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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) No.11759/2015, CM No.31278/2015 (for exemption) & CM
No.31279/2015 (for placing on record CD marked as Annexure XII).
TANUSHREE CHOPRA Petitioner
Through: Mr. Smita Bankoti and Mr. Ashish
Sheoran, Advs.

versus

MINISTRY OF WOMEN AND CHILD DEVELOPMENT
& ORS Respondents
Through: Ms. Swaty Singh Malik and Mr. Ajay
Kumar, Advs. for R-1 along with Ms.
Renu Love, Assistant Director, DWC.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
ORDER
% **17.12.2015**

1. The petitioner, an employee of the respondent no.3 ITC Maurya (employer), has filed a complaint with the Management of the employer of sexual harassment meted out to her by her superior officer (who has not been made a party). The employer of the petitioner has referred the said complaint to its Internal Complaint Committee (ICC) (impleaded as respondent no.2) constituted under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and the said ICC has commenced inquiry which is underway.

2. The grievance of the petitioner is that the ICC of the employer is conducting the inquiry in violation of the procedure prescribed by the ICC itself as well as in violation of certain settled norms for conducting such inquiry including those prescribed by the various Governmental Agencies and expounded by the Courts. It is *inter alia* contended that during the

inquiry, (i) the petitioner and the alleged offender are made to sit in the same room; (ii) the alleged offender is allowed to be present during the cross-examination of the petitioner; (iii) the ICC seized the cell phone of the petitioner containing the audio recordings though the petitioner had provided transcript thereof; (iv) 2 ICC has confiscated another cell phone of the petitioner which did not even contain anything pertaining to the complaint; and, (v) the petitioner is being made to sit face to face with the alleged offender. It is argued that though the petitioner has made grievances in this regard to the ICC as well as to the employer but no action has been taken thereon. Allegations of bias are also made against the members of the ICC and it is alleged that one of the members has already observed that the ICC cannot render any finding against the alleged offender.

3. The petitioner thus has claimed relief of dissolving the ICC for having failed to conduct free and unbiased proceedings on her complaint and for having failed to adhere the procedure laid down by the ICC itself.

4. It is also the grievance of the petitioner that the respondent no.1 Ministry of Women and Child Development has not appointed the Appellate Authority within the meaning of Section 18 of the said Act which could have been approached by the petitioner with the grievances as made in this petition. Axiomatically, a direction to the respondent no.1 Ministry of Women and Child Development to make such appointment is also sought.

5. It is yet further the grievance of the petitioner that her employer has not complied with the requirements of Section 19 (a) and (c) of the Act i.e. has not provided a safe working environment at the workplace and not organised awareness programmes. A direction is sought to the employer to

place on record the said compliances.

6. The counsel for the respondent no.1 Ministry of Women and Child Development appearing on advance notice states that though presently there is a vacancy in the office of the Authority notified under Clause (a) of Section 2 of the Industrial Employment (Standing Orders) Act, 1946 which is the Appellate Authority under the aforesaid Act also in terms of Section 19 supra read with Rule 11 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal), Rules 2013 but the said vacancy shall be filled up within a period of five weeks from today.

7. I have in the circumstances enquired from the counsel for the petitioner as to what purpose an order dissolving the ICC would serve and whether not the same would stall the making of recommendations which the ICC is required to make within 90 days as provided in Section 11(4) of the Act.

8. The counsel for the petitioner has contended that the said period of 90 days is already over and notwithstanding the same, the ICC has not submitted its Report. It is further contended that after dissolving the ICC, the employer should be directed to constitute a fresh ICC.

9. The counsel for the petitioner on enquiry whether there is any provision in the Act for constitution of a fresh ICC by the employer in the midst of an inquiry underway, has fairly stated that there is none.

10. I am of the view that this Court in exercise of powers under Article 226 of the Constitution of India would not be justified in interfering with the inquiry already underway before the ICC and interference wherewith would delay the entire proceedings. The purport of the Act, as is evident from the

various provisions thereof, is of expediency in such matters and of the perpetrator if any found of the offence of sexual harassment being brought to book at the earliest. Moreover, it is not as if the petitioner will not have any remedies even if the report of ICC were to be prejudicial to the petitioner. If the petitioner is aggrieved therefrom, the petitioner can always appeal under Section 18 of the Act.

11. The counsel for the petitioner has informed that the employer, in its Rules, has not constituted any Appellate Authority. If it is so, the Appellate Authority provided for under Rule 11 *supra* would be the Appellate Authority and the petitioner would have her remedies against the Report of ICC before the Appellate Authority and the Appellate Authority, if finds merit in the allegations as made by the petitioner in this petition, would certainly be entitled to pass appropriate orders including of a fresh inquiry.

12. It is the settled principle of law that petitions under Article 226 should not be entertained at interim stage as the same inevitably leads to delay and multiplicity of proceedings. Reference in this regard can be made to a host of judgments discussed by me in *S.P. Parasher Vs. Rehabilitation Council of India* MANU/DE/4094/2011 against which LPA No.40/2012 was dismissed on 18th January, 2012 and to *The Secretary, Ministry of Defence Vs. Prabhash Chander Mirdha* (2012) 11 SCC 565.

13. As far as the grievance of the petitioner of non-compliance by the employer of the requirements of Section 19 (a) and (c) of the Act is concerned, admittedly no such complaint was made as is required to be made to the District Officer under Section 20 of the Act prior to the making of the complaint. The petitioner, if has any grievance in this regard, to

immediately on the District Officer taking charge, make a complaint in this respect and there is nothing to suggest that the District Officer would not take appropriate action in that respect.

14. Binding the respondent no.1 Ministry of Women and Child Development to the statement aforesaid to appoint the District Officer within five weeks, the petition is disposed of with liberty to the petitioner to, if remains aggrieved from the recommendations ultimately made by the ICC, appeal before the Appellate Authority.

No costs.

RAJIV SAHAI ENDLAW, J

DECEMBER 17, 2015

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