.

25. List on 28.03.2023

VIKAS MAHAJAN, J

JANUARY 5, 2023/sv