

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 21.12.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.No.11764 of 2023
and WMP.Nos.27738, 11647, 25870,
27732, 12714, 22486 of 2023

- 1.XYZ-1
- 2.XYZ-2
- 3.XYZ-3
- 4.XYZ-4
- 5.XYZ-5
- 6.XYZ-6
- 7.XYZ-7

... Petitioners

Vs

1.Kalakshetra Foundation,
Rep. by its Chairperson,
Kalakshetra Rd,
Thiruvanmaiur,
Chennai-600 004.

2.Government of India,
Rep. by its Secretary,
Ministry of Culture,
Room No.501, 'C' Wing,
Shastri Bhavan,
New Delhi-110 015.



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3. Government of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St George,
Chennai-600 021.

4. Government of India,
Rep. by its Secretary,
Ministry of Education,
Dept. of School education and Literacy,
109-C, Shastri Bhavan,
New Delhi-110 001.

5. Tamil Nadu State Commission for Women,
Rep. by its Chairperson,
Kalasa Mahal, 1st Floor, Chepauk,
Chennai-600 005

6. Revathi Ramachandran,
A3, Sriram Apartments,
196 A, St. Marys Road,
Abiramapuram
Chennai-600 018

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 1st respondent to formulate a gender neutral policy to prevent sexual and/ or any other form of harassment of its students and create a support mechanism in keeping with the Protection of Children from Sexual Offences Act, 2012, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the Tamil Nadu Prohibition of Harassment of Woman Act, 1998, University Grants Commission (Prevention, prohibition and redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions)



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Regulations, 2015 and the various guidelines of the Central and State Governments, the National Commission for Children, the Central Civil Services Rules and to take action on the complaints of harassments received from the students either directly or through the 5th respondent Commission

- (i) by holding an enquiry through a Gender Sensitive Committee of which students and parents are also members, and
- (ii) reporting the complaints to the police for further investigation and prosecution under the Indian Penal code and the aforesaid statutes, and
- (iii) take disciplinary action against the perpetrators as per the relevant Conduct and Discipline Rules and Policies.

For Petitioners : Ms.R.Vaigai, Senior Counsel
for Ms.Anna Mathew

For Respondents : Mr.AR.L.Sundaresan
Additional Solicitor General
Assisted by
Mr.V.Chandrasekaran (for R1)
Senior Panel Counsel
and
Ms.M.E.Saraswathy (for R2 and R4)

Mr.Silambannan,
Additional Advocate General
assisted by
Mr.M.Rajendran (for R3)
Additional Government Pleader

Mr.David Sunder Singh (for R5)

Mr.Ragesh Bhagavath (for R6)



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ORDER

This Writ Petition has been filed by 7 petitioners who seek a mandamus directing the first respondent, being Kalakshetra Foundation/R1 to formulate a Gender Neutral Policy to prevent sexual and/or any other form of harassment of its students and create a support mechanism in keeping with the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO'), the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the Tamil Nadu Prohibition of Harassment of Woman Act, 1998 (in short 'POSH'), University Grants Commission (Prevention, prohibition and redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015, Guidelines issued by the Central and State Governments, the National Commission for Children and the Central Civil Services Rules in order that complaints of harassment received from the students may be appropriately and effectively resolved.

2. They seek inter alia that a transparent and democratic procedure be followed in the adjudication of the complaints in aid of which (i) an enquiry be held through a Gender Sensitive Committee of which students and parents are also members, (ii) complaints be reported to the police for further investigation



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and prosecution under relevant penal Statutes and (iii) disciplinary action be taken as against the perpetrators as per the relevant Rules and Policies.

3. The petitioners have not chosen to disclose their identity. The array of respondents includes as R2 – Secretary, Ministry of Culture, GOI, R3- Secretary, Department of School Education, Government of Tamil Nadu, R4- Secretary, Ministry of Education, GOI, R5-Chairperson, Tamil Nadu State Commission for Women and R6- then Director of Kalakshetra Foundation.

4. Kalakshetra is a hallowed institution of art and culture, revered not just in the Country but worldwide. It was set up in the year 1936 along with the founding of the International Centre for Arts by Rukmini Arundale and George Arundale with the support of Annie Besant and located in the Theosophical Society campus in Adyar, spread over around 100 acres of land.

5. In order to better regulate the activities of Kalakshetra dance school, the Kalakshetra Foundation Act was passed in 1993, the Central Government recognising it as an Institution of National importance. All rights, title and interests in Kalakshetra thus vest in the Foundation, which is headed by the Governing Board comprising a Chairperson and 12 members.

6. The composition of the members includes officers of the Central and State Governments, eminent artistes or patrons of art and culture and the



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Director of the Kalakshetra Foundation, who is an Ex-officio member of the Governing Board. The Director is a full time employee.

7. The Foundation houses the

- (i) Rukmini Devi College of Fine Arts (RDCFA), which offers Diplomas and Post Diplomas in music, dance and fine arts. The college presently has a student strength of around 250, regular teaching staffs, guest faculty and administrative staff. The petitioners are all students in the RDCFA and allege harassment in various forms, including sexual, by the faculty in the college.
- (ii) Besant Arundale Senior Secondary School (BASS), which is affiliated to the Central Board of Secondary Education, started in the year 1973 and presently with a student strength of 900. This school has 13 regular teaching staff, 3 non-teaching staff, 25 adhoc teachers and 5 visiting teachers.
- (iii) Besant Theosophical Higher Secondary School (BTHS), affiliated to the Tamil Nadu State Board, that has 567 students between classes 1 to 10 and 122 students in the Higher Secondary section. It has 18 teaching staff and 2 non-teaching staff for classes 1 to 10



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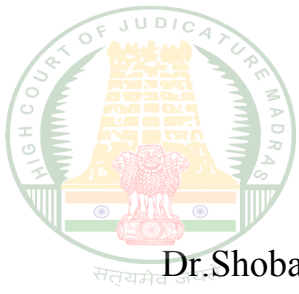


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and 23 teaching staff and 4 non-teaching staff for the Higher Secondary section.

8. The petitioners state that their complaints of harassment, both sexual and otherwise and discrimination in several forms, had not been addressed in an appropriate manner. According to them, there has been an unfortunate and dangerous break-down of the system in Kalakshetra. Instead of the support and assistance that they had legitimately expected, they were met with more harassment at the hands of the then Director. This had led to wide spread protests garnering significant media attention. As a result of the furore, members of the Governing Board had met the students on 31.03.2023 requesting them to call off their protests and assuring them of appropriate action.

9. The members of the National as well as State Commission for Women had also met the petitioners and the students in the campus on the same day. It was at that time that the abject lack of an effective policy to deal with harassment including sexual harassment, was acutely felt. An Independent Committee (Committee) was constituted comprising of Justice K.Kannan (Chairman), Ms.Lethika Saran, former Director General of Police and



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Dr.Shobana Varthaman (Members) to look into the issues raised by the students and submit a report with recommendations.

10. While the report of the Committee was awaited, the petitioners parallelly approached this Court by institution of the present Writ Petition on 13.04.2023. The trajectory that the matter has taken between the first hearing conducted on 17.04.2023 and today, 21.12.2023, when the matter has been disposed has been smooth and encouraging. The approach of the respondents, at least after 30.10.2023 when the matters were listed on my docket, was geared towards alleviating the concerns of the students.

11.The Court thus does not see any necessity, at this juncture, to re-visit the details of the harassment alleged by the petitioners being sufficiently confident that suitable remedial measures are in place internally to deal with the same.

12. A draft of the Gender Neutral Policy for Prevention, Prohibition and Redressal of Sexual Harassment Complaints has been circulated at the instance of the petitioners and has been exchanged, debated and discussed with the respondents. During the course of the hearings, it took shape into a Gender Neutral Policy that both the sides approved. There were minute nuances that



were addressed in the course of the hearings and resolved to the satisfaction of the parties.

13. In order that those deliberations are also part of the record, this Court extracts order dated 10.11.2023, wherein the constitution of the Internal Complaints Committee of R1 was discussed.

The re-constituted ICC, having regard to the representation made by the various students as well as order passed by this Court on 13.10.2023, is as follows:-

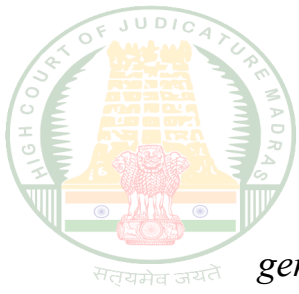
Constitution of ICC :

1	<i>Smt.Priyanka Chandra, Director (C&M), Ministry of Culture (Presiding Officer u/s 4(2)(a) of POSH Act, 2013)</i>
2	<i>Ms.Sabitha, IAS (Retd) (Member, u/s. 4(2)(c) of POSH Act, 2013);</i>
3	<i>Ms.L.Maithili Mehta, Advocate;</i>
4*	<i>To be replaced</i>
5*	<i>To be replaced</i>
6	<i>Ms.Luni Bangsia, Faculty Member, (Member u/s 4(2)(b) of POSH Act, 2013);</i>
7	<i>Smt.R.Shanthi, PGT, BASS (Member u/s 4(2)(b) of POSH Act, 2013);</i>

**It is suggested that these two slots may be substituted by a person of eminence and accomplishment drawn from the field of music/dance/arts.*

2. The constitution as on date does not comprise a male member. This aspect of the matter is necessarily to be looked into.

3. Mr.Sundaresan, learned Additional Solicitor General would agree that the respondents will re-visit the proposed



gender policy in light of the suggestions made by the petitioner and incorporating the same as far as possible.

4. Let a copy of the revised policy be circulated to the petitioners, at least by 21.11.2023 for their perusal.

5. List on 24.11.2023.

14. The lacunae caused by the absence of a male member and the suggestions noted in order dated 10.11.2023 were addressed and recorded under order dated 24.11.2023 in the following terms:

Read this order in conjunction with and in continuation of order dated 10.11.2023 and previous orders.

2. Mr.AR.L.Sundaresan, learned Additional Solicitor General states that as regards the observation made at paragraph 2 of order dated 10.11.2023 Dr.Gopal Jayaraman, Musician (Vocalist), presently holding the post of Regional Director of Indira Gandhi National College of Arts, Puducherry has been appointed.

3. As regards the revision of the policy, suggestions have been made by the petitioners and it is the say of the respondents that those suggestions, to the extent possible, have been incorporated and the revised policy has been circulated to the petitioners.

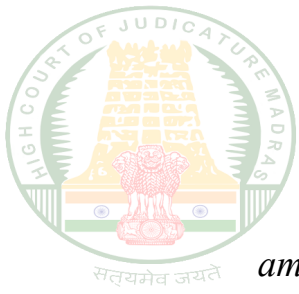
4. Petitioners seek some time to peruse the same and revert. Ms.Vaigai, learned Senior Counsel is stated to be unwell today. For this reason as well, the petitioners seek some time.

5. List on 08.12.2023.

15. On 08.12.2023, the Court has recorded the following:

Both learned counsel would submit that the policy is under finalization.

2. Petitioner expresses satisfaction with the way matters are moving forward and conveys to the Court that there is an



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amicable atmosphere prevalent that fosters the exchange of ideas in regard to the finalization of the Policy.

3. The Court is happy to hear this and records appreciation of all the parties involved in this endeavor.

4. List on 18.12.2023 with the fond hope that the finalized policy will be handed over to the Court on that date.

16. When the matter is taken up today (21.12.2023), the parties confirm the finalisation of the Gender Neutral Policy for Prevention, Prohibition and Redressal of Sexual Harassment Complaints (in short 'Policy'). The policy shall be uploaded on the website of Kalakshetra and prominently displayed in appropriate places in the campus. This Writ Petition could well be closed now. However, pending this Writ Petition, the following Miscellaneous Petitions have been filed that would also have to be dealt with appropriately.

17. WMP No.25870 of 2023 has been filed seeking a direction to R1 to produce the final report dated 07.08.2023 of the independent inquiry committee presided over by Justice K.Kannan. Learned Additional Solicitor General was requested to furnish a copy of the report for a perusal by the Court. Upon perusal, some of the suggestions made under that report are reiterated as part of this order in the following paragraphs

18. The Report of the Independent Committee is graphic in regard to the nature of sexual harassment that has been alleged. The allegations are



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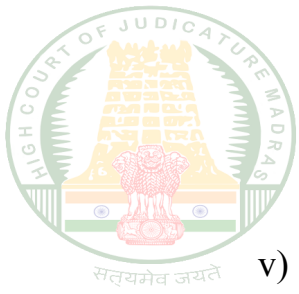
distasteful to say the least and extremely disturbing. The Committee has made a series of recommendations, and some are reiterated in this order for urgent consideration by the management of Kalakshetra:

i) A total ban on the entry of students into the teachers' quarters has been advocated. The only exception will be social occasions during community celebrations.

ii) As a portal of higher learning, the emphasis should be on deep learning and perfection of the Art form before the students embarks on public performances. The obsession for performance must be curtailed in preference to the student polishing the art form and one's exposition of the same. As a consequence, students may be dissuaded from participating from inland and global tours for public performances.

iii) Formulation of a students redressal mechanism has been suggested which, with the formulation of the present policy, is obviated.

iv) Automation of office administration including maintenance of records such as attendance registers and recording of entry and exit of all staff and faculty, such that the premises of Kalakshetra is rendered safe and secure.



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v) Selecting able administrators with efficient HR management and organisational skills as primary skill sets. They may additionally, profess interest in the performing arts.

vi) The practice of calling upon repertory artists to step in for a teacher who is absent should be eliminated. A clear demarcation must be drawn between the repertory and its artists on the one hand, and the academic section of the college on the other. Only post graduate students and interns must assist in the academic curriculum.

vii) The code against teaching and non-teaching staff from establishing and running dance or music schools must be enforced strictly.

19. The conclusion of the Independent Committee in regard to the allegations of sexual harassment and the recommendations relating to removal of a member of the faculty must be carried out on priority and forthwith, if not already done.

With this, WMP No.25870 of 2023 stands closed.

20. WMP Nos.22486 and 12714 of 2023 have been filed by individuals seeking to implead themselves in the Writ Petitions as respondents. The proposed respondent in W.M.P.No.12714 of 2023 seeks a direction to the



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Complaints Committee to enquire into his complaint dated 29.03.2023 as against various individuals.

21. In light of the present order and the fact that the Policy is now in place, there is no necessity for any direction to be issued as the proposed respondent in W.M.P.No.12714 of 2023 may well approach the authority named in the Policy for redressal.

With this, WMP No.12714 of 2023 stands closed.

22. As far as WMP No.22486 of 2023 is concerned, the proposed respondent airs her grievance about termination of her services from BASS. This is not the proper forum to consider such a grievance which may be pursued by this petitioner before the appropriate forum and in accordance with law.

With this, WMP No.22486 of 2023 stands closed.

23. WMP No.27738 of 2023 has been filed seeking interim directions for inspection of R1 in keeping with (i) manual on safety and Security of children in Schools issued by the National commission for Protection of Child Rights (NCPCR) . (ii) G.O. (1D) No.83 dated 17 /06/2021 issued by 3rd respondent (iii) Circular No.19/2017 dated 12/09/2017 issued by 4th respondent (iv) circular No.05 /2018 dated 27/03/2018 issued by the 4th



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respondent and (v) Handbook on Implementation of POCSO Act 2012 for School Management and Staff issued by National Institute of Public Co-operation and Child Development and to assess and file a report a report regarding the compliance / non - compliance of the said government notifications, circulars and guidelines.

24. The Policy formulated now is specific to the RDCFA and the adults in the two schools, but would not comprehensively address and cover the interests of the students in the schools. The petitioners have made reference to specific safeguards and measures that have to be put in place while framing a sexual harassment policy for schools that would necessarily and specifically have to address the interests of minors.

25. This Court is conscious of, and has impressed upon the parties that this is not a public interest litigation. However, bearing in mind the efforts that have been taken to formulate the policy for the RDCFA, all parties are keen to continue the present momentum and undertake the exercise of finalising the policy for the schools as well, at the earliest. Their interest is well taken. Let this policy be drafted, taking note of the applicable provisions in the Protection of Children from Sexual Offences Act, 2012 as well as other applicable



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Regulations or Guidelines, expeditiously, and within six (6) months from date of receipt of this order.

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With this WMP No.27738 of 2023 stands closed.

26. In WMP No.27732 of 2023, perhaps frustrated with the fact that an Institution of the stature of Kalakshetra lags behind when it comes to progress on modern and equitable measures of functioning, the petitioner has sought a declaration that the inaction of the respondents to frame a proper sexual harassment policy is illegal and unconstitutional. They have sought various consequential directions in this regard.

27. The allegations of omission and commission put forth by the petitioners shall now be enquired into expeditiously and matters taken to a logical conclusion. However, and undoubtedly, it is a blight on Kalakshetra that such allegations were being made for long by the students without being effectively and promptly addressed.

28. The affidavit filed in support of the Writ Petition waxes eloquent about Guru Shishya Parampara, as relevant to an Institution engaged in the teaching of fine arts such as the RDCFA as well as a more modern student-teacher relationship that is envisaged in educational institutions today. Whether traditional or modern, stakeholders in the education system are expected to



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adhere to expectations in regard to the demands of the system and how the same are to be met equitably and in keeping with societal norms.

29. The petitioners point out that equations within the educational system, both classical and modern, gravitate towards the teachers who form a power centre within the Institution. Invariably, unquestioning trust is reposed in the teacher by the student and if the present model of education is to succeed, the teacher must reciprocate and provide mentorship in full measure.

30. With the framing of the Policy, the situation happily stands remedied today, at least in part. I thus see no need for a declaration of the nature sought but caution the respondents to ensure that suitable measures are taken to frame the necessary sexual harassment policies for the school within the timelines that have been fixed supra.

31. The Writ Petition is disposed in terms of this order and connected Miscellaneous Petitions are all closed. No costs.

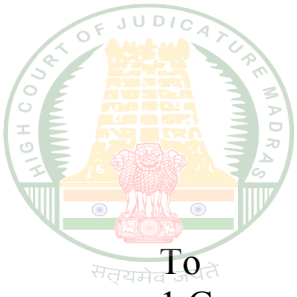
21.12.2023

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Index : Yes / No

Speaking Order/Non-speaking order

Neutral Citation : Yes/No



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