VERDICTUM.IN

FORM NO. J (2)

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

Present:
THE HON'BLE JUSTICE REETOBROTO KUMAR MITRA

WPA/27187/2026

KAJAL CHOUBEY
Vs.
THE STATE OF WEST BENGAL & ORS.

For the Petitioner	:	Mr. Goutam Pathak Banerjee, Advocate Mr. Manujendra narayan Roy, Advocate Mr. Gourav Haldar, Advocate
For the State	:	Mr. Piush Chaturvedi, Sr. Advocate Mr. Tarun Kumar Jana, Advocate
For Respondent No. 4	:	Mr. Partha Sarathi Bhattacharya, Sr. Advocate Mr. Raju Bhattacharya, Advocate Mr. Soumen Chatterjee, Advocate
Heard on	:	November 23, 2026.
Judgment on	:	November 23, 2026.

THE COURT:

1. The writ-petition is taken up on merits, as it is urged by Mr. Chaturvedi, learned Sr. Advocate appearing for the State and



Mr. Bhattacharya, learned Sr. Advocate appearing for the respondent no. 4. submit that they do not wish to use any affidavit as only a point of law is to be decided, the facts being more or less admitted.

2. The petitioner is aggrieved that the proceedings against him have not been conducted in accordance with the due process of law and has prayed for a stay of further proceedings against him.

3. Mr. Roy, learned Advocate appearing for the petitioner, has raised three principal issues, which are enumerated as under:

a) *The corum of the Internal Committee is de hors the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as "the said Act"), as stipulated in Section 4(2) thereof. There is a deficiency in the corum inasmuch as the President of the Internal Complaints Committee (hereinafter referred to as "the ICC") has to be a lady. The present corum, not having a lady at its helm of affairs, is clearly vitiated.*

b) *The jurisdictional deficiency of the ICC stems from the fact that, in its recommendation, the ICC has proceeded to recommend punishment for the accused, the petitioner*

herein. The ICC has no jurisdiction to recommend such punishment.

c) *The entire process as stipulated under the said Act ought to have been completed within a period of 90 days as prescribed under Section 11(4) thereof.*

4. It is submitted that since there are three major deficiencies, any further proceedings initiated under the said Act against the petitioner ought to be stayed.

5. Mr. Chaturvedi, learned Sr. Advocate appearing for the State, has made the following submissions:

i) *Section 4(2) of the said Act stipulates three separate situations. The first is under normal circumstances, where a senior lady officer should head the ICC. The first proviso contemplates the second circumstance, where no senior lady official is available in that unit or department, in which event a similarly placed lady employee should be deputed from a separate unit of the same employer. The second proviso speaks of a third situation where a high-ranking lady official is not available in the department concerned, permitting such an officer to be deputed from another workplace or department or organisation of the same employer. According to him, in the present case, there is no such lady official available, on account whereof the second proviso comes into play and the concerned officer has been rightly deputed as the Chairperson of the ICC.*

ii) *The appointment of a male member in consonance with the second proviso to Section 4(2)(a) also finds support from Section 4(5) of the said Act, which refers to a male member for the purpose of removal from office. Thus, the Chairman/Presiding Officer being a male member is well within the scheme of the Act.*

iii) *The timeline of 90 days is not a mandatory direction but is absolutely directory in nature, keeping in line with the decision of the Hon'ble Supreme Court of India in* ***Kailash vs. Nankhu, reported in (2005) 4 SCC 480****.*

iv) *Reliance has also been placed on a decision of a Coordinate Bench of the Hon'ble High Court at Delhi reported in 2023 SCC Online Del 381, whereby reliance was placed on a decision of the Hon'ble High Court at Tripura in Vinay Kumar Rai vs. Union of India, reported in 2021 SCC Online Tri 482.*

v) *The afore-stated decisions clearly hold that Section 11(4) is not mandatory in nature, but directory, and that the avowed purpose is to fix timelines to put forth the seriousness of the matter and not to render a process nugatory if the timelines are overrun*.

6. Mr. Bhattacharya, learned Senior Advocate appearing for the complainant, adopts the submissions of Mr. Chaturvedi and further places reliance on the decision of the Hon'ble High Court at Tripura with respect to the interpretation of Section 11(4) of the said Act.

7. I have heard the learned Advocates for the parties and considered the decisions relied upon by them.

8. The allegations covered by the said Act are of an extremely serious and grave nature. Moreso, in this particular case, the allegations are not merely grave and severe, but are of a nature requiring a detailed investigation involving several documents and other exhibits produced by both parties. This entire process of investigation by the ICC could not have been completed within a period of 90 days. The question, therefore, arises whether in a long-drawn, difficult, and circuitous process such as the present one, the timelines should be construed in so strict a manner that any enlargement thereof would vitiate the entire proceeding.

9. To ascertain and arrive at a finding on this issue, it is essential to examine the reason for prescribing such timelines. Admittedly, the timeline prescribed does not come with a default clause. It is a mere indicator that the process should be completed within a period of 90 days. In the absence of any default clause, an interpretation that any enlargement of such timelines would vitiate the entire process, simply because the

period of 90 days has not been adhered to, would amount to interpreting the entire statute in a manner not in consonance with the purpose of the Act. The object of the Act is to provide protection to women against harassment at workplace and for prevention and redressal of complaints of sexual harassment and to stop any sort of harassment of a lady employee at the workplace. For no fault of an employee who complains of harassment, holding the proceedings to be vitiated merely because the ICC has overshot the prescribed timelines would result in giving an interpretation never intended under the Act.

10. As held by the Hon'ble High Court at Tripura and reiterated by the Hon'ble High Court at Delhi, such an interpretation would be completely illogical. The entire purpose of providing timelines is to ensure that a complaint of this nature (sexual harassment) is treated with utmost seriousness and that the gravity of the situation is given due credence.

11. I, therefore, hold that the timeline prescribed under Section 11(4) is not mandatory in nature, but directory. Furthermore, the culmination of this inquiry by the ICC is a mere

recommendation; it does not impede or impinge upon the rights of any of the parties.

12. The timelines have been stipulated to ensure that a complaint of sexual harassment is dealt with in a serious manner and with utmost expedition. It is not for the accused to derail the report of the ICC on the basis that it went beyond the prescribed timelines.

13. In any event, the petitioner, having participated in the entire investigation, having presented evidence and having submitted to the jurisdiction of the ICC, cannot be heard at this stage to say that the ICC was not properly constituted.

14. The ICC, in this particular case, may have overshot its jurisdiction by also recommending a punishment. Had the recommendation been accepted in its entirety, it would surely have given rise to an infraction of the petitioner's rights. However, that is not the case here. Although the recommendation of the ICC has been accepted by the Disciplinary Authority, clearly the punishment as recommended by the ICC has not been accepted. The initiation of disciplinary proceedings against the accused

petitioner is itself reflective of the fact that the punishment recommended by the ICC has been rejected. The recommendation has been acted upon *de hors* the recommendation of punishment, which is why the Disciplinary Authority has embarked on a disciplinary proceeding itself. The moment the Disciplinary Authority embarks on a proceeding of its own, the recommendation for punishment by the ICC loses all force and becomes wholly redundant. It remains a mere observation that has fallen from favour, without in any manner having any force or effect.

15. With regard to the constitution of the Committee, it cannot be said to be *de hors* the provisions of the said Act, as Section 4(2)(a) provides for the mode and manner of appointment of the Chairperson/Presiding Officer of the ICC.

16. It is true that the first preference is for a senior lady officer to head the Committee, but this is not the only preference. The second proviso to Section 4(2)(a) makes it clear that in the event such a senior lady officer is not available with the employer, a male incumbent can also be appointed.

17. In fact, while dealing with the removal of the Presiding Officer, a direct reference is made to a male member under Section 4(5) of the said Act.

18. Thus, it cannot be said that the constitution of the ICC was bad, or that the ICC acted with any jurisdictional deficiency, or that the enlarged timelines of the recommendation made by it to the Disciplinary Authority would vitiate the entire proceeding before the Disciplinary Authority.

19. In view of the aforesaid discussion, the following findings are inevitable:-

a. The ICC had been duly constituted, even though the same was headed by a male member rather than a lady official, as there were no such official available with the department. This is in consonance with the second proviso to Section 4(2) of the Act. Thus, there is no deficiency in the quorum.

b. The recommendation of the ICC has effect only insofar as the initiation of proceedings is concerned. The redundant part of the recommendation relating to punishment to be meted out to the petitioner herein, as the accused, has been rendered nugatory as the disciplinary authority has itself initiated

proceedings against the petitioner. Thus, the redundant part of the recommendation has been completely ignored and has not been given any effect.

c. The timeline stipulated in Section 11(4) of the Act which is procedural aspect, merely directory in nature and not mandatory, in the absence of any default mechanism thereof. The timelines have been fixed to elicit a quick response to a complaint of sexual harassment and not to enable an accused person to take advantage of the same and seek termination of the proceeding on the ground of any proceedings beyond the timelines.

20. The accused, having participated in the process, is estopped by the principles of waiver, acquiescence, and estoppel from contending that the enlarged timelines have vitiated the proceeding or that the quorum of the ICC was deficient.

21. Since the matter has been heard at length and decided on all issues, in view of the afore-stated findings and conclusions, the writ petition is **dismissed**.

22. There shall be no order as to costs.



23. Urgent Photostat Certified Copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Reetobroto Kumar Mitra, J.)