

CASE DETAILS

INITIATIVES FOR INCLUSION FOUNDATION & ANR.

v.

UNION OF INDIA & ORS.

(Writ Petition (Civil) No. 1224 of 2017)

OCTOBER 19, 2023

[S. RAVINDRA BHAT AND DIPANKAR DATTA, JJ.]

HEADNOTES

Issue for consideration: Writ petitioner sought directions for implementation of the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 read with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.

Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 – Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 – Directions issued (under the relevant heads) to ensure the effective implementation of the POSH Act, and render it workable:

Held: (A) Coordination between Union Government and State/UT Governments: The Women and Child Development Ministry of every State/UT, through its Principal Secretary, should consider identifying a ‘nodal person’ within the Department, to oversee and aid in coordination as contemplated under the POSH Act – This person would also be able to coordinate with the Union Government on matters relating to this Act and its implementation; (B) Appointment of Public Authorities: The concerned Principal Secretary of the State/UT Ministry of Women and Child [or any other Department, subject to amendment of the Rules], will personally ensure appointment of a district officer in each district within their territorial jurisdiction, as contemplated under Section 5 – Thereafter, each appointed district officer (a) must in compliance of Section 6(2) appoint nodal officers in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area; (b) must constitute a LC, as contemplated under Section 6 and 7 of the Act; and (c) ensure the

contact details of these nodal officers, and LCs, shall be forwarded to the nodal person within the State Government Ministry of Women and Child Development – Thereafter, a circular/bulletin containing names of all district officers, and their contact details (phone, address, and email), along with a district wise chart of the various nodal officers and their contact details, must be uploaded on the department’s website (or in the absence of one, on the main State government website) in a conspicuous location, along with a compiled version of the Act, Rules, and simple charts/explainers on the basics of the Act; (C) Amendments and gaps in Rules that State must fill: The Union Government ought to consider amending the Rules, so as to operationalise Section 26 of the Act, by recognising a reporting authority, and/or a fine collecting authority – The Union Government may also consider amending the Rules so as to identify one Department (preferably the Women and Child Department), and creating a ‘nodal person’ post within the said Department to be responsible for the coordination required in the implementation of the Act; (D) Training and capacity building: The District Officers and LCs should be mandatorily trained regarding their important responsibilities – Organisation of periodic and regular training sessions at the District level which are to be attended by the District Officer, members of the LC, and nodal officers; (E) Larger efforts towards awareness: In furtherance of Section 24, the State/UT Governments, and Union Government are hereby directed to set out the financial resources allocated and or needed, to developing educational, communication and training material for spreading awareness of the provisions of this Act to the public, and formulate orientation and training programmes – The District Officers, once nominated by the State are hereby directed to identify the non-governmental organisations working with women and their protection within the district, and take action pursuant to their duty under Section 20(b) for creation of awareness – The appropriate government or district officers in question, must also undertake effort to spread awareness on the existence of LCs, and make them approachable for the unorganized sector-thus operationalizing the horizontal import of this Act – The directions (iv) and (v) passed in *Aureliano Fernandes v. State of Goa & Ors.* are reiterated – A targeted effort be made to share the Government of India, Handbook on Sexual Harassment of Women at Workplace (2015) with each District Officer,

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who may in turn disseminate it to their respective LCs, the nodal officers appointed under Section 6(2), and employers who constitute their own ICCs; (F) Annual Compliance Reports : Due compliance with Section 21(1) and (2), and Section 22, must be undertaken by each District Officer, of the State – The State/UT Governments is hereby directed to create a Standard Operating Procedure (SOP) including the procedure, and timelines for this process, so as to enable it to, in turn, comply with Section 23 of the Act, i.e., monitoring implementation and maintaining data; (G) Monitoring of ICs and compliance by employers : The directions passed in *Aureliano Fernandes v. State of Goa & Ors.* address most specifically, the constitution of ICs-in public establishments [falling broadly within Section 2(o)(i)] and some private establishments-such as bodies governing professional associations, etc.; those directions are hereby reiterated, to avoid multiplicity or overlap of efforts – Similarly, directions are hereby made to hospitals, nursing homes, sports institutes, stadiums, sports complex, or competition or games venues [as defined in Section 2(o)(iii) and (iv)] to establish ICs, and report compliance as per the duties under this Act – The District Officer must be supplied a list of establishments (compiled by the relevant departments of the State/UT Government) that fall within the scope of Section 2(o), so that they may write to them and ensure that they are well versed with the provisions relating to employers, and their duties (including constitution of ICC under Section 4, duties under Section 19, etc.) and are implementing them in letter and spirit. This will also enable collection of annual reports, as contemplated under Section 21 – The consequent direction to all private sector workplaces under Section 2(o)(ii) can be passed once the District Officer is able to discern an exhaustive list of entities. [Para 22]

Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 – ‘may’ in s.5 – discussed.

Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 – ‘domestic worker’, ‘unorganised sector’, ‘workplace’ – discussed.

Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 – Role of District Officer – discussed.

LIST OF CITATIONS AND OTHER REFERENCES

State of Uttar Pradesh v. Jogendra Singh [1964] 2 SCR 197 – relied on.

Aureliano Fernandes v. State of Goa & Ors., (Judgment dated 12.05.2023 in C.A. No.2482 of 2014) – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 1224 of 2017.

(Under Article 32 of The Constitution of India)

Appearances:

Sanjay Parikh, Sr. Adv., Ms. Srishti Agnihotri, Ms. Shobha Gupta, Aditya Ranjan, Ms. Jessy Kurian, Ms. Tarjana Rai, Advs. for the Petitioners.

Lokesh Sinhal, Sr. A.A.G., Deepak Thukral, A.A.G., Ms. Rekha Dayal, Sr. Adv., Ms. Suhseni Sen, Ms. Manisha Chava, Rustam Singh Chauhan, Gurmeet Singh Makker, Sahil Bhalaik, Tushar Giri, Siddharth Anil Khanna, Mahfooz Ahsan Nazki, Surjendu Sankar Das, Ms. Annie Mittal, Vinod Sharma, Pashupathi Nath Razdan, Ms. Maitreyee Jagat Joshi, Astik Gupta, Ms. Akanksha Tomar, Nishe Rajen Shonker, Mrs. Anu K. Joy, Abraham Mathew, Alim Anvar, Pukhrambam Ramesh Kumar, Aaditya Aniruddha Pande, Siddharth Dharmadhikari, Sourav Singh, Aditya Krishna, Mrinal Gopal Elker, Saurabh Singh, Siddhesh Shirish Kotwal, Ms. Ana Upadhyay, Ms. Manya Hasija, Tejasvi Gupta, Pawan Upadhyay, Nirnimesh Dube, Shibashish Misra, Ajay Pal, Mayank Dahiya, Ms. Sugandh Rathor, Tanmaya Agarwal, Wrick Chatterjee, Mrs. Aditi Agarwal, Vinayak Mohan, Raj Bahadur Yadav, Shreekant Neelappa Terdal, Sri Harsha Peechara, Duvvuri Subrahmanya Bhanu, Ms. Pallavi, Ms. Kriti Sinha, Rajiv Kumar Choudhry, Aravindh S., Abbas, Abhinav Mukerji, Mrs. Bihu Sharma, Ms. Pratishtha Vij, Mohit Prasad, Ms. Swati Ghildiyal, Samar Vijay Singh, Dr. Monika Gusain, Nikunj Gupta, Keshav Mittal, Tapesk Kumar Singh, Prashant Bhardwaj, Aditya Pratap Singh, Priyanshu Malik, V. N. Raghupathy, Manendra Pal Gupta, Varun Varma, M. Bangaraswamy, S. Spandana Reddy, Avijit Mani Tripathi, T.K. Nayak, Ms. Rekha Bakshi, Ms. Marbiang Khongwir, Ms. K.

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Enatoli Sema, Ms. Limayinla Jamir, Amit Kumar Singh, Ms. Chubalemla Chang, Prang Newmai, Raghvendra Kumar, Anand Kumar Dubey, Devvrat Singh Naruka, Ms. Harsha Sharma, Maneeshpathak, Sabarish Subramanian, Shuvodeep Roy, Kabir Shankar Bose, Deepayan Dutta, Vishwa Pal Singh, Ms. Rachana Gandhi, Mukesh Kumar, Bharpur Singh, Sandeep Kumar, Ashish Pandey, Akash, Gopal Singh, Akhileshwar Jha, Hitesh Kumar Sharma, Neeraj Singh, Ms. Yamini Sharma, Ritika Raj, Ms. Niharika Dewivedi, Ms. Manju Jetley, Gaurav Agrawal, Satya Mitra, Advs. for the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

S. RAVINDRA BHAT, J.

1. The writ-petitioner organisation, approaches this court under Article 32 of the Constitution, seeking issuance of appropriate orders directing the respondents [Union government, and each State/UT government – collectively referred to as ‘respondent-state’] to take steps for implementing the provisions of the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 read with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 [hereafter “Act/POSH Act” or “Act” and “Rules/POSH Rules” respectively]. The detailed claims¹ are extracted verbatim:

“1. To issue a writ in the nature of mandamus or an appropriate writ, order or direction as may be necessary:-

a. Directing all the Respondents, i.e. Union of India, States and UTs to implement the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, Redressal) Act, 2013 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition, Redressal) Rules, 2013 without any further delay;

¹ The following abbreviations have been used in the writ petition, as well as in this judgment hereafter: “LCC” or “LC” mean ‘Local Committee’ (as per Act 23/2016 which amended ‘local complaints committee’ to ‘local committee’); and “ICC” or “IC” to mean ‘Internal Complaints Committee’.

- b. *Directing all the States/UTs to notify and appoint the District Officers as per Section 5 of the Act;*
 - c. *Directing all the States/UTs to constitute LCCs in all the districts as per Section 6 & 7 of the Act;*
 - d. *Directing all the States/UTs to appoint Nodal Officers as per Section 6 of the Act;*
 - e. *Directing all the States/UTs to constitute ICCs as per Section 4 of the Act in all the workplaces defined in Section 2(o) of the Act;*
 - f. *Directing all the States/UTs to ensure reporting and collection of Annual Compliance Reports from all workplaces by all the District Officers of respective States as per Section 21 and 22 of the Act;*
 - g. *Directing all the States/UTs to ensure that the Annual Compliance Reports collected by District Office[r]s, containing information on the number of cases filed and their disposal, are consolidated and the reports are published and put in public domain;*
 - h. *Directing all the States/UTs to give due publicity to the Acts and Rules in all the Districts – block, talukas, tehsil in rural or tribal area and ward or municipality in the urban area and that awareness activities will be organized to advance the understanding of the provisions of this Act;*
 - i. *Directing all the States/UTs that the gist of important provisions will be displayed at all working places in all the States/UTs.*
 - j. *Directing Respondent No.1 to frame rules and/or directions as provided in Section 29 of the Act, to clarify role of Districts in collecting annual compliance reports from ICCs and LCCs, role of District Officers in collecting fines for non-compliance of the Act and appropriate authority for collection of fines;*
- 2. Issue any other writ/order/direction as this Hon'ble Court may deem fit and proper in the circumstances of the case."*

2. Over the course of many hearings, this court, with the able assistance and cooperation of learned counsels involved in the matter – on both sides – undertook an exercise to delineate lacunae in the implementation of the Act,

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on ground. Further, in compliance with orders of this court, numerous states² filed affidavits highlighting steps taken by their respective governments in furtherance of implementing the Act and Rules in letter and spirit.

3. On 20.02.2023, learned counsels addressed this court on certain questions regarding the setting up of Nodal Cells in the concerned Central Union Ministry and also with respect to setting up of Local Committee and appointment of Nodal Officers in all districts of the country. This judgment pertains to these specific issues and the suggestions made in this regard.

4. Recently, this court in another bench composition, in *Aureliano Fernandes v. State of Goa & Ors.*³ had occasion to pass directions regarding the implementation of the POSH Act. These directions are comprehensive with regards to seeking compliance of the Act by the appropriate government [as defined under Section 2(b)] and its many departments, authorities, institutions, etc.; the High Courts and the courts it supervises; specific non-state authorities/organisations such as – statutory bodies of professionals (at the apex and state level), universities and other educational institutions, hospitals/nursing homes, etc. It specifically directed NALSA and SLSAs, and the National Judicial Academy and State Judicial Academies, to develop modules for workshops and awareness programmes, in their capacities. Given that the directions passed overlap with the scope of the present writ petition that is before this court, they merit emphatic reiteration:

“77. To fulfil the promise that the PoSH Act holds out to working women all over the country, it is deemed appropriate to issue the following directions:

(i) The Union of India, all State Governments and Union Territories are directed to undertake a timebound exercise to verify as to whether all the concerned Ministries, Departments, Government organizations, authorities, Public Sector Undertakings, institutions, bodies, etc. have

2 Including Nagaland, Madhya Pradesh, Meghalaya, Goa, Puducherry, Dadra & Nagar Haveli, Karnataka, Manipur, Haryana, Telangana, Gujarat, Assam, Rajasthan, Himachal Pradesh, Chandigarh UT, Andaman and Nicobar, Uttarakhand, Uttar Pradesh, Sikkim, Punjab, Odisha, Maharashtra, Jharkhand, NCT Delhi, Bihar, Tamil Nadu, Kerala, and Tripura.

3 Judgment dated 12.05.2023 in Civil Appeal No. 2482/2014.

constituted ICCs/LCs/ICs, as the case may be and that the composition of the said Committees are strictly in terms of the provisions of the PoSH Act.

(ii) It shall be ensured that necessary information regarding the constitution and composition of the ICCs/LCs/ICs, details of the e-mail IDs and contact numbers of the designated person(s), the procedure prescribed for submitting an online complaint, as also the relevant rules, regulations and internal policies are made readily available on the website of the concerned Authority/Functionary/Organisation/Institution/Body, as the case may be. The information furnished shall also be updated from time to time.

(iii) A similar exercise shall be undertaken by all the Statutory bodies of professionals at the Apex level and the State level (including those regulating doctors, lawyers, architects, chartered accountants, cost accountants, engineers, bankers and other professionals), by Universities, colleges, Training Centres and educational institutions and by government and private hospitals/nursing homes.

(iv) Immediate and effective steps shall be taken by the authorities/managements/employers to familiarize members of the ICCs/LCs/ICs with their duties and the manner in which an inquiry ought to be conducted on receiving a complaint of sexual harassment at the workplace, from the point when the complaint is received, till the inquiry is finally concluded and the Report submitted.

(v) The authorities/management/employers shall regularly conduct orientation programmes, workshops, seminars and awareness programmes to upskill members of the ICCs/LCs/ICs and to educate women employees and women's groups about the provisions of the Act, the Rules and relevant regulations.

(vi) The National Legal Services Authority (NALSA) and the State Legal Services Authorities (SLSAs) shall develop modules to conduct workshops and organize awareness programmes to sensitize authorities/managements/employers, employees and adolescent groups with the provisions of the Act, which shall be included in their annual calendar.

(vii) The National Judicial Academy and the State Judicial Academies shall include in their annual calendars, orientation programmes, seminars and workshops for capacity building of members of the ICCs/LCs/ICs established in the High Courts and District Courts and for drafting Standard Operating Procedures (SOPs) to conduct an inquiry under the Act and Rules.

(viii) A copy of this judgment shall be transmitted to the Secretaries of all the Ministries, Government of India who shall ensure implementation of the directions by all the concerned Departments, Statutory Authorities, Institutions, Organisations etc. under the control of the respective Ministries. A copy of the judgment shall also be transmitted to the Chief Secretaries of all the States and Union Territories who shall ensure strict compliance of these directions by all the concerned Departments. It shall be the responsibility of the Secretaries of the Ministries, Government of India and the Chief Secretaries of every State/Union Territory to ensure implementation of the directions issued.

(ix) The Registry of the Supreme Court of India shall transmit a copy of this judgment to the Director, National Judicial Academy, Member Secretary, NALSA, Chairperson, Bar Council of India and the Registrar Generals of all the High Courts. The Registry shall also transmit a copy of this judgment to the Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and the Engineering Council of India for implementing the directions issued.

(x) Member-Secretary, NALSA is requested to transmit a copy of this judgment to the Member Secretaries of all the State Legal Services Authorities. Similarly, the Registrar Generals of the State High Courts shall transmit a copy of this judgment to the Directors of the State Judicial Academies and the Principal District Judges/District Judges of their respective States.

(xi) The Chairperson, Bar Council of India and the Apex Bodies mentioned in sub-para (ix) above, shall in turn, transmit a copy of this judgment to all the State Bar Councils and the State Level Councils, as the case may be.

78. The Union of India and all States/UTs are directed to file their affidavits within eight weeks for reporting compliances. List after eight weeks.”

5. In addition to these detailed directions, a few aspects relating to the effective implementation of the POSH Act highlighted in the present writ petition, require our attention.

Authorities responsible for the implementation of the POSH Act

6. The POSH Act is comprehensive, and a code in itself, for prevention, punishment and redressal of sexual harassment complaints. It takes the remit of the remedy envisaged in the Vishaka Guidelines beyond the State and public functionaries, to a larger, much wider scope of ‘employee’⁴ and ‘employer’⁵ than any other legislation. As a result, it comes too, with its own challenges for effective implementation. Anticipating this, the Act

4 Section 2(f) reads as follows:

“(f) “**employee**” means a person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name”

5 Section 2(g) reads as follows:

“(g) “**employer**” means—

(i) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;

(ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.

Explanation.—For the purposes of this sub-clause “management” includes the person or board or committee responsible for formulation and administration of policies for such organisation;

(iii) in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;

(iv) in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker;”

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provides for a tiered-model for its functioning, and in turn for monitoring of its implementation.

7. Each employer is legally mandated to constitute an ICC under Section 4. To address the gaps where there is no ICC (i.e., for those working in a workplace that employs less than 10 workers or where the employer themselves are the respondent), the Act provides for an LC in each district, which is to be constituted by the District Officer under Section 6. The District Officer is also tasked with designating a nodal officer in each block, taluka, and tehsil in rural or tribal area, and ward or municipality in the urban area, to receive complaints and forward the same to the concerned LC⁶. These nodal officers are meant to be the first point of contact in that sense, especially in situations where there is no ICC constituted. The ICC or LC after conducting inquiry (or recording settlement⁷ if such is the case), has to in its inquiry report recommend to the employer, or District Officer, respectively, what action is to be taken against the respondent (or in the situation of a false/malicious case⁸, against the complainant), in each case⁹.

8. The Petitioner has pointed out that there is a lack of clarity as to the District Officer's role in relation to the annual reports contemplated under Section 21 and 22. A reading of these provisions together offers some clarity: both the ICC and LC prepare annual reports and submit it either directly (in the case of the LC) or through the employer (here, the ICC), to the District Officer¹⁰. While Section 21(1) does not mention the ICC report being forwarded to the District Officer, Section 22 right after, states that the employer is mandated to mention in its report the number of cases lodged and disposed (if any), and even in the absence of a report it must intimate the numbers to the District Officer¹¹. Further, it is the District Officer, in turn, who submits a brief report to the State Government¹².

6 Section 6(2) of the POSH Act.

7 Section 10 of the POSH Act.

8 Section 14 of the POSH Act and Rule 10 of the Rules.

9 Section 13 of the POSH Act and Rule 9 of the Rules.

10 Section 21(1) of the POSH Act.

11 Section 22 of the POSH Act.

12 Section 21(2) of the POSH Act.

9. The appropriate government [defined under Section 2(b)], is responsible at the last level, to monitor the implementation of this Act and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace¹³. It is also obligated to take measures to publicise the Act¹⁴. Another built-in safeguard in the framework is that the appropriate government is empowered to call for information and inspection of records¹⁵ - wherein it may call upon an employer or District Officer to furnish in writing any information relating to sexual harassment it may require, or produce any record required by an officer authorised to carry out an inspection.

10. What is wholly apparent from this outline of the scheme of the Act, is that the role of the District Officer, is pivotal; they are responsible for numerous aspects in the implementation of the Act. It is where the buck stops, so to say, in terms of coordination and accountability relating to the POSH Act. Even in terms of payment and fees – the District Officer is responsible for payment of allowances to the Chairman and members of the LC¹⁶, which it receives from the agency set up by the State Government (**ref:** Section 8 of the Act). Interestingly, the District Officer also performs a duty in terms of enforcement; under Section 13, if the respondent in any case fails to pay any sum so directed, the ICC/LC can forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer¹⁷.

11. Section 5 stipulates that:

*“5. The appropriate Government **may** notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer. for every District to exercise powers or discharge functions under this Act.”*

And Chapter VII, titled ‘Duties and Powers of the District Officer’ states under Section 20:

13 Section 23 of the POSH Act.

14 Section 24 of the POSH Act.

15 Section 25 of the POSH Act.

16 Rule 5 of the POSH Rules

17 Second proviso to Section 13(3) of the POSH Act.

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“20. The District Officer shall, -

(a) monitor the timely submission of reports furnished by the Local Committee;

(b) take such measures as may be necessary for engaging non-governmental organisations for creation of awareness on sexual harassment and the rights of the women.”

While the language used in Section 5 is ‘may’, the context of the statute – as elaborated above, and specifically Section 20 (which uses ‘shall’ and obligates the District Officer to perform pivotal functions) makes it quite clear that the District Officer, is the most important functionary in the system, tasked with keeping the redressal and monitoring framework both intact, and smoothly running. In one of the first cases on the interpretation of ‘may’, this court in *State of Uttar Pradesh v. Jogendra Singh*¹⁸ held:

“There is no doubt that the word “may” generally does not mean ‘must’ or ‘shall’. But it is well settled that the word “may” is capable of meaning “must” or ‘shall’ in the light of the context. It is also clear that where a discretion is conferred upon a public authority coupled with an obligation, the word ‘may’ which denotes discretion should be construed to mean a command. Sometimes, the legislature uses the word “may” out of deference to the high status of the authority on whom the power and the obligation are intended to be conferred and imposed. In the present case, it is the context which is decisive.”

Treating Section 5 as directory, would leave a gaping hole in the otherwise clearly delineated workflow and redressal mechanism, and the efficacy of this legislation, as a result, falls flat.

12. We have perused the replies/affidavits filed by numerous states pursuant to receiving notice; seen together, they are marked by a lack of uniformity in terms of implementation of the Act. Numerous states have tried to force-fit the institutional requirements of the Act, within their existing bureaucratic frameworks (for instance, some states have assigned its implementation to departments other than their Women and Child

18 [1964] SCR (2) 197

Development Ministry, like the departments dealing with Social Welfare, Social Security, Legislative Affairs, etc.). The affidavit filed by the petitioner in response to the replies by the States, highlights the many lacunae and lack of uniformity in the implementation of the POSH Act, by various state governments. District Officers were in most states notified after notice of this writ petition was served on them, and even among those states that have taken action – they have simply notified a specific post as District Officer, without providing any specific details of the officers, their contact information, etc. Most states have failed to provide documentation on constitution of LCs, and even those who have, many have not constituted one in each district. Only a handful of states have provided any details of ‘nodal officers’ – but even among these, the nodal officers are specific posts notified, and not individuals at every taluka, ward, municipality, etc. as contemplated under Section 6(2). The information on annual reports is perhaps most alarming – only three have provided a consolidated report (relying on differing sources, or just the LCs). Each State, has notified a different Ministry as the ‘nodal’ ministry for implementation of the Act – some have notified the Social Welfare Ministry or its allied departments, while others rely on the Women and Child Development department.

13. The general thrust of the affidavits, especially that of the Union of India – has been to highlight the generation of awareness through a massive publicity campaign and issuance of advisories, publication of handbooks, etc. However, it is quite plainly clear that though the generation of awareness is necessary, if a woman suffers sexual harassment at the workplace – the framework for redressal has to in fact exist. The failure to notify district officers specifically, has a snowballing effect on appointment of the LCs and nodal officers, in addition to other aspects. The complaint mechanism, and larger framework - no matter how effective, remain inadequate if the authorities set out in the Act, are not duly appointed/notified. Therefore, the State/UT government must ensure that every district, at all times has a notified District Officer; in case of vacancy caused by retirement, or any other reason, it must be duly remedied, to enable smooth transition between officers, and ensure that there is always someone in-charge of this position. Furthermore, effort has to be undertaken to orient, train and sensitise these district officers, with regards to the provisions of the Act and Rules, with an emphasis on their roles and obligations. Similar range of activities must

be conducted for the nodal officers appointed and LCs constituted by each district officer.

Operationalizing the Act for the unorganized sector

14. This Act is a pioneering legislation with a ‘horizontal’ mechanism and rights framework. A look at some of the definitions - ‘employee’¹⁹, ‘employer’²⁰, and ‘workplace’²¹ drives this point home and demonstrates the scope of its horizontal application. Further, the inclusion of definitions of ‘domestic worker’, and ‘unorganized sector’ in Section 2, which though not expressly referred to in the substantive content of the Act, is telling:

“(e) “domestic worker” means a woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or full time basis, but does not include any member of the family of the employer;”

“(p) “unorganised sector” in relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.”

The inclusion of these definitions, has greatly expanded the scope of this Act’s application. An aggrieved domestic worker, thus, can take action against a person residing in the house they work at, using the LC framework; see Section 2(o) which defines ‘workplace’ and includes under sub-clause (vi) “a dwelling place or house”:

“(o) “workplace” includes—

(i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the

19 Section 2(f), extracted above in fn 4.

20 Section 2(g) extracted above in fn 5.

21 Section 2(o) of the Act.

local authority or a Government company or a corporation or a co-operative society;

(ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;

(iii) hospitals or nursing homes;

(iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;

(v) any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey;

(vi) a dwelling place or a house”

15. Consider next, the composition and role of the LC – which is the foundational body in the district, especially so for the unorganized sector. This committee is headed by a nominated chairperson who is an eminent woman in the field of social work and committed to the cause of women; one member is nominated from the women working in a block/taluka/tehsil (rural) or ward/municipality (urban); two more, of which at least one has to be a woman to be nominated amongst NGOs or associations committed to cause of women or a person familiar with the issues relating to sexual harassment. Further one must be with legal background/knowledge of the law, and one must belong to a Scheduled Caste, Scheduled Tribe, or Other Backward Class²². An LC is empowered with powers equivalent to a civil court²³ to conduct inquiry, issue summons, enforce attendance, etc., which is reflective of its importance in the framework. The inclusion of nominees from such NGOs is also helpful, because in a context where LCs may convey a sense of formality, women find it easier to approach local NGOs;

²² As per Section 6 and 7 of the Act.

²³ Section 11 of the Act.

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this is one of the finding in a 2015 International Labour Organization (ILO) report²⁴. However as pointed out, there is no avenue in the law for these NGOs to register or pursue the matter on behalf of such consenting women. Thus, the spreading of awareness relating to LCs and dispelling the air of formality, should form a priority of the highest level State, that seeks to implement the Act.

16. Lastly, it is relevant to note a major limitation of the Act, which depends on the Union Government to disburse funds to the States, which using an agency, can transfer the same to the district officer²⁵. Similarly Section 20 and 24, which obligate the district officer and appropriate government to take steps to publicise the Act, is limited by Section 24 which states that:

“The appropriate Government may, subject to the availability of financial and other resources, —

(a) develop relevant information, education, communication and training materials, and organise awareness programmes, to advance the understanding of the public of the provisions of this Act providing for protection against sexual harassment of woman at workplace;

(b) formulate orientation and training programmes for the members of the [Local Committee].”

(emphasis supplied)

In the absence of a delineated budget to pay the concerned officers and conduct events for awareness and training, various LCs are rendered infructuous or remain vacant²⁶. Therefore, the requirement of setting the budget for the implementation of this Act, at each district level, and thereafter state-level, to ascertain disbursal of grants from the Union Government.

24 ILO, Insights into working conditions in India's garment (2015) <<https://ruralindiaonline.org/en/library/resource/insights-into-working-conditions-in-indias-garment-industry/>> (accessed on 17.10.2023).

25 Section 8 of the Act.

26 See NHRC's report on status and Functioning of Local Complaints Committees under the Act (2019) [https://nhrc.nic.in/sites/default/files/Status and Functioning of Local Complaints Committees under the Sexual Harassment.pdf](https://nhrc.nic.in/sites/default/files/Status%20and%20Functioning%20of%20Local%20Complaints%20Committees%20under%20the%20Sexual%20Harassment.pdf) (accessed on 17.10.2023).

17. In this manner, the Act contemplates a wide scope for both the aggrieved woman, and the respondent, and place a public duty on the employers, or LCs as the case may be, to ensure prevention, prohibition and redressal of complaints of sexual harassment. Operationalizing LCs and ensuring their effectiveness, remains the key to making these remedies accessible to the unorganized sector.

Discussion on specific directions sought by the petitioners

18. The directions prayed for in the present writ petition, can be traced directly to the obligations and duties set out in the express provisions of this Act:

Prayer		Provision under the Act	Public functionary in charge/ obligation on
(a)	Implement the provisions of the POSH Act and Rules	-	Union of India, State governments, and union territories
(b)	Notify and appoint district officers	Section 5	State and UT governments
(c)	Appointing LCs in each district	Section 6 and 7	District Officer
(d)	Appointing nodal officers	Section 6(2)	District Officer
(e)	Constituting ICCs in all workplaces as defined under s. 2(o)	Section 4	To be constituted by each employer
(f)	Ensure reporting and collection of annual compliance reports from all workplaces	Section 21 and 22	District Officers

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(g)	Annual compliance reports are consolidated and the reports are published in the public domain	Section 23	Appropriate government
(h)	Publicising the Act and Rules and organize awareness activities to advance understanding of the provisions of the Act	Section 24; Section 20(2)	Appropriate government; District Officer to take measures for engaging NGOs for creation of awareness
(i)	Gist of important provisions will be displayed at all working places	Section 19(b)	Duty of each employer
(j)	Framing of rules and or direction to clarify aspects not covered under the prevailing Rules	Section 29	Union Government

19. Prayer (g) directing the State/UT governments to ensure that the annual compliance reports collected by the District Officers are consolidated and the reports are published in the public domain, requires some consideration. Section 23 of the Act reads as follows:

“23. Appropriate Government to monitor implementation and maintain data.- The appropriate government shall monitor the implementation of this Act and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplaces.”

While the Act does not contemplate such publication in the public domain, there is certainly merit in using this anonymised data on cases lodged and disposed, to consolidate statistics, that will reflect efficacy of the implementation of the Act. Therefore, while there is no need for such an express direction by this court, the Central Government, and State Government, as the case may be, in the interest of transparency and good governance may consider to make these statistics public– the access to which, would certainly have a positive impact on various stakeholders. This in turn will also strengthen the monitoring of the implementation of this Act.

20. Prayer (j) seeking the framing of rules and/or directions as provided in Section 29 of the Act is limited to three lacunae pointed out by the petitioner: **(i)** to clarify the role of districts in collecting the annual compliance reports from ICCs and LCs; **(ii)** role of district officers in collecting fines for non-compliance of the Act; and **(iii)** identify the appropriate authority for collection of fines. This court has considered the Rules, as they stand, closely; there is certainly some gaps. On point (i), this court’s discussion in paragraph 8 clarifies the position – although the required amendment explicitly laying this out in the Rules, would be appropriate. Points (ii) and (iii) are cause for real concern.

21. Section 26(1) of the Act defines penalty to be imposed on the employer for failing to: constitute the ICC under Section 4, conduct inquiries under Section 13 and 14, submit annual compliance reports as per Section 22, or contravention of any other provision of the Act or Rules. Contravention of the Act, attracts a penalty of ₹ 50,000. However, the Rules are woefully silent on the reporting authority actually responsible for taking note of the non-compliance, and the public authority empowered to collect the said fine²⁷. Given the scheme of the Act, it would be recommended that the

27 The other provision which contemplates penalty, is Section 17 [Penalty for publication or making known contents of complaint and inquiry proceedings] which states:

“17. Where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act, contravenes the provisions of section 16, he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed.”

Rule 12 of the POSH Rules has set the fine to be Rs. 5000, which is to be collected by the employer.

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District Officer itself, be made this authority – however, presently since they are not empowered to take appropriate action against employers for non-compliance of the Act, it renders the framework rather toothless. Similarly under Section 26(2) which provides further penalty (including cancellation of business license or withdrawal of renewal or approval of cancellation of registration by the government or local authority required for carrying on their business/activity) on an employer for continuous violations of the same provisions – does not mention the authority under the Act responsible for carrying out this function.

Conclusion and Directions

22. Having regard to the above discussion, it is appropriate for this court to issue the following directions (under the relevant heads) to ensure the effective implementation of the POSH Act, and render it workable:

A. Coordination between Union Government and State/UT Governments

- i. The Women and Child Development Ministry of every State/UT, through its Principal Secretary, should consider identifying a ‘nodal person’ within the Department, to oversee and aid in coordination as contemplated under the POSH Act. This person would also be able to coordinate with the Union Government on matters relating to this Act and its implementation.
- ii. Each State/UT Government is to submit a consolidated report of its compliance with the below directions to the Union Government within 8 weeks. The latter is hereby directed to consolidate the various reports, identify any lapses in the compliance by the State and try to remedy it, before filing a consolidated affidavit of compliance – detailing the States’ compliance, and the Union Government’s action taken in regard to the direction within 12 weeks from the date of this judgment.

B. Appointment of public authorities

- iii. The concerned Principal Secretary of the State/UT Ministry of Women and Child [or any other Department, subject to amendment of the Rules as per direction (vii) below], will personally ensure

appointment of a district officer in each district within their territorial jurisdiction, as contemplated under Section 5 within four weeks from the date of this judgment.

- iv. Thereafter, each appointed district officer
 - (a) must in compliance of Section 6(2) appoint nodal officers in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area;
 - (b) must constitute a LC, as contemplated under Section 6 and 7 of the Act; and
 - (c) ensure the contact details of these nodal officers, and LCs, shall be forwarded to the nodal person within the State Government Ministry of Women and Child Development within 6 weeks from the date of this judgment.
- v. Thereafter, a circular/bulletin containing names of all district officers, and their contact details (phone, address, and email), along with a district wise chart of the various nodal officers and their contact details, must be uploaded on the department's website (or in the absence of one, on the main State government website) in a conspicuous location, along with a compiled version of the Act, Rules, and simple charts/explainers on the basics of the Act, within 6 weeks from the date of this judgment.

C. Amendments and gaps in Rules that State must fill

- vi. The Union Government ought to consider amending the Rules, so as to operationalise Section 26 of the Act, by recognising a reporting authority, and/or a fine collecting authority. This direction must be read in light of the discussion in paragraph 8 (role of district officer with regards to annual compliance reports) and paragraph 21 (on the penalty regime contemplated in the Act and resulting lacunae in the Rules) above.
- vii. The Union Government may also consider amending the Rules so as to identify one Department (preferably the Women and Child Department), and creating a 'nodal person' post within the said Department to be responsible for the coordination required in the

implementation of the Act [see direction (i)]. This will ensure greater uniformity in the implementation of the Act across the country.

D. Training and capacity building

- viii. The District Officers and LCs should be mandatorily trained regarding their important responsibilities. Given their position in the redressal framework contemplated in the Act, they must first be sensitised to the nature of sexual harassment, the gendered interactions that occur in the workspace, etc. The State Governments, must organise periodic, and regular training sessions at the District level which are to be attended by the District Officer, members of the LC, and nodal officers [ref: Section 24(b)].

E. Larger efforts towards awareness

- ix. In furtherance of Section 24, the State/UT Governments, and Union Government are hereby directed to set out the financial resources allocated and or needed, to developing educational, communication and training material for spreading awareness of the provisions of this Act to the public, and formulate orientation and training programmes as elaborated in direction (viii) above. This plan of action, must form part of the compliance affidavit filed by each State. The discussion in paragraph 16 is to be read along with this direction.
- x. The District Officers, once nominated by the State are hereby directed to identify the non-governmental organisations working with women and their protection within the district, and take action pursuant to their duty under Section 20(b) for creation of awareness.
- xi. The appropriate government or district officers in question, must also undertake effort to spread awareness on the existence of LCs, and make them approachable for the unorganized sector – thus operationalizing the horizontal import of this Act.

- xii. The directions (iv) and (v) passed in *Aureliano Fernandes v. State of Goa & Ors.*²⁸ (supra) cover specifically the direction to authorities, management and employers to familiarize the members of the ICCs and LCs of their duties and detailed step-wise manner in which an enquiry ought to be conducted on receiving a complaint of sexual harassment; conduct orientation programmes, workshops, seminars, awareness programmes, etc. and to educate women employees and women groups about the Act, Rules, and regulations are reiterated. The modules prepared by NALSA [as per direction (vi) in *Aureliano Fernandes*] to conduct workshops and organize awareness programmes to sensitise authorities, managements, employers could be used in this regard.
- xiii. It is relevant to add here that the Ministry of Women and Child Development, Government of India, has prepared a Handbook for implementation of POSH Act²⁹, which serves as a useful guide for not just employees seeking information, but also more pertinently those who are nominated or appointed as members of the ICs (by the employer) or LCs (by the District Officer). It is hereby directed that a targeted effort be made to share this information with each District Officer, who may in turn disseminate it to their respective LCs, the nodal officers appointed under Section 6(2), and employers who constitute their own ICCs.

F. Annual Compliance Reports

- xiv. Due compliance with Section 21(1) and (2), and Section 22, must be undertaken by each District Officer, of the State – including collecting the reports from the IC/employers (or information where no report is available), and from the LC, and preparation of a brief report to be shared with the State

28 Judgment dated 12.05.2023 in Civil Appeal No. 2482/2014.R

29 Government of India, Handbook on Sexual Harassment of Women at Workplace (2015) <https://wcd.nic.in/sites/default/files/Handbook%20on%20Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf> (accessed on 26.09.2023).

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government. The State/UT Governments is hereby directed to create a Standard Operating Procedure (SOP) including the procedure, and timelines for this process, so as to enable it to, in turn, comply with Section 23 of the Act, i.e., monitoring implementation and maintaining data. This direction may be read in light of the discussion contained in paragraph 18 above.

G. Monitoring of ICs and compliance by employers

- xv. The directions passed in *Aureliano Fernandes v. State of Goa & Ors.*³⁰ (supra) address most specifically, the constitution of ICs – in public establishments [falling broadly within Section 2(o)(i)] and some private establishments – such as bodies governing professional associations, etc.; those directions are hereby reiterated, to avoid multiplicity or overlap of efforts. It is however further, directed that efforts made must be in line with the scheme of the Act, and through the authorities so designated for the various roles.
- xvi. Similarly, directions are hereby made to hospitals, nursing homes, sports institutes, stadiums, sports complex, or competition or games venues [as defined in Section 2(o)(iii) and (iv)] to establish ICs, and report compliance as per the duties under this Act.
- xvii. The District Officer must be supplied a list of establishments (compiled by the relevant departments of the State/UT Government) that fall within the scope of Section 2(o), so that they may write to them and ensure that they are well versed with the provisions relating to employers, and their duties (including constitution of ICC under Section 4, duties under Section 19, etc.) and are implementing them in letter and spirit. This will also enable collection of annual reports, as contemplated under Section 21. The consequent direction to all private sector workplaces under Section 2(o)(ii) can

30 Judgment dated 12.05.2023 in Civil Appeal No. 2482/2014.

be passed once the District Officer is able to discern an exhaustive list of entities.

23. List this matter in the first week of February 2024, for further compliance.

Headnotes prepared by:
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Directions issued.