



Sakshi Singhal
Associate

DELHI HIGH COURT ON CONSTITUTING POSH INTERNAL COMMITTEE

A. Introduction

Delhi High Court ('**HC**'), in the P v. Union of India case,¹ imposed costs on IFCI Factors Ltd ('**IFL**') and held that employers cannot escape liability for delaying sensitive complaints under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ('**POSH Act**') on the mere ground that the Internal Complaints Committee ('**ICC**') was incorrectly constituted.

B. Brief Facts

1. The Petitioner P² ('**P**') had filed complaint July 5, 2019, to the HR Head of IFL alleging sexual harassment (i.e., certain language used) by a senior functionary ('**Accused**').
2. The complaint was forwarded to the Managing Director, who forwarded it to the HR and Chief Vigilance Officer ('**CVO**') of IFL after stating that the complaint must be taken up by the ICC (currently termed as 'Internal Committee') as the Accused is an employee of IFL.
3. IFL constituted its ICC on July 30, 2019, and initiated proceedings.
4. The ICC was reconstituted on in August 2019, and February 2020.
5. On March 11, 2020, the ICC found the Accused guilty and recommended that an apology be taken from him and the same was accepted by the Company.
6. However, the Accused appealed to the 'appellate authority'³ of IFL (Board of Directors) and it directed re-examination by ICC.
7. Aggrieved by the re-examination order, P approached the HC.

C. Main Contentions

1. P contented that she no longer wished to participate in the enquiry process and be subjected to second round of proceedings before the ICC since :
 - a. the complaint dated back to 2019; and
 - b. she has moved on in life.
2. The Accused contended that his statutory remedy of appeal cannot be taken away.⁴
3. IFL submitted that there was a technical error in the constitution of the ICC because of which the re-examination was ordered.

¹P v. Union of India and Ors, W.P.(C) 14403/2022 and CM APPL. 43979/2022, available [here](#).

² Name withheld by the Court.

³ As per Section 18 of the POSH Act, an appeal against a decision of the ICC lies with the authority prescribed by the state government.

⁴ Section 18 of the POSH Act.

D. HC's Judgment & Reasoning

1. HC disposed of the case awarding costs of Rs. 1 lakh on IFL payable within four weeks. It held that the constitution of the ICC was being repeatedly changed for some reason or the other.⁵ It observed: “*In POSH related complaints and matters, the constitution of the ICC is of utmost importance and the same has to be in accordance with the provisions of the Act. The management and authorities of the organisations have to behave in a responsible manner and on the mere ground that the constitution was incorrect, a re-examination of the whole proceedings cannot be directed under the present facts and circumstances.*”⁶
2. It relied on the U.S. Verma case⁷ judgment of the HC and held that: “*Adjudication of complaints relating to sexual harassment need to be dealt with utmost care. The inquiry needs to be by a duly constituted ICC and the same needs to be complete in all aspects. Institutions cannot escape liability for dragging on these sensitive complaints.*”⁸
3. It also held that the order for re-enquiry shall not be pursued by IFL since:
 - a. Significant time had elapsed since the complaint and P cannot be harassed and put to inconvenience to appear again and again before the ICC.
 - b. Witnesses may not now be available with IFL.
 - c. The Accused cannot also be subjected to harassment and frustration to participate in a second enquiry.
4. The HC finally closed the matter and concluded that an apology was no longer required since P did not insist on the same.

This *Counselence Connect* contains information in a nutshell on a recent change in law.

This is not legal advice and must not be treated so. For any clarifications, please contact us at: info@counselence.com. Past issues of *Counselence Connect* are available at the 'Newsletters' page of our website (www.counselence.com).

⁵ Paragraph 12 of the Judgment.

⁶ Paragraph 11 of the Judgment.

⁷ U.S. Verma and Ors. v. National Commission for Women and Ors., (2009) 163 DLT 557.

⁸ Paragraph 15 of the Judgement.