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MALICIOUS PROCEEDINGS: PROTECTION FOR THE LC & IC

MEMBERS

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An inquiry into a complaint of ‘Sexual harassment’ at times tends to become very charged, emotions can run high on both sides, and the parties cannot be blamed for that: as the topic is very sensitive and rekindles the “pain suffered” by the complainant vs the “character impact” faced by the accused.

The Internal Committee (“IC”) which oversees the inquiry plays the difficult role of an independent judge, and also a sort of prosecutor for the complainant, both rolled into one body. Due to this unique amalgamation, at times, both the contesting parties may get a feel that the IC unduly favours the other party. As a result, many a times, while the complainant is unhappy with the outcome of the inquiry, eg: while the complainant feels the case deserved a termination of the respondent, the IC post inquiry may conclude that the case merits a lesser punishment; the respondent is unhappy that he has been subject to disciplinary action as he strongly feels that he is innocent. Allegations may fly thick and fast, about how the witnesses were tutored, or how the IC ignored certain pieces of evidence, or how the IC gave unfair chance to one of the parties, etc.

The normal course of action for a party unhappy with the findings or the outcome of a case is to file an appeal as outlined under Section 18 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 (“SH Act”). Rule 11 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Rules, 2013 (“SH Rules”) states that the appellate authority notified under clause (a) of section 2 of the Industrial Employment (Standing Orders) Act, 1946, shall be the appellate authority under the SH Act. However, on rare occasions parties may choose to take other non-standard extreme courses of actions, such as launch of prosecution or complaints against the IC or LC members.

Two very recent cases have brought to the fore the discussion on this topic in the context of the IC or LC members:

- a) Nandlal Lohariya v. Jagdish Chand Purohit and others¹, where the Hon'ble Supreme Court held that, an advocate losing a case after arguing it on merits and due to no negligence on his part cannot be construed as 'deficiency in service' for which a consumer complaint can lie. This is a very non-standard approach, and as the complainant took the matter all the way upto the Supreme Court, it would have put the concerned advocates to a lot of unwanted tumult.
- b) Police officers assault Bihar judge:² where allegedly two police officers forcibly entered the chamber of Additional District Judge Avinash Kumar and when the judge protested, they manhandled and physically assaulted him, and even took out their service revolvers to attack the judge. The general consensus is that police investigation can be challenging to the persons undergoing the investigation.

These two cases illustrate that in an unfortunate scenario, it is not impossible for an IC member to be faced with malicious prosecution or complaint.

The SH Act and the rules made thereunder are silent on the protections that are available statutorily to the members of the IC or the LC, when faced with such a scenario. The SH Act only outlines the powers of the LC & IC in Sec 11(3):

“For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents; and
- (c) any other matter which may be prescribed.”

¹https://www.livelaw.in/pdf_upload/nandlal-lohariya-vs-jagdish-chand-purohit-ii-2021-sc-636--403807.pdf

²<https://www.barandbench.com/news/police-officers-assault-bihar-judge-patna-high-court-summons-chief-secretary-dgp>

Judicial officers (and even tribunal members?) are protected by virtue of the safeguards provided in the Judicial Officers Protection Act, 1850 ("1850 Act") and the Judges (Protection) Act, 1985 ("1985 Act") and a catena of decisions by the Supreme Court of India and various High Courts laying down the protocols and processes for investigation, prosecution or arrest of judicial officers.

While the 1850 Act protects judicial officers against civil suits for any act done by them in their judicial capacity, the 1985 Act goes much further and in section 3(1) provides comprehensive protection to the judicial officers from both civil and criminal proceedings: Additional Protection to Judges. (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (2), no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.

The Supreme court has categorically stated in a number of cases that: "A Judge cannot be expected to give reasons other than those that have been enumerated in the judgment or order... A judicial officer is entitled to get protection and the object of the same is not to protect malicious or corrupt Judges, but to protect the public from the dangers to which the administration of justice would be exposed if the judicial officers concerned were subject to inquiry as to malice, or to litigation with those whom their decisions might offend... A Judge should be free to make independent decisions."³ In spite of such strong protection and support from the highest judicial authorities, time and again, high handed behaviour against the members of the lower judiciary has taken place.

The IC is a unique creature which does not really have any parallel in India: it is neither a judicial institution nor a tribunal. Perhaps IC is the only institution in India that is not constituted by the government or that does not discharge governmental duties, but has the powers of a civil court, though only for purposes outlined in the SH Act. The IC is certainly a quasi-judicial

³Khanapuram Ghandaiyah (2010) 2 SCC 1

authority, as it is required to adjudicate a dispute and pass a reasoned order. However, neither the SH Act nor the SH Rules categorise the IC or LCC as a “quasi-judicial” or “tribunal” body anywhere, and as such until the constitutional courts read into the SH Act something on these lines, the ‘position’ of the IC or LCC is unclear. In the light of the discussion above, it is evident that protection available to judicial officers under the 1850 Act or the 1985 Act may not be available to the IC or LC members until the constitutional courts interpret Section 2(a) of the 1985 Act to include them and consider the “Complaint” as a “legal proceeding”.

What would be the situation of an IC member if they were to be subject to such malicious complaints or prosecution. While a magistrate may probe deeper when inquiring into a private complaint filed under Sec 190 of Cr.P.C against a judicial officer, it is not uncommon to see many instances where the constitutional courts have set aside inquiry ordered mechanically by a magistrate in a private complaint. In such an unfortunate event, the IC or LC member would be at the mercy of the IO armed with an inquiry ordered by the magistrate. An LC or IC member may be left to manage such scenarios on his own, if the employer fails to come to their rescue whole heartedly.

Another aspect which merits consideration is, most of the IC or LC members are not lawyers or not part of the legal profession, hence unlike judicial officers who are part of the legal profession, access to justice may be expensive and difficult for the IC or LC members. Such a scenario may be compared to the situation “Independent Directors” were in under the Companies Act, 1956. However, the Companies Act, 2013, remedied it to an extent by providing some protections to the independent directors under the Section 149(12), and it is time for some such legislative protection to the members of the IC or LC. Till such time the legislature does not bring in change, it is upto the judiciary which has stood as the bulwark for addressing women’s rights.