# IN THE HIGH COURT OF ORISSA AT CUTTACK

## W.P.(C) No. 20232 of 2025

*(An application under Articles 226 & 227 of the Constitution of India)*

***Zee Entertainment Enterprise Ltd., Mumbai & Anr.*** ……. ***Petitioners***

*-Versus-*

***Anukul Chandra Rout & Ors.*** ……. ***Opposite Parties***

Advocate(s) appeared in this case:-

| | | |
|---|---|---|
| For Petitioners | : | Mr. S.S.Mohanty, Advocate |
| For Opposite Parties | : | Mr. S.Dash, Advocate for O.P.1<br>Mr. G.Tripathy, AGA |

**CORAM : JUSTICE B.P. ROUTRAY**

**JUDGMENT**

**Date of Hearing : 27th July 2026**
**Date of Judgment : 14th October 2026**

***B.P. Routray,J.***

**1.** Present writ petition has been filed seeking challenge to the impugned order of the Appellate Authority dated 30th May 2025 in Appeal Case No.01 of 2024 in terms of Section 18(1) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (herein after referred as the PoSH Act).

**2.** Present Opposite Party was the Respondent in the enquiry conducted by Internal Complaints Committee (ICC) and present Proforma Opposite Party No.1 is the aggrieved woman who made the complaint before ICC. Present Appellants are the employer of the Respondent and the aggrieved woman. For easy understanding the parties are referred as such.

**3.** The facts of the case in short are that the employer, i.e. Zee Entertainment Enterprise Ltd., has its registered office at Mumbai having different branch offices or local offices all over India and functioning having interests in Television, Internet, Film and business related to Digital Content and owns and operates more than 90 television channels worldwide. It has the regional television channel at Bhubaneswar namely, "Zee Sarthak TV" and has its office establishment at Bhubaneswar and employees are posted at Bhubaneswar.

**4.** The Respondent joined the office of the employer at Bhubaneswar on 2nd January 2017 in the capacity of Senior Executive Producer and in course of time was elevated to the position of Associate Director Programming Fiction, since 30th May 2022. The aggrieved woman was the female protagonist in the T.V. show 'SHREE' and it is alleged by

her that the Respondent caused sexual harassment to her seeking sexual favour indirectly by passing derogatory comments on her, her attire on different occasions on different dates including sending messages and calls in the mobile phone. Such details of the complaint made against the Respondent by the aggrieved woman are not required to be discussed here in detail.

**5.** Alleging such action on the part of the Respondent, the aggrieved woman made complaint through E-mail dated 6th May 2024 and 14th May 2024 to the authority and the Presiding Officer of ICC at Bhubaneswar local office vide her E-mail dated 15th May 2024 sent the same to the authority at Mumbai Head Office stating that she (the Presiding Officer of ICC at Bhubaneswar) is on maternity leave and requested to take proper follow of steps. Showing prompt response, the complaint of the aggrieved woman was handed over to the corporate ICC based at Mumbai and present Petitioner No.2 assumed the responsibility of conducting the enquiry being the member of ICC of Petitioner No.1-Company. A copy of the complaint was then sent to the Respondent through E-mail and the aggrieved woman was requested to furnish the names of her witnesses. The Respondent submitted his written response to the complaint pursuant to the communication made

to him, vide E-mail dated 24th May 2024 (Annexure-5 series). The ICC at Mumbai conducted the enquiry and hearing through Video Conference on 12th June 2024, 18th June 2024, 19th July 2024 and 25th July 2024. The enquiry was conducted in Hindi and English. According to the employer, the aggrieved woman narrated her version through Video Conference and the same was duly transcribed, shared by E-mail and confirmed by the aggrieved woman vide E-mail dated 20th June 2024 and 7th August 2024. Both the aggrieved woman and Respondent have produced their respective witnesses before the Committee who were examined through Video Conferencing by the Committee at Mumbai. The Respondent was also examined through Video Conferencing and his statement was duly transcribed, ratified and confirmed vide E-mail dated 24th June 2024 and 5th August 2024. Of course, the Respondent denied all such allegations against him and contested in the enquiry proceeding.

**6.** Upon completion of the enquiry, the ICC submitted its report on 13th August 2024 (Annexure-6) recommending termination of the service of Respondent with warning to the witnesses of the Respondent not to repeat such prompted/coached statements before the Committee.

**7.** Being aggrieved by such report of the ICC, the Respondent preferred appeal to the Labour Court, Bhubaneswar-cum-Appellate Authority declared under Section 18(1) of the PoSH Act.

**8.** The learned Appellate Authority vide order dated 30th May 2025 (Annexure-7) set aside the findings of the ICC as well as the order of termination of the Respondent and remitted back the matter to present Petitioner No.1 to conduct fresh enquiry in accordance with law, either by placing the Respondent under suspension or by allowing him to resume his duty and further, to submit fresh report within a period of forty five (45) days from the date of order of the Appellate Authority. This order of the Appellate Authority under Annexure-7 is impugned in present writ petition.

**9.** The learned Appellate Court remanded the matter back to ICC mainly on the ground that, due and fair opportunity of hearing has not been extended to the Respondent by the ICC and the amount of reasonableness expected from the ICC in conducting the enquiry in a fair manner is not satisfied. It is because the ICC did not, *inter alia,* grant any opportunity of cross-examination to the Respondent in respect of the witnesses of aggrieved woman and the aggrieved woman. Further, the statement of the aggrieved woman was recorded in absence of the

Respondent and the copy of such statement of the aggrieved woman and her witnesses have not been served on the Respondent, though gist of the same was given to the Respondent. It is also for the reason that, all such witnesses named by the Respondent were not examined by the ICC.

**10.** It is submitted on behalf of the employer (Present Petitioners) that, the observation of the learned Appellate Court with regard to absence of due and fair opportunity of hearing on the ground that no opportunity of cross-examination of the witnesses was granted to the Respondent, is unsustainable for the reason that on a broader principle of compliance of natural justice the statements made by such witnesses were confronted with the Respondent asking him to rebut the same, and secondly, the documents relied on by the ICC against the Respondent though have not been served to him but the substance thereof have been confronted with the Respondent.

**11.** It is further submitted on behalf of the employer there are twelve (12) witnesses altogether examined by the ICC, out of which Witnesses No. 9 to 12 are at the instance of the Respondent. Thus the principles of natural justice have been complied with in broader sense by confronting the gist of statements of the witnesses and the gist of documents used

against the Respondent, granting him the fair opportunity of hearing to rebut the same and so, it is not necessary to give the Respondent the opportunity to cross-examine the witnesses. The Appellate Authority has thus committed illegality in setting aside the enquiry report and remanding the matter back to the ICC for fresh enquiry.

**12.** Conversely, it is submitted on behalf the Respondent that the ICC was constituted at the Head Office at Mumbai ignoring the local ICC against the mandate prescribed in the PoSH Act. It is further submitted that the right to cross-examine is an indispensable part of the principles of natural justice and thus when the accused was not granted the right of cross-examination and even was not supplied with the copies of documents and depositions relied on by the ICC, the Appellate Authority is justified in directing for reconsideration of the enquiry by the ICC after giving due and fair opportunity of hearing to the Respondent. It is also submitted that before issuing the order of termination against the Respondent following the report of the ICC, no procedure or fair play has been followed by the employer and it is so issued even without giving him any opportunity of hearing before terminating his service.

**13.** As per the rival contentions of the parties, it is therefore necessary to see whether the constitution of ICC at Mumbai was fair on the part of the employer to complete the enquiry against the Respondent and secondly, whether the ICC has followed due procedure in conducting the enquiry followed by the order of termination, giving due and fair opportunity to the Respondent. Since the impugned order of remand of the Appellate Authority is on these two points, the parties do not refer to the merits of the complaint and such finding of the ICC holding the Respondent guilty. It is also true that, the Appellate Authority has not entered into the merit aspect of the allegations made in the complaint of the aggrieved woman and the finding of the ICC in that respect.

**14.** It needs to be stated here that, the notice on all present Opposite Parties except Opposite Party No.1 has been dispensed with as Opposite Party No.2 is the Presiding Officer of the Labour Court-cum-Appellate Authority and Proforma Opposite Parties 2 to 7 are the members of the ICC. Proforma Opposite Party No.1 is the aggrieved woman and she did not participate in the proceeding before the Appellate Authority despite notice was served on her duly. As such, this Court did not find it necessary to serve notice on Proforma Opposite Party No.1 (aggrieved

woman), where present concern is between the employer and the Respondent.

**15.** Before proceeding further, some relevant provisions of the PoSH Act are required to be reproduced here. The same are follows:-

> **4. Constitution of Internal Complaints Committee:-**
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> (1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee":
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> Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.
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> (2) The Internal Committee shall consist of the following members to be nominated by the employer, namely:-
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> *(a)* a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:
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> Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section (1):
>
> Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organization;

*(b)* not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

*(c)* one member from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

Provided that at least one-half of the total Members so nominated shall be women.

(3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

(4) The Member appointed from amongst the non-governmental organizations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

(5) Where the Presiding Officer or any Member of the Internal Committee,-

(a) contravenes the provisions of Section 16; or

(b) has been convicted for an offence or any inquiry into an offence under any law for the time being in force is pending against him', or

(c) he has found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(d) has so abused his position as to render his continuance in office prejudicial to the public interest,

Such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

**6. Constitution and jurisdiction of Local Committee-**

(1) Every District Officer shall constitute in the district concerned, a committee to be known as the "Local Complaints Committee" to receive complaints of sexual harassment from establishments where the Internal Complaints Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.

(2) The District Officer shall designate one nodal officer in every 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 Local Complaints Committee within a period of seven days.

(3) The jurisdiction of the Local Complaints Committee shall extend to the areas of the district where it is constituted.

**9. Complaint of sexual harassment.-**

(1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided that where such complaint cannot be made_ in writing, the Presiding Oflicer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the compla int in writing.

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three rnonths, if it is satisfied that the circumstances were such which prevented the woman from fil ing a complaint within the said period.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

## 10. Concilitation

(1) The Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation.

Provided that no monetary settlement shall be made as a basis of conciliation.

(2) Where settlement has been arrived at under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.

(3) The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement as recorded under sub-section (2) to the aggrieved woman and the respondent.

(4) Where a settlement is arrived at under sub-section (1), no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be.

**11. Inquiry into complaint.-**

(1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

(2) Notwithstanding anything contained in section 509 of the Indian Penal Code (45 of 1860), the court may, when the respondent is

convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

(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 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.

(4)The inquiry under sub-section (1) shall be completed within a period of ninety days.

## 13. Inquiry report.-

(1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.
(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.
(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the

respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be—

*(i)* to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

*(ii)* to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15:

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or as, the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

(4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.

Further, under section 7 of the PoSH Rules, 2013 the manner of inquiry has been prescribed. The same is read as follows:-

**7. Manner of Inquiry into complaint.-**

(1) Subject to the provisions of section 11, at the time of filing the complaint, the complainant shall submit to the Complaints Committee, six copies of the complaint along with supporting documents and the names and addresses of the witnesses.
(2) On receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved woman under sub-rule (I) to the respondent within a period of seven working days.
(3) The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses, within a period not exceeding ten working days from the date of receipt of the documents specified under subrule (I).
(4) The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice.
(5) The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an ex-parte decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings convened by the Chairperson or Presiding Officer, as the case may be: Provided that such termination or ex-parte order may not be passed without giving a notice in writing, fifteen days in advance, to the party concerned.
(6) The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee.
(7) In conducting the inquiry, a minimum of three Members of the Complaints Committee including the Presiding Officer or the Chairperson, as the case may be, shall be present.

## 9. Manner of taking action for sexual harassment.

Except in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be, to take any action including a written apology, warning, reprimand or censure, withholding of promotion withholding of pay rise or increments, terminating the

respondent from service or undergoing a counselling session or carrying out community service.

**16.** In ***Aureliano Fernandes vs. State of Goa & Ors., (2024) 1 SCC 632,*** the Hon'ble Supreme Court has observed as follows:-

> **(d)BREATHING REASONABLENESS INTO THE PROCEDURAL REGIME:**
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> 58. Thus, it can be seen that the journey from Vishaka case [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] that acted as a springboard and sowed the seeds of future legislation by structuring Guidelines to deal with cases of sexual harassment, blossomed into a comprehensive legislation with the enactment of the PoSH Act and Rules. At the same time, however women-centric the Guidelines and the Act may have been, they both recognize the fact that any inquiry into a complaint of sexual harassment at the workplace must be in accordance with the relevant rules and in line with the principles of natural justice.
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> 59. The cardinal principle required to be borne in mind is that the person accused of misconduct must be informed of the case, must be supplied the evidence in support thereof and be given a reasonable opportunity to present his version before any adverse decision is taken. Similarly, the employer concerned is also expected to act fairly and adopt a procedure that is just, fair and reasonable. The whole purpose is to breathe reasonableness into the procedural regime. But, the test of reasonableness cannot be abstract. It has to be pragmatic and grounded in the realities of the facts and circumstances of a case.
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61. The four predominant purposes sought to be achieved by reading the principles of natural justice into law and into the conduct of judicial and administrative proceedings to achieve the underlying object of securing fairness have been concisely expressed by this Court as an assurance of a fair outcome by following the procedural rules, an assurance of equality in the proceedings, legitimacy of the decision and decision-making authority thereby preserving the integrity of the system and finally, with the idea of preserving the dignity of individuals where citizens are treated with respect and the dignity they deserve in a society governed by the Rule of Law [Madhyamam Broadcasting Ltd. v. Union of India, (2023) 13 SCC 401 : 2023 SCC OnLine SC 366].

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80. In fact, the glaring defects and the procedural lapses in the inquiry proceedings took place only thereafter, in the month of May 2009, when 12 hearings, most of them back-to-back, were conducted by the Committee at a lightning speed. On the one hand, the Committee kept on forwarding to the appellant, depositions of some more complainants received later on and those of other witnesses and called upon him to furnish his reply and on the other hand, it directed him to come prepared to cross-examine the said complainants and witnesses as also record his further deposition, all in a span of one week. Even if the medical grounds taken by the appellant seemed suspect, the Committee ought to have given him reasonable time to prepare his defence, more so when his request for being represented through a lawyer had already been declined. It was all this undue anxiety that had led to short-circuiting the inquiry proceedings conducted by the Committee and damaging the very fairness of the process.

81. For the above reasons, the appellant cannot be faulted for questioning the process and its outcome. There is no doubt that matters of this nature are sensitive and have to be handled with care. The respondents had received as many as seventeen complaints from students levelling serious allegations of sexual harassment against the appellant. But that would not be a ground to give a complete go-by to the procedural fairness of the inquiry required to be conducted, more so when the inquiry could lead to imposition of major penalty proceedings. When the legitimacy of the decision taken is dependent on the fairness of the process and the process adopted itself became questionable, then the decision arrived at cannot withstand judicial scrutiny and is wide open to interference. It is not without reason that it is said that a fair procedure alone can guarantee a fair outcome. In this case, the anxiety of the Committee of being fair to the victims of sexual harassment, has ended up causing them greater harm.

82. This Court is, therefore, of the opinion that the proceedings conducted by the Committee with effect from the month of May 2009, fell short of the "as far as practicable" norm prescribed in the relevant Rules. The discretion vested in the Committee for conducting the inquiry has been exercised improperly, defying the principles of natural justice. As a consequence thereof, the impugned judgment [Aureliano Fernandes v. State of Goa, 2012 SCC OnLine Bom 1920] upholding the decision taken by the EC of terminating the services of the appellant, duly endorsed by the appellate authority cannot be sustained and is accordingly quashed and set aside with the following directions:

82.1. The matter is remanded back to the Complaints Committee to take up the inquiry proceeding as they stood on 5-5-2009.

82.2. The Committee shall afford adequate opportunity to the appellant to defend himself.

82.3. The appellant shall not seek any adjournment of the proceedings.

82.4. A Report shall be submitted by the Committee to the disciplinary authority for appropriate orders.

82.5. Having regard to the long passage of time, the respondents are directed to complete the entire process within three months from the first date of hearing fixed by the Committee.

82.6. The procedure to be followed by the Committee and the disciplinary authority shall be guided by the principles of natural justice.

82.7. The Rules applied will be as were applicable at the relevant point of time.

82.8. The decision taken by the Committee and the disciplinary authority shall be purely on merits and in accordance with law.

82.9. The appellant will not be entitled to claim immediate reinstatement or back wages till the inquiry is completed and a decision is taken by the disciplinary authority.

**17.** The Calcutta High Court in ***Institute of Hotel Management, Catering Technology and Applied Nutrition & Ors. Vs. Suddhasil Dey & Anr., 2020 SCC Online Cal 3320,*** as has been referred by the Appellate Authority in the impugned order, have stated as follows:-

40. It is trite that the intention of the legislature is primarily to be discovered from the language used, which means that attention should be paid to what has been said and also to what has not been said. Here, the intention of the legislature, when examined in the light of guidance provided above by the Supreme Court, does not lead us to the conclusion that the scheme of the 2013 Act or the rules framed thereunder in any manner prohibits cross-examination of a complainant or her witnesses before the ICC by the respondent in his presence. Cross-examination through a prepared questionnaire may not in all cases serve the purpose of an effective cross-examination. At

times, the next question to be put to a witness could depend on the answer to the previous question. When the legislative intent behind enacting a particular provision is clear on a literal interpretation of the statute and the result is not absurd, it would be inadvisable to substitute by judicial-wisdom of what the law should have been and how it should be applied.

41. We repeat, we have not been shown from the 2013 Act or the 2013 Rules that a respondent to a complaint of sexual harassment at the workplace, which is under inquiry, has no right to cross-examine a complainant. Cross-examination of the complainant by the respondent not having been excluded by express provision or by necessary implication, the right of cross-examination has to be read into the 2013 Act and the 2013 Rules. It is difficult to conceive that an inquiry held by the ICC can pass the test of judicial scrutiny and be held to be valid without an opportunity of cross-examination being extended to the respondent. Law relating to inquiries/trials against delinquent/accused in proceedings, ˜ departmental or criminal ˜ invariably recognizes the right of cross-examination as a basic right of a fair hearing. Failure to extend opportunity of cross-examination in course of an inquiry/trial could legitimately give rise to a grievance at the instance of the delinquent/accused of being denied reasonable opportunity of defence, which is so very fundamental in relation to proceedings which have the potential of depriving such delinquent/accused of his valuable right under Article 21 of the Constitution.

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48. Even if we discount the two (2) grounds on which the proceedings before the ICC stood vitiated, i. e., non-supply of copies of the complaints and failure to permit cross-examination, the ground on which the challenge of Mr. Dey succeeded before the tribunal is sound and we hold the judgment and order of the tribunal unexceptionable. There can be no doubt that Mr. Dey's disciplinary authority (the Board of Governors) was the sole judge of facts. Having looked at the inquiry report dated March 26, 2015, the Board of Governors had decided not to agree with the inquiry report and resolved that the ICC, on remand, may conduct a further enquiry. The ICC initially dillydallied by raising frivolous pleas, one of which was that there was

a pending writ petition before this Court at the instance of Mr. Dey. The Law Officer in the Tourism Department of the Government of West Bengal was right in observing that no order of stay being operative, there was no bar for the ICC to proceed to hold further inquiry by way of collection of evidence from the complainants. Admittedly, no further enquiry was conducted by the ICC and it proceeded to furnish its subsequent inquiry report, sometime in April, 2016, enclosing therewith the complaints of the complainants and giving its reasons as to why the allegations against Mr. Dey had been found to have merit. We agree with Mr. Datta that in terms of rule 15 of the CCS (CCA) Rules, further inquiry ought to have been conducted by the ICC in terms of the decision of the Board of Governors dated December 28, 2015; even if no further enquiry were or required to be conducted, Mr. Dey had the right to receive copy of the subsequent inquiry report and that the Board of Governors, without furnishing copy of the subsequent report of the ICC to Mr. Dey, could not have straight away determine that his guilt having been proved, he deserved an order of dismissal together with launching of prosecution. Neither the 2013 Act nor the 2013 Rules speak of dispensation of the requirement of furnishing a copy of the inquiry report to the respondent, prior to disciplinary action being taken. In such view of the matter, there has been an egregious failure on the part of the Board of Governors of the institute to render justice to Mr. Dey. We, thus, share the concern expressed by the tribunal.

49. The contention on behalf of the petitioners before the tribunal that the original application was hit by the principle of res judicata, we are inclined to believe, was one raised in desperation. There are two reasons why such contention should fail. First, the writ petition that Mr. Dey had presented before this Court challenging initiation of the proceedings was not decided on merits; the writ petition stood withdrawn by him. The principle of res judicata is not attracted if issues are not decided and there is no discussion or finding rendered by the Court on the same subject matter. Secondly, since the tribunal was the sole repository of jurisdiction, as the court of first instance, to entertain a claim from the side of Mr. Dey in relation to the inquiry that had commenced under the 2013 Act, the learned Judge of the writ court had no jurisdiction to entertain the writ petition. Assumption of jurisdiction by the writ court was erroneous and any order passed in such writ proceedings, suffering from inherent lack of jurisdiction,

being void, does not bind any party. In such a situation too, the principle of res judicata is not attracted.

**18.** The Kerala High Court in ***Thomas Antony vs. State of Kerala., 2025 SCC Online Ker 1762,*** have stated as follows:-

> **7.** However, before permitting the delinquent to cross-examine the victim of the sexual harassment, the Committee must ensure her capability to depose before them fearlessly and without any intimidation. This Court in *Sibu L.S.* v. *Air India Ltd. New Delhi*(supra) enunciated the procedure to be followed in such matters, and in particular, the manner in which the principles of natural justice have to be secured in the enquiry conducted in a complaint relating to the sexual harassment. It reads:
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> > "The fundamental principles relating to the principles of natural justice is that when a prejudicial statements are made, the same shall not be used against any person without giving him an opportunity to correct and contradict. In sexual harassment complaint, sometimes the complainant may not have courage to depose all that has happened to her at the work place. There may be an atmosphere restraining free expression of victim's grievance before the Committee. The privacy and secrecy of such victims 'also required to be protected. It is to be noted that verbal cross examination is not the sole criteria to controvert or contradict any statement given by the aggrieved before any authority. Primarily, in a sexual harassment complaint, the committee has to verify and analyse the capability of the aggrieved to depose before them fearlessly without any intimidation. If the Committee is of the view that the aggrieved is a feeble and cannot withstand any cross examination, the Committee can adopt such other measures to ensure that the witnesses statement is contradicted or corrected by the delinquent in other manner. The fair opportunity, therefore, has to be understood in the context of atmosphere of free expression of grievance. If the Committee is of the view that the witness or complainant can freely depose without any fear, certainly, the delinquent can be permitted to have verbal cross examination of such witnesses. In cases,

> where the Committee is of the view that the complainant is not in a position to express freely, the Committee can adopt such other method permitting the delinquent to contradict and correct either by providing statement to the delinquent and soliciting his objections to such statement."
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> From the above principles it is clear that, the mere fact that the delinquent was not permitted to verbally cross-examine the victim, it cannot be said that the enquiry is vitiated.

**19.** In the case at hand, the Appellate Authority is of the opinion that in the Constitution of ICC by the Head Office, no member belonged to the local office at Bhubaneswar and none of the members were conversant with Odia language and so procedural infirmity is found in the enquiry proceeding. It has been further stated that the Members of the ICC have not recorded any reason as to why it would not be feasible to allow the recording of the statement of the victim in presence of the Respondent and as to why he was denied the opportunity of cross-examining the aggrieved woman. It has been further stated that no reason has been assigned to drop those witnesses from the list of the Respondent for their non-examination. Keeping in view all such infirmities, the matter was remanded to the ICC for fresh enquiry.

**20.** So far as the constitution of the ICC at Mumbai Head Office is concerned the same is seen against the provisions contained

in Section 4 of the PoSH Act. As per said provision, every employer is required to constitute the ICC at all such places where the offices or administrative units of the work place are located, even at divisional or sub-divisional level. In the present case, it is not that no ICC was operating at Bhubaneswar at the relevant time, but it has been explained on behalf of the Petitioners that since the Presiding Officer of the local ICC was in maternity leave, the enquiry was taken up by the ICC at Mumbai. Though some justification is seen in said explanation of the employer, but the same is not found sufficient on the part of the Head Office not to include other local Members of ICC at Bhubaneswar for conducting the enquiry against the Respondent. Apart from this, the other aspect is with regard to interpretation of Odia language stated by the aggrieved woman and the statements of different witnesses of course.

**21.** It is true that the copies of depositions of the aggrieved woman and her witnesses were not supplied to the Respondent. As stated by the employer-Petitioners, gist of the same was given to the Respondent only. In addition of this, the major infraction, as alleged by the Respondent is depriving him from the opportunity of cross-examining the aggrieved woman and her witnesses. This is a major

aspect of law in conducting the enquiry against the Respondent as alleged by him. It needs to be stated here that, Section 11 of the PoSH Act read with Rule 7 of the PoSH Rules mandates the ICC to make enquiry into the complaint in accordance with the principles of natural justice, and in addition to this the provisions of Section 11 requires that the enquiry into the complaint to be done in accordance with the provisions of Service Rules applicable to the Respondent and where no such Rules exists, in such manner as may be prescribed. Section 11 further provides that where both parties are employees they should be given an opportunity being heard in course of the enquiry including that the copy of the findings shall be made available to both parties enabling them to make representation against the findings before the Committee.

It is well recognized that the principles of natural justice require the decision is to be made fairly and impartially. Where substantial right of a party is considerably affected, the principles of natural justice are attracted with its full effect applicable to judicial, quasi-judicial and administrative enquiries. All enquiries must be held in good faith without any bias, arbitrariness and unreasonableness. The mandate to follow the procedural formalities of natural justice

has been well engrafted in the statutory scheme of the PoSH Act and Rules, aimed to play fair and reasonableness independent of the outcome of the enquiry. The principles of natural justice breaths reasonableness into the procedure because it guarantees a reasonable procedure as a part of fundamental rights entrenched in Article 14, 19 and 21 of the Constitution of India. The facets of *Audi alteram partem* encompasses the components of notice, contents of notice, statements of imputations and other materials available on record for perusal, and situational modification to this is permissible to suit the needs of situation to such extent that the core principle of natural justice is not abrogated. As part of right to fair and reasonable hearing, the opportunity to cross-examine should be granted to opponent in order to filter out the falsehood and exaggerations from the statement. To test worthiness and truthfulness of the statement of a witness, weeding out falsehood, it is necessary on the part of the witness to pass the test of cross-examination. Thus, as a matter of reasonableness the Respondent is required to be granted with the opportunity of cross-examination of the witnesses speaking imputations against him.

**22.** Here is a case where the Respondent was not only deprived of his right to cross-examine the witnesses speaking against him but

he was also deprived of getting copies of those documents and materials used by the ICC against him. As such, the Appellate Authority is found correct in sending back the matter to the ICC for fresh enquiry following due and fair procedure as enacted under the PoSH Act and Rules. The Appellate Authority has specifically pointed out the reasons for deprivation of fair opportunity of hearing on the part of the Respondent and the same in the present facts of the case cannot be said as infirm with the requirements of principles of natural justice, particularly in absence of any reason assigned by the ICC to the effect of depriving such opportunity to the Respondent.

**23.** This Court is thus agreed with the direction of the learned Appellate Authority. Without finding any infirmity in the findings and directions of the Appellate Authority, the writ petition is dismissed. The impugned order at Annexure-7 is accordingly affirmed.

***(B.P. Routray)***
***Judge***

*S.Das,Sr.Steno*