

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on: August 07, 2015

+ LPA 311/2015 & C.M.No.9314/2015 (*stay*)

INDIAN INSTITUTE OF

TECHNOLOGY (IIT) KHARAGPUR

..... Appellant

Through: Mr.Maninder Singh, Sr.Adv. with
Mr.Anand Verma, Mr.Avnish Kr.Sharma, Adv.

Versus

CENTRAL VIGILANCE

COMMISSION (CVC) & ORS

..... Respondents

Through: Mr.R.V.Sinha, Adv. with Mr.A.S.Singh,
for R-1/CVC.

Mr.Anil Soni, Adv. with Mr.Naginder Benipal, Adv.
for R-2&3.

Mr.Pranav Sachdeva, Adv. with Ms.Neha Rathi, Adv.
for R-4.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

: **Ms.G.ROHINI, CHIEF JUSTICE**

1. Respondent No.4 in W.P.(C) No.2780/2012 (Indian Institute of Technology (IIT), Kharagpur) (hereinafter referred to as 'IIT Kharagpur') is the appellant before us. The appeal is preferred against the order dated 17.03.2015 whereunder the learned Single Judge allowed C.M.No.780/2015 filed by the writ petitioner seeking permission to raise additional grounds (specified in para-49 of the application) and also to insert an additional prayer in the writ petition.

2. The writ petitioner (arrayed as respondent No.4 in the present appeal), who is a Computer Science Professor in the Indian Institute of Technology

(IIT) Kharagpur, claims to be an RTI Activist and whistle blower. By order dated 13.05.2011 passed by IIT Kharagpur, the writ petitioner was placed under suspension with immediate effect pending disciplinary proceedings initiated against him alleging that he had deliberately tarnished the image of the Institute by making unsubstantiated allegations of mass copying in conduct of IIT Examinations.

3. The petitioner made representations before the respondents No.1 to 3 (Central Vigilance Commission & Others) alleging that he is being harassed, threatened and victimized by IIT Kharagpur since he made several complaints to Central Vigilance Commission (CVC) with regard to the irregularities committed by IIT Kharagpur in conducting Joint Entrance Examination (JEE) for admission in IITs and seeking protection from victimization. Alleging that the respondents No.1 to 3 failed to take any action, W.P.(C) No.2780/2012 is filed with a prayer to direct the CVC to act in terms of the Office Order No.33/5/2004 dated 17.05.2004 whereunder the resolution of the Government of India on Public Interest Disclosures and Protection of the Informer (whistle blower) was circulated and to direct the respondents No.1 to 3 to protect the petitioner from victimization by ensuring that no punitive action is taken for his act of whistle blowing.

4. Alongwith the writ petition he also filed CM No.5972/2012 seeking stay of operation of the order dated 13.05.2011. However, no such interim relief was granted and the application remained pending. Subsequently, the petitioner filed CM No.1705/2013 apprehending that the respondent would pass coercive order of dismissal and seeking stay of all further proceedings. By order dated 18.02.2013 the learned Single Judge directed that in case the disciplinary authority comes to a conclusion that findings of enquiry officer

merit acceptance, written communication should be sent to the Petitioner atleast one week before any action is taken. Thereafter by order dated 21.03.2013, the following directions were issued by the learned Single Judge:-

“I am informed by the learned counsel for respondent No.4 that the matter is now resting with the Board of Governors. A meeting is fixed for that purpose on 23.3.2013. I am also informed that the disciplinary authority has accepted the report of the enquiry officer.

The petitioner has been given notice to file a reply which the petitioner has filed pursuant to the notice issued by the Board of Governors.

It is made clear that while the Board of Governors of respondent No.4 may deliberate and consider the matter in issue and pass an order but they will not give the effect to the same till further orders of the Court.

The petitioner says that there is another aspect of the matter which requires consideration, which is, that respondent No.1 i.e. Central Vigilance Commission (CVC) has not considered the complaints, which the petitioner has filed with it.

Ms. Bhatia, who appears for respondent No.1, submits that the CVC is not presently considering the letters/communications sent by the petitioner as they are not in the proper format.

Mr. Sachdev, learned counsel for the petitioner says that, he will file a fresh complaint in the format prescribed by the CVC. Learned counsel for the petitioner says that, this exercise will be done within one week from today. On a complaint being filed in the prescribed format, the CVC will consider the same as also the requisite material filed along with it. Let a report of the CVC be filed in this regard before the next date of hearing.

Renotify on 19.9.2013.

It will be open to the CVC to call upon respondent No.4, to state its case, at the time of the enquiry, being conducted in the matter.”
(emphasis supplied)

5. It is not in dispute that the suspension order dated 13.05.2011 was subsequently withdrawn by IIT Kharagpur on 13.04.2013 thereby reinstating the petitioner into service. However, on 26.10.2014, a fresh order came to be passed by IIT Kharagpur/respondent No.4 in the writ petition and appellant herein imposing the penalty of compulsory retirement. Under these circumstances, a fresh application being CM No.780/2015 came to be filed by the petitioner in January, 2015 pleading that the IIT Kharagpur had illegally proceeded with inquiry culminating in order dated 26.10.2014 imposing the penalty of compulsory retirement and thus seeking permission to seek an additional prayer to quash the inquiry report dated 28.12.2012 as well as the penalty order dated 26.10.2014. The petitioner also sought permission to raise additional grounds based on the events that have emerged subsequent to filing the writ petition.

6. The said application was opposed by the IIT Kharagpur/respondent No.4 in the writ petition contending that the proposed amendment goes beyond the scope of the writ petition in which the petitioner had only challenged the inaction on the part of the CVC to give protection to the whistle blower. It was also contended that this Court had no territorial jurisdiction to entertain the writ petition much less to grant the additional prayer sought by way of amendment to the writ petition.

7. The learned Single Judge declined to go into the objection with regard to the territorial jurisdiction observing that the same requires consideration while hearing the writ petition and accordingly kept it open. So far as the

prayer to grant permission to raise additional grounds is concerned, the learned Single Judge opined that the same deserves to be allowed since the additional grounds proposed to be raised flow from the charge sheet dated 16.05.2011. It was also observed that the petitioner though claiming to be a whistle blower, is ultimately aggrieved by the decision of the Board of Governors of the IIT Kharagpur. Accordingly, CM No.780/2015 was disposed of directing the petitioner to file an amended petition within one week and granting liberty to the respondent No.4/Appellant herein to file a fresh counter affidavit within four weeks. The writ petition was directed to be re-notified on 26.05.2015 and we are informed that the same was adjourned and now stands posted to 27.07.2015.

8. Assailing the order under appeal, Shri Maninder Singh, the learned senior counsel appearing for the appellant vehemently contended that having regard to the preliminary objection of territorial jurisdiction raised by the appellant, the learned Single Judge ought not to have permitted the amendment of the writ petition as sought by the petitioner. Placing reliance upon the decisions in *Revajeetu Builders and Developers v. Narayanaswamy and Sons*; (2009) 10 SCC 84, *Vidyabhai v. Padamalatha*; (2009) 2 SCC 409, *Kusum Ingots & Alloys Ltd. v. Union of India & Anr.*; (2004) 6 SCC 254 and *Arun Aggarwal v. Nagreeka Exports (P) Ltd & Anr.*; (2002) 10 SCC 101, it is contended by the learned senior counsel that allowing the amendment of the writ petition without adjudicating the jurisdictional fact, which goes to the very root of the matter, is contrary to the settled principles of law. Pointing out that the entire proceedings of the inquiry against the writ petitioner culminating in the order of compulsory retirement dated 26.10.2014 have been held at Kharagpur and that no part of

cause of action has arisen within the territorial jurisdiction of this court, the learned senior counsel contended that in the light of the admitted facts, the learned Single Judge ought not to have allowed the amendment of the writ petition seeking an additional prayer to quash the order dated 26.10.2014.

9. We have also heard the learned counsel for the respondent No.4 herein/writ petitioner as well as the learned counsel appearing for the respondents No.1 to 3.

10. For proper appreciation of the controversy involved, we have called for the record in W.P.(C) No.2780/2012. A perusal of the same shows that though an objection was raised by IIT Kharagpur/respondent No.4 in the writ petition (appellant herein) on the very first hearing on 25.07.2012 as to the maintainability of the writ petition on the ground of territorial jurisdiction, without expressing any opinion on the said objection, the respondents were granted time to file their counters. Be it noted that at that stage, the prayer in the writ petition was only to direct the CVC to protect the petitioner from victimization in terms of the Office Order No. 33/5/2004 dated 17.05.2004 relating to the protection of the whistle blowers. However, during the pendency of the writ petition, the disciplinary proceedings against the petitioner were concluded resulting in the order of compulsory retirement dated 26.10.2014. According to the writ petitioner, since the order dated 26.10.2014 was flown from the charge-sheet dated 16.05.2011, on the basis of which the writ petition was initially filed, the proposed amendment does not alter the nature of the main petition in any manner whatsoever. It is also his case that no prejudice would be caused to the appellant by allowing the amendment.

11. It is no doubt true that the order of compulsory retirement dated

26.10.2014 came to be passed during the pendency of the writ petition. It is also a matter of record that by order dated 21.03.2013, the learned Single Judge allowed the Board of Governors of the appellant to deliberate and consider the matter in issue and pass an order but made it clear that they will not give effect to the same till further orders of the court. However, the fact remains that the order dated 26.10.2014 emanated out of the disciplinary proceedings held against the writ petitioner and admittedly the said proceedings were held in Kharagpur beyond the territorial jurisdiction of this court. The question therefore that requires consideration is whether the learned Single Judge, in the facts and circumstances of the case, is justified in allowing the writ petitioner to amend the writ petition by inserting an additional relief to quash the order dated 26.10.2014 while leaving open the objection raised by the appellant with regard to the maintainability of the writ petition.

12. The law is well settled that the courts have very wide discretion in the matter of amendment of pleadings but the powers of the court must be exercised judiciously and with great care. While deciding applications for amendments, the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments. The first condition which must be satisfied before the amendment can be allowed by the court is whether such amendment is necessary for the determination of the real question in controversy. If that condition is not satisfied, the amendment cannot be allowed. This is the basic test which should govern the courts' discretion in grant or refusal of the amendment. The other important condition which should govern the discretion of the court is the potentiality of prejudice or injustice which is

likely to be caused to the other side. Ordinarily, if the other side is compensated by costs, then there is no injustice but in practice hardly any court grants actual costs to the opposite side. Some basic principles which ought to be taken into consideration while allowing or rejecting the application for amendment are: (i) whether the amendment sought is imperative for proper and effective adjudication of the case; (ii) whether the application for amendment is bona fide or mala fide; (iii) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money; (iv) refusing amendment would in fact lead to injustice or lead to multiple litigation; (v) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and (vi) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. The fact that the claim is barred by the law of limitation is but one of the factors to be taken into account by the court in exercising the discretion as to whether the amendment should be allowed or refused, but it does not affect the power of the court if the amendment is required in the interests of justice [Vide ***Revajeetu Builders and Developers case*** (supra)].

13. The law is also well settled that a pleading could only be amended if it is to substantiate, elucidate and expand the pre-existing facts already contained in the original pleadings but under the guise of an amendment, a new cause cannot be substituted and the courts cannot be asked to adjudicate a new issue instead of the issue that was involved in the original case.

14. Be that as it may, having regard to the specific plea of the appellant that the entire inquiry against the writ petitioner was held in Kharagpur and

that no part of cause of action resulting in the order dated 26.10.2014 has arisen within the territorial jurisdiction of this court, we are of the view that it is essential to decide the question of jurisdiction as a preliminary issue. Without determining the question of territorial jurisdiction, the writ petitioner cannot be allowed to seek the relief of quashing the order dated 26.10.2014.

15. We have taken note of the fact that the writ petition is of the year 2012 and the pleadings on behalf of all the parties are complete and the writ petition in fact is ripe for hearing even before the petitioner filed the application for amendment. That being so, there cannot be any impediment to determine the question of territorial jurisdiction as a preliminary issue.

16. For the aforesaid reasons, the order under appeal is hereby set aside and the appeal is disposed of requesting the learned Single Judge to consider and determine the question of territorial jurisdiction as a preliminary issue on the next date of hearing. Needless to mention that in case the learned Single Judge finds that this court has territorial jurisdiction, the application for amendment, i.e. CM No.780/2015 shall stand revived and the same will be heard and decided afresh in accordance with law.

17. The appeal is accordingly disposed of.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J.

AUGUST 07, 2015

Pk