

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

WP(C).No. 25846 of 2015 (E)

PETITIONER:

**DR.KASTHURBA A.K., ASSOCIATE PROFESSOR,
DEPARTMENT OF ARCHITECTURE,
NATIONAL INSTITUTE OF TECHNOLOGY,
KOZHIKODE - 673 601.**

BY ADV. SRI.NIRMAL. S

RESPONDENT(S):

- 1. NATIONAL INSITUTE OF TECHNOLOGY,
REPRESENTED BY ITS DIRECTOR, NIT CAMPUS,
KOZHIKODE - 673 601.**
- 2. THE WOMEN'S COMPLAINT CELL (WCC),
REPRESENTED BY ITS CHAIRPERSON,
NATIIONAL INSTITUTE OF TECHNOLOGY,
NIT CAMPUS, KOZHIKODE - 673 601.**
- 3. DR.P.P.ANIL KUMAR, ASSOCIATE PROFESSOR,
NATIONAL INSTITUTE OF TECHNOLOGY,
NIT CAMPUS, KOZHIKODE - 673 601.**

***ADDL. R4 IMPEADED**

- 4. DR.INDIRA, CIVIL ENGINEERING DEPARTMENT,
NATIONAL INSITUTE OF TECHNOLOLGY, KOZHIKODE - 673 601.**

**ADDL. R4 IS IMPEADED AS PER ORDER DATED 15.09.2015
IN IA.13221/2015.**

**R1 & R2 BY SRI.MILLU DANDAPANI
R4 BY ADVS. SRI.A.JAYASANKAR
SRI.C.V.MANUVILSAN
SRI.MANU GOVIND
SRI.ASHWIN SETHUMADHAVAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 28-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1. TRUE COPY OF THE COMPLAINT DATED 26.12.2011.
- EXHIBIT P2. TRUE COPY OF THE JUDGMENT IN WPC NO.26773/2014
DATED 26.06.2015.
- EXHIBIT P3. TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE
1ST RESPONDENT DATED 21.07.2015.
- EXHIBIT P4. TRUE COPY OF THE CONSTITUTION OF THE 2ND RESPONDENT AS
PUBLISHED ON THE WEBSITE OF NIT.
- EXHIBIT P5. TRUE COPY OF THE ORDER APPOINTING DR.INDIRA AS THE
CHAIRMAN OF THE DOCTORAL COMMITTEE OF SHINE GEORGE
DATED 20.2.2015.
- EXHIBIT P6. TRUE COPY OF THE SUMMONS ISSUED BY THE 2ND RESPONDENT TO
THE PETITIONER DATED 3.9.2015.
- EXHIBIT P7. TRUE COPY OF THE COMPLAINT MADE BY ASSISTANT
PROF. SMT.SUSHAMA.
- EXHIBIT P8. TRUE COPY OF THE CONSTITUTION OF THE IWC OF IIM INDORE AS
PUBLISHED ON THE WEBSITE.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.MUHAMED MUSTAQUE, J.

W.P(C)No. 25846 of 2015

Dated this the 28th day of September, 2015

J U D G M E N T

Petitioner is working as an Associate Professor in the Department of Architecture in the National Institute of Technology, Kozhikode.

2. The petitioner raised a sexual harassment complaint against the third respondent. There was an initial report prepared on 3.6.2013 by the Enquiry Committee. This was challenged before this Court in WP(C) No.26773 of 2014. This Court set aside Ext.P6 enquiry report and directed the official respondents to afford a personal hearing to the petitioner on the basis of the complaint and complete the enquiry and file a report within a period of two months.

3. Petitioner's present grievance is that an external member shall be nominated as Chairman of Internal Complaints Committee being constituted under the Sexual Harassment of Women at Workplace

(Prevention, Prohibition and Redressal) Act, 2013. Petitioner made a request by Ext.P3. It is, on account of non-consideration of Ext.P3, the petitioner approached this Court.

4. It appears that a committee has been constituted. Fourth respondent is the Chairperson. Therefore, after filing the writ petition, the petitioner impleaded fourth respondent in the party array. Petitioner apprehends bias in this matter by constituting the additional fourth respondent as the chairperson.

5. The allegation of bias in the impleading petition is that the aggressor/the third respondent is having cordial relationship with the fourth respondent. It is also submitted that on account of personal acquaintance of the third respondent with the fourth respondent, it is likely to influence the outcome of the enquiry. Petitioner also relied on various judgments of the Honourable Supreme Court to substantiate her contention.

6. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 contemplates constitution of the committee. Section 4 reads as follows:-

“4. Constitution of Internal Complaints Committee.-- (1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the “Internal Complaints Committee”:

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.

(2) The Internal Committee shall consist of the following members to be nominated by the employer, namely:--

(a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:

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 organisation;

(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;

© one member from amongst non-governmental organisations 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 organisations 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 an inquiry into an offence under any law for the time being in force is pending against him; or

© he has been 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.”

The Internal Complaints Committee as contemplated under the Act itself shall consist of a Senior level woman employee in the

organisation, by nomination. It is apparent that any person, who may have employment, may have acquaintance with any other person in the organisation. The mere acquaintance of a person with another employee cannot be a reason to raise a plea of bias. The relation must be in such a position to influence the outcome of the proceedings. This Court, at this threshold, cannot decide as to whether the relationship would be capable to influence decision making process of a committee. It is only, after the probe is over, such influence of bias can be exposed. The constitution of committee itself by including a senior level woman employee itself would indicate that the legislation never intended to include external member as being part of the committee. Therefore, the authorities have acted upon according to the statutory provisions to nominate the fourth respondent. Therefore, there is no infirmity in the procedure of nominating the fourth respondent. If there is any specific incident of bias, the petitioner is free to bring to the notice of the first respondent, who may take

appropriate action on such complaint. It is also open for the first respondent to consider any request of the petitioner nominating any other Presiding Officer from other offices or administrative units of the workplace in terms of proviso to Section 4(2)(a) , if such request is made by the petitioner. However, this Court is not expressing anything in this matter. This is a matter, the first respondent would consider in appropriate circumstances considering the situation. Therefore, leaving open all issues in this writ petition regarding bias, with liberty to the petitioner, if she feels any bias at later stage, she has to avail appropriate remedy.

This writ petition is disposed of as above.

sd/-

A.MUHAMED MUSTAQUE,
Judge

MBS/

WP(C).NO.25846 OF 2015

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