

APRIL 2017

INTERNAL COMPLAINTS COMMITTEES: REQUIREMENTS FOR COMPLAINTS RELATING TO SEXUAL HARASSMENT

1. BACKGROUND

The Delhi High Court on February 16, 2017, in the matter of *Ashok Kumar Singh v. University of Delhi & Ors* pronounced on the nature of inquiry reports of internal complaints committees ("ICCs") required under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (the "Act").

2. FACTS

Ashok Kumar Singh (the "Petitioner") filed a writ petition in the Delhi High Court challenging the reports of the ICC constituted by Dayal Singh Evening College (the "Employer") pursuant to three independent inquiry proceedings by the ICC of the Employer.

The Petitioner challenged the reports submitted by the ICC on two grounds, namely:

- (a) the Petitioner, on the basis of Section 13(3) of the Act, alleged that the reports only gave a *prima facie* opinion of the complaints having substance, without actually giving a definitive conclusion and holding the charges against the Petitioner to be proved; and
- (b) the Petitioner further alleged violation of the principles of natural justice stating that the Petitioner was not allowed to lead evidence in support of his defense during the inquiry proceedings. The Petitioner also contended that he was denied the opportunity to cross-examine the witnesses during the inquiry proceedings conducted by the ICC.

The Delhi High Court reviewed the relevant provisions of the Act, namely the procedure of inquiry into the complaint (Section 11), filing of the inquiry report (Section 13) and the procedure to appeal against the recommendations of ICC (Section 18) as well as the operative portions of the reports of the ICC in this regard.

3. JUDGMENT

The Delhi High Court took the view that while the reports submitted by the ICC contained *findings*, it failed to arrive at a definitive *conclusion* with respect to the guilt of the Petitioner in relation to the charges.

It ruled that the operative portions of the reports submitted by the ICC to the Employer were in violation of sub-section (3) of Section 13 of the Act, and were liable to be set aside. The ICC was ordered by the Delhi High Court to submit fresh reports to the Employer. It was further clarified that for this purpose, the ICC need not conduct any fresh proceedings and could proceed on the basis of the existing record of the inquiry proceedings.

The Delhi High Court also quashed the Petitioner's allegation in relation to the violation of the principles of natural justice without going into merits and opined that such grievances will have to be addressed by the Employer to whom the inquiry reports are submitted.

IndusLaw View:

A bare reading of Section 2(n) (which defines sexual harassment), Section 11, Section 13 and Section 18 of the Act suggest the following:

- (a) Upon receipt of a complaint of sexual harassment under the Act, in the absence of settlement by conciliation, an inquiry is required to be conducted under Section 11 of the Act by the ICC.
- (b) Subsequently, the inquiry report containing the findings of the ICC should be submitted to the employer under Section 13(1) of the Act.
- (c) If the ICC arrives at the conclusion that the charges against the respondent have been proved, under Section 13 (3) of the Act, the ICC shall recommend to the employer to take action for sexual harassment as misconduct in accordance with its internal policies and in the absence thereof, in accordance with the manner prescribed by the ICC.
- (d) The employer should then take action on the basis of the conclusions and findings of the ICC.
- (e) The ICC is therefore required to establish whether the charges against the alleged guilty person are proved *in addition* to conducting the inquiry and reporting its findings. The ICC's failure to establish the charges will result in the inquiry report falling foul of Section 13 of the Act.

In order to ensure compliance with the Act, it is imperative that the ICC inquiry report submitted to the employer clearly determines the charges before recommending any action to the employer. The employer is entitled to proceed against such persons in the manner recommended by the ICC only once the inquiry report has concluded that the charges of sexual harassment are proved and the conclusion is established and documented in the inquiry report.

This judgement of the High Court of Delhi is however only binding on courts located in Delhi and has persuasive value in relation to courts in other States.

However, given that the Act is uniformly applicable throughout India and the Delhi High Court has interpreted provisions of the Act that apply to any inquiry proceeding conducted by the ICC under the Act, we are of the view that employers should take note of this judgment and require ICCs constituted under the Act to adhere strictly to the provisions of Section 13 of the Act, while preparing inquiry reports in general.

Authors: Avik Biswas, Namita Viswanath and Jaya Shruthi

April 3, 2017

DISCLAIMER

This alert is for information purposes only. Nothing contained herein is, purports to be, or is intended as legal advice and you should seek legal advice before you act on any information or view expressed herein.

Although we have endeavored to accurately reflect the subject matter of this alert, we make no representation or warranty, express or implied, in any manner whatsoever in connection with the contents of this alert.

No recipient of this alert should construe this alert as an attempt to solicit business in any manner whatsoever.