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

% Judgment delivered on: 24.10.2016

+ **W.P.(C) 6352/2016**

MANJEET SINGH Petitioner

Through: Atyab Siddiqui and Tibah Siddiqui, Advocates.

versus

INDRAPASTHA GAS LIMITED Respondent

Through: Mr. Sanat Kumar, Sr. Advocate with Mr. S. K. Pandey and Mr. Yogender Verma, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J(Oral)

1. The petitioner seeks quashing of the report dated 31.03.2016 of the Internal Complaints Committee (ICC) of the respondent; quashing of the order dated 18.05.2016 which has reduced the rank of the petitioner to one lower post, i.e., from Vice President (Level-5 Grade) to Chief General Manager (Level-4 Grade); quashing of the order dated 08.07.2016 passed by the Appellate Authority as well as the communication of the order dated 14.07.2016.

2. The petitioner was charged and was found guilty of misconduct which, according to the respondent, would be considered sexual harassment under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The charge relates to a complaint by

the petitioner's Executive Secretary over an alleged incident on 26.01.2016. The initial complaint was made on 08.02.2016 and the subsequent complaint on 11.02.2016, which added many new aspects to the second complaint.

2.1 The complaint dated 08.02.2016 reads as under;

“08/02/2016

To

The Managing Director
Indraprastha Gas Ltd.
New Delhi.

Sub: Harassment of Female Employee.

Dear Sir,

I, Reena Mohanty, Employee No. 259, working as Sr. Executive Secretary attached to VP (HSE &JV). This is to bring to your kind notice that I have been facing harassment from my boss from past few weeks, due to which I am under depression and in mental agony.

On 26th January 2016 he tried flirting with me and acted inappropriately, which was not under the dignity like; he tried to hug me apart from this he also clicked my picture without my knowledge. My only request to the management is to take appropriate action on my complain and provide me safe and congenial environment to work.

Thanking you.

Reena Mohanty”.....

2.2 And the complaint dated 11.02.2016 reads as under;

“Date: 11TH Feb-2016

To

The Internal Complaint Committee (ICC)
Indraprastha Gas Ltd.
New Delhi.

Referring to the discussion we had on 10th Feb-2016 where I narrated the unpleasant incident happened with me on 26th Jan-2016 in IGL's office premises I hereby thank the ICC for patient hearing. As required by the esteemed committee, I hereby submit the facts in sequence for best judgment.

On last Republic Day I had come to office to attend flag hoisting and to receive the rewards for the chess and carom competition held In IGL recently. Though I aspire not to miss such special occasions the recent attendance was specially driven by HR's specific mail to winners to attend the function where award would be conferred.

After flag hoisting and snacks in canteen I went to my workstation to check my mails and for housekeeping of my desk. In the meantime, Mr. Manjeet Singh (Present VP-HSE & JV) came to his cabin.

I went to his cabin to ask about his recent Iran trip as a general courtesy. He asked me to sit and started telling me about his trip and ordered for tea. He said the trip was good and among other things he said "Iran girls are very fair, beautiful and nice". I said "Sir it may be because of their climate".

He said though Indian girls are also beautiful but they are full of attitude. "Even tu bhi sundar hai". Though I felt very uncomfortable, I tried to take it in a positive way. Then he continued that they are (Iran girls) even very friendly. They don't mind clicking pictures with anyone.

He said, "Kya main tujhe kuchh dikhaoon? Kisi ko batayegi to nahi?" I refused to see by saying that "Sir, I don't want to intrude in your personal life and keep it with you, whatever it is". But he insisted to show by saying "arrey koi baat nahi, dekh le, tu to apni hi hai". He called me to his side of table to show me the content of his mobile. Though I avoided and told that I could see the same from my side of the table but he insisted me to come to his side.

He showed me his few snaps with an Iran Girl and I appreciated the snap though feeling uncomfortable and immediately went back to the visitor's chair where I was sitting earlier.

Then he told me that "Mainey teri photo khinchli". I got shocked as how can a person take my picture without my knowledge and reacted politely "Sir Kisliye? Kya jarurat thi?" He said camera quality is good and urged to take one more picture of mine. First I refused but he kept on telling so I stood reluctantly as I could not understand how to react to such behaviour of such a senior person. Then he continued to speak about Indian girl's conservative mind set. He said, "Kya ek ladka aur ek iadki achchey dost nahi ho sakte hain? Maan io agar mere sar mein dard ho raha ho, aur main kisi se keh doon sar dabane ko to ismein burayi kya hai?" etc. I kept on listening but did not reply. He continued criticizing Indian girls' behaviour and attitude then I said that it is a wrong perception and moreover we all are member of your team. Then he said, "Tao main kya samjhoon kit u patt gayi mujhse?" I got shocked spellbound again.

He told me that he took MD and Sr. VP (Marketing) to a Gurudwara and showed me pictures of Gurudwara in his mobile. The attendant was getting late in bringing tea and I wanted to leave that place ASAP. I said that I was getting late for home and wanted to leave but he said not to go without having tea and ordered again for tea. But when I said that I need to leave, he said it is going to be lunch

time and offered me to have lunch outside but I refused straightaway and told him that I have to go home ASAP and I am already getting late. He asked me to reconsider my decision for lunch but I refused again. I tried to change the topic by asking about his child. He got diverted from topic for 5 min but again came back to previous topic.

Meanwhile tea came and I finished tea immediately and told him that I am leaving now from here. I could not sit there anymore and stood up to leave.

He stood up and said ok before you leave let me wish you and let's shake hand. I shook hand. But immediately he said that let me give you a hug and extended his hands. Sensing his wrong intention I stopped him immediately as the extension of his hand was seemed inappropriate to me, and immediately turned towards the door and left his cabin.

I shared this problem in little bit next day with Ms. Aakansha in HR that I am extremely upset because of his behavior. After that I spoke to Mr. Sudhanshu Pant to describe the incident for guidance as I was very upset and he postponed the same as he was busy. After 2-3 days I again reminded him but he was still seemingly busy, hence, the discussion could not happen.

I kept on maintaining distance from him and it is pertinent to note that on 5th Feb - 16 I wanted permission of Mr.Manjit Singh verbally for a short leave citing personal reason. He reacted with false ground that I usually take many leaves which I objected and showed my protest against his perception and subsequently granted the leave. However, his tone and 6S unwillingness to grant leave was seemed to be influenced by underlying incident of 26th Jan-16. On the same day we had a get together among the selected staff of our department In the evening at Vasant Kunj mall to celebrate the recent promotions where again I hinted Mr.Pant and wanted to share the whole incident with

anticipation of his help to come out from the mental agony. I asked him should I intimate to MD and would it be helpful. However, he discouraged not to take such steps

which may have very bad consequence.

On 8th Feb-2016 when I could not hold the stress any more, I went to Ms. Sheetal to know the code of conduct and procedure for remedial but did not share the whole matter with her. She stood by me and strengthened me to directly approach to MD for redressal of such type of grievance and approaching somebody else may result in suppression of facts.

Motivated by her guidance I could muster courage to appraise MD immediately.

Submitted for your adequate and appropriate consideration.

Reena Mohanty

Emp. No.259”

3. It is the petitioner’s case that: (i) during the enquiry, the petitioner was never allowed to cross examine the complainant; (ii) the evidence led by the complainant does not corroborate any of the charges levelled against him and (iii) the first complaint itself does not make such charges as are sought to be levelled in the second complaint.

4. The learned counsel for the petitioner refers to the evidence and the conclusion drawn in the Enquiry Report of the Disciplinary Authority and submits that initially the case was about the leave requested for by the

complainant, and a subsequent complaint about the sexual harassment is nothing but an improvisation, with the ulterior motive to teach a lesson to the petitioner and to get her desired leave application approved.

5. The complainant's witnesses, namely, (i) Ms. Akanksha Sharma, Deputy Manager (HR) (ii) Ms. Sheetal Sharma, Manager (HR) and (iii) Mr. Sudhanshu Pant, VP (Projects) did not corroborate the charge of harassment. The statements of each of them are as under;

“(i) Ms. Akanksha Sharma, Dy. Manager (HR)

Ms Aakanksha Sharma was mentioned by the complainant in her deposition as being the first person, following the alleged misbehaviour with her on 26.01.2016, with whom she had shared on 27.01.2016 morning itself, that she was very upset because of inappropriate behaviour of her boss on the previous day. Accordingly to corroborate this version, Ms. Akanksha Sharma was called by the ICC.

In her statement before the ICC, Ms. Sharma confirmed that on 27.01.2016 Ms. Reena looked upset and shared about the inappropriate behaviour of her boss on the previous day, and that he had asked her to have lunch with him and clicked her photograph without her permission. Ms Reena mentioned that she cannot share further details with her. At this point, Ms Aakanksha Sharma told Ms Reena to escalate the matter to Management. However, she said she did not have concrete proof at this moment and would maintain distance from her boss. Ms Reena requested Ms Aakanksha Sharma not to share this incident with anyone. After this, Ms Aakanksha did not have any conversation with her on this matter.

(ii) Ms. Sheetal Sharma, Manager (HR)

In her deposition, Ms Sheetal Sharma stated that in the morning of 8th Feb 2016, Ms Reena had approached her and enquired about her rights as a woman employee in the event of being subjected to inappropriate behaviour from a male colleague. On probing, Ms. Reena shared that her boss VP (JV & HSG) had tried to misbehave with her on January 26th 2016, but she was not willing to share any specifics on the issue. Since she wanted to report the incident to the IGL Management, Ms Sheetal suggested that-she could report this to CGM (HR) but Ms Reena was not comfortable in reporting the same to him and wanted to go to MD. The meeting with MD was facilitated by Ms. Sheetal Sharma on the same morning.

(iii) Mr Sudhanshu Pant (VP - Projects)

Mr Sudhanshu Pant deposed before ICC that he did not know anything about the incident reported by Ms. Reena till the time it was shared with him by ICC and that he was totally taken by surprise. He acknowledged that he had met Ms. Reena on 27, 28 & 29.01.2016 in Mr. Manjeet Singh's room but nothing was informed by Ms. Reena to him, neither he could make out from her manner that such an incident had taken place.

On 01.02.2016 morning Ms. Reena met him in the corridor and they exchanged congratulations on their respective promotions. It is at this point that Ms. Reena asked him if they could go out of office as she had to share something with him. However, since he was engaged in official work and also considered it unprofessional to go out during office hours, he did not accede to her request. Ms. Reena did not share anything about the incident with him thereafter over the next 2-3 days, as he was out of station on 3 & 4th February, 2016.

On 5th evening, at a get-together of the department out of office, during the conversation Ms. Reena shared that Mr. Manjeet Singh had tried to flirt with her on 26.01.2016. On this, Mr. Pant's immediate reaction was that there might have been some misunderstanding and that he would further discuss the matter with her on 8th Feb 2016 i.e. on coming Monday, as there was a lot of noise and other colleagues were also present at the venue. She apparently did not elaborate and he also thought that it is agreeable to her to discuss on coming Monday. On Monday morning, i.e. 08.02.2016, Mr Pant tried to talk to her but he could not contact as she did not pick up the phone and the following day she was on leave. He met her next on 10th Feb 2016 just before he was called for the ICC meeting and on enquiring, Ms.Reena said that she had gone too far ahead in the matter.”

6. The learned counsel for the petitioner submits that the ICC, instead of providing an opportunity to the petitioner to cross examine the complainant, as per the procedure known to law, made them sit across each other at the table and ask them to cross-examine each other. This procedure is entirely alien to law. The law requires questions to be put to a witness during cross-examination and do not counter-question. The learned counsel relies upon the judgment of this Court in **Bidyug Chakraborty (Prof.) v. Delhi University & Ors.**, 2009 VI AD (Delhi) 1, in particular, paragraphs 5, 6 and 14 to contend that denial of an opportunity to cross-examine witness vitiates the inquiry process and on this ground alone the enquiry proceedings and the conclusion would have to be set aside. The said judgment held as under:

“..... 5. In Medha Kotwal Lele & Ors. Vs. Union of India & Ors. WP(C) No. 173-177 of 1999 decided on 26.4.04, the Hon'ble Supreme Court, referring to its earlier decision in

Vishaka & Others Vs. State of Rajasthan & Ors. (1997) 6 SCC 241 held as under:

"Complaints committee as envisaged by the Supreme Court in its judgement in Vishaka's case, 1997(6) SCC 241 at 253, will be deemed to be an inquiry authority for the purposes of Central Civil Services (Conduct) Rules, 1964 and the report of the complaints committee shall be deemed to be an inquiry report under the CCS rules. Thereafter the disciplinary authority will act on the report in accordance with the rules."

6. Rule 14 of CCS/CCA rules prescribes the procedure for imposing major penalty and to the extent it is relevant, the rule reads as under:

"(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the Disciplinary Authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross examined by or on behalf of the Government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross examined, but not on any new matter, without the leave of the Inquiring Authority. The Inquiring Authority may also put such questions to the witnesses as it thinks fit.

(16) when the case for Disciplinary Authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded, and the Government servant shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Government servant shall then be produced. The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross - examination, re- examination and examination by the Inquiring Authority according to the provisions applicable to the witnesses for the Disciplinary

Authority.

(18) The Inquiring Authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

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14. As noted earlier, no opportunity was given to the petitioner for verbal cross examination of the complainant. A perusal of the inquiry report shows that the committee informed the petitioner that he could cross examine the complainant by giving written questions to the committee. In our opinion, mere permission to give written questions to the committee for cross examination of the complainant does not fulfil the legal requirement on the part of the Inquiring Authority, to give opportunity to the delinquent to cross examine her. Cross examination by giving written questions to the inquiring authority can never be as effective as verbal cross examination and cannot be its proper substitute. While putting questions to a witness the examiner does not know what answer the witness would give to the questions put to him/her. It is, therefore, not possible for him to formulate the next question without taking into consideration the answer given by the witness. The answer given by the witness to one question may lead to further questions from the examiner on the same line, in order to elicit truth from the witness and to impeach his/her trustworthiness. Moreover, asking the petitioner to give written questions for cross examination was confined in respect of the complainant alone. No opportunity was given to the petitioner even to give written questions for cross examination of other witnesses examined by the committee. It was imperative on the part of the Inquiring Authority to give opportunity to the petitioner for her cross examination not only of the complainant but also of the other witnesses examined by it. Denial of opportunity to cross examine the complainant and

other witnesses examined by the committee constitutes gross violation of principles of natural justice...”

7. The Court is of the view that cross-examination cannot be reduced to a mutual allegation of charges against each other or a verbal duel of unpleasant and perhaps intemperate language. For the delineation of truth the orderly conduct of cross-examination is essential. The procedure cannot be reduced or relegated to a farce where two opposing parties are left at the mercy of each other's articulation of expressions, lung power, domineering or domineering attitude, etc. much to the embarrassment and personal affront to the dignity of the innocent party. While it may not always be possible to apply strict rules of procedure especially in cases of the nature at hand, nevertheless a modicum of order in the conduct of cross-examination is essential for it to be lent any credence. Adherence to natural justice forms the foundation of both quasi judicial and administrative inquiry. There can be no leeway in applying the principles of fair-play in either type of inquiry between the two. The principle of fair play is to guide all administrative action. This aspect has to be all the more so examined in judicial review. In ***E.P. Royappa vs State of Tamil Nadu & Anr. (1974) ILLJ 172 SC***, the Supreme Court held:

“..... Article 14 is the genus while Article 16 is a species, Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any; attempt to truncate its all-embracing scope and meaning, for to do so

Would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Arts. 14 and 16. Mala fide exercise of Power and arbitrariness are different lethal radiations emanating from the same vice : in fact the matter comprehends the former. Both are inhibited by Arts. 14 and 16..."

8. The contention apropos the nature of the manner of cross-examination is not refuted by the respondent. The petitioner's right to cross-examine the complainant in the manner prescribed in law would vitiate proceedings.

9. The learned counsel for the petitioner submits that there is insufficient indeed no material on record for the ICC to have concluded as it did and then to have erroneously imposed the penalty, impugned in this petition. The operative portion of the impugned order reads as under;

4.1 In the context of the above mentioned findings, the Committee has arrived at the following conclusion :

- (i) The specific charges leveled against Shri Manjeet Singh by the complainant could only be proved partially due to lack of evidence. Though there were circumstantial evidence, such as general behavior of the complainant after 26.01.2016 (alleged date of incident), sharing a part of the incident with her colleagues etc., it could not be substantiated completely that the respondent had actually indulged in unwelcoming act of behaviour as defined under section 2(9) of the Act. The other charges of showing photographs of Iranian ladies and suggestive conversation could also not be proved, though it is most unlikely that the respondent did not take or have any other photographs of his visit to Iran except two photographs of Gurudwara, as claimed by him. Therefore, from the overall circumstances of the case, the Committee has reached the conclusion that the respondent, Mr. Manjeet Singh, had intentionally or unintentionally, indulged in a behavior which can be termed as more than familiar or even flirtatious, in terms of transgressing the lines of acceptable behavior at a 37 work place, which impinged on the complainant's modesty.
- (ii) Appropriate disciplinary action may therefore be taken by the Disciplinary Authority commensurate with the conclusion of the ICC.
- (iii) Though IGL has been organizing workshops on the subject, the ICC recommends focused efforts, by way or organizing workshop/training programmes etc. may be made to ensure that all

employees of IGL are adequately sensitized to the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.”

10. Quite clearly, the inquiry report has not found the petitioner guilty of the charge levelled against him. Although it has gone on to impute a behaviour which it has termed as “....more than failure or even flirtatious, in terms of transgressing the lines of acceptable behaviour at a 37 work place....”. The Court is unable to find any reasons for the Committee to arrive at the said conclusion. There is nothing on record to support the aforesaid inference. Even the so called circumstantial evidence is not seen from the records. Hence the Committee’s conclusion being unfounded, would have to be set aside.

11. The Committee had also concluded that the showing of photographs of Iranian ladies and suggestive conversation could not be proved. However, it doubted that the respondent did not take or convey any other photograph of his visit to Iran except two photographs of Gurudwara as claimed by him. The Court is of the view that this conclusion is unfounded inasmuch as it negates and precludes the possibility of the petitioner being surprised over the fact that there was a Gurudwara in an Islamic state. The petitioner could well be a deeply religious and a spiritually person. Accordingly, the petitioner may have wanted to share wonderment upon his return to India over the existence of a Gurudwara in a muslim majority country. He may have, accordingly, taken pictures of the places of worship of the Sikhism existing in a theocratic State of another religion. Sharing of pictures of Gurudwara if at all any such pictures were shared, cannot be a cause for suspicion either about the motives or the character of the

petitioner. There is no evidence to doubt his integrity. A person could be religiously curious and far more spiritually oriented at a younger age. A person could be religiously curious and spiritually oriented. Spiritual orientation is a personal characteristic of an individual which is often not heralded or pompously shown during ordinary office work. It could manifest itself in subtle and quiet mannerisms, observations and conduct of the individual. The petitioner should have been given the benefit of doubt, all the more so when there is nothing on record to substantiate any of the charges which were levelled against him.

12. Simultaneously, it cannot be overlooked that for a woman who has suffered sexual harassment and thus being in a state of shock, it would not be possible for her to recount the entire unpleasant episode with promptness, alacrity and complete facts because such a person would ordinarily be under varying degrees under sense of deep shock, shame, anger and perhaps fear. She would be looking for avenues for redressal and persons she could confide in. The Committee is a mechanism put in place to assist women who complain of sexually harassment at their place of work. Nevertheless, it is equally important that the goodwill, fair name and dignity of an innocent accused be dealt with the utmost care. An accused/ charged officer must be presumed to be innocent until there is evidence to show otherwise. The dignity of neither party can be trifled with in an inquiry proceedings.

13. Mr. Sanat Kumar, the learned Senior Advocate appearing for the respondents submits that there is enough evidence to show that there was an interaction between the petitioner and the complainant. He relies on the following findings of the Committee;

3.1 On the basis of all the submissions and detailed interaction of the complainant, the respondents and other officials listed above with the Committee members, as well as the additional information of a previous complaint against the respondent in the year 2005, the ICC is of the view that:

- There is enough evidence to adduce that the incident of personal interaction on 26.01.2016 between the complainant and respondent had indeed taken place. Purportedly, during the course of conversation, the respondent, knowingly or unknowingly transgressed the line of acceptable behavior between a boss and subordinate to a level, which in the complainant's perception, was an attempt on his part to get personal with her, almost to a point of flirtation and that she felt that his behavior was an infringement on her modesty.
- Though there is no evidence to establish the alleged charges to the effect that the conversation steered around Iranian vs. Indian girls, or the respondent taking the complainant photo on his phone or his seeking a physical contact with her by means of a handshake or a hug, there is enough reason for the Committee to infer and arrive at a conclusion that what had occurred between the complainant and the respondent on the afternoon of 26.01.2016, had significantly disturbed her to the extent that she had shared her discomfiture with a woman colleague of HR department on the very next day and also tried to reach out to her former boss of many years Sh. Sudhanshu Pant to share her concern and seek his guidance on the same. That the incident had significantly impacted her over the next few days till she met the MD and formally complained about it has also come forth from the account/statement of other officials.
- In his deposition, the respondent while accepting the exchange of conversation with the complainant, completely denied the specifics as had been charged against him and in fact made an attempt to deflect the

matter by steering it towards the behavior of the complainant, including her absence from work, frequently availing of leave, non-satisfactory performance of work etc. Though un-connected, there was an attempt on his part to project the complainant in a negative light by commenting upon her social behavior in terms of indulging in late night parties and drinking wine etc. This is reflective of a point that he had a pre-conceived notion in his mind that she is a woman who could be open to easy conversation and a more than strictly official behavior.”

14. He further submits that the conclusions drawn by the ICC are based upon the evidence, i.e., that the incident happened on 26.01.2016 and this is corroborated by the change in the behaviour and attitude of the complainant as was noticed by her colleagues at the lunching party on 05.02.2016.

15. The Court is, however, not persuaded by the aforesaid because the evidence given by the female colleagues and other employees as independent witnesses did not corroborate any overfamiliar behaviour or charges of sexual harassment levelled against the petitioner. Indeed, the report records that;

“Interaction of ICG with officials named by the respondent and the complainant in their respective depositions

2.9 Following the deposition by the respondent, the Committee considered it appropriate to have personal interaction with Mr. Nitin Nangia and Ms. Meenakshi both of whom were mentioned by the respondent in his deposition. It was also opined that Mr. Sudanshu and the complainant Ms. Reena Mohanty should be called 2£ once

again to share the deposition of the respondent and take their versions on the same.

2.10 Accordingly, Mr. Nangia, Mr. Pant and Ms. Reena Mohanty were called for a meeting on 16.02.2016. A brief of their deposition before the ICC is given below:

Mr. Nitin Nangia

Mr. Nitin Nangia stated that his association with Ms. Reena was approx. over 05 years and that she lacked willingness to learn or take up responsibility and did not discharge her work satisfactorily. She had a casual approach towards work and either would not perform or would forget what was assigned to her. On several occasions Mr. Pant had asked him to advise her and teach her to do some transaction but she was not willing. Most of the times, she was not available on her seat. On being asked by the ICC, if he could recall any incident of a serious argument or fight between Ms. Reena or any other colleague, he denied the same but stated that she was very rude in her behaviour and very egoistic.

On specifically being asked he would rate Ms. Reena as a person who could make a false allegation against any colleague to settle a personal score, he denied the same stating that he did not think that she could go to that extent.

On Ms. Reena's behavior, he mentioned that he had heard from people in office that she attended parties till late, was talkative and used to indulge in loose conversation with vendors.

Mr. Sudhanshu Pant

In his second round of deposition before the ICC wherein he was asked specific questions in the context of the statement of the respondent, Mr. Pant stated that he has association with Ms. Reena's for nearly 03 years, during which he found her working well and generally discharging her role satisfactorily, though the work load of the department was not very heavy. She used to go out frequently to attend to her personal work with permission; however this was normal work culture and there was nothing extraordinary in it. On being specifically enquired if Mr. Singh had counselled Ms. Reena for late reporting and absenteeism he shared that there was casual references in this regard but there was nothing specific or significant. Against a specific question by ICC if Ms. Reena had any trigger for vendetta against Mr. Singh whereby she could make a serious allegation against him, Mr. Pant was non committal and stated that it could be. As in his first deposition on 10.02.2016, he retraced the events before 27.01.16 to 05.02.2016 in terms of his interaction with Ms. Reena. He confirmed that to the best of his knowledge, d there was no incident of any fight or serious argument between Ms. Reena and the respondent or any other employee of the Company. He also stated that he cannot think of any other official who could use the complainant to make a false allegation against Mr. Manjeet Singh. He also denied that Ms. Reena could be considered as a person who could be used by anyone for setting personal scores.

Ms. Reena Mohanty

In her second round of interaction with ICG on 16.02.2016, following the deposition of the

respondent, Ms. Reena reiterated everything that she has stated earlier on 10.02.2016 and countered the statements made by Mr. Manjeet Singh about the nature of conversation between them on 26.01.2016.

2.11 In the record note of the ICG meeting on 16.02.2016 (Annexure-7), the Committee also decided to take the versions of the women employees present at the get-together of 05.02.2016 so as to ascertain from them if the complainant had shared her disturbed state/discomfiture vis-a-vis her boss following the incident of 26.01.2016.

2.12 Since Ms. Meenakshi was not present on 16.02.2016, she deposed before the Committee on 22.02.2016 when 09 other female employees of IGL (who were part of the II group that had attended a luncheon get-together on 05.02.2016 and had been mentioned by the complainant in her statement) were interacted upon with the ICC. Record Note of the ICC meeting held on 22.02.2016 is placed at Annexure-8.

Ms. Meenakshi

Ms. Meenakshi whose statement is attached at Annexure-9, had confirmed that she had worked with Mr. Manjeet Singh for nearly 09 years during which his behaviour was fine and she had no problem in obtaining leave/short leave from him.

Other female employees mentioned by the complainant in her deposition

All the other female employees (including 02 members of the ICC; with the exclusion of one who was not available in office on 22.02.2016)

whose collective statement at Annexure -10 confirmed that during the lunch on 05.02.2016, they had noticed that Ms. Reena was upset and on enquiring, had shared her heated discussions with her boss on the issue of availing short leave.”

16. From the aforesaid, it is clear that nobody corroborated the complainant’s version of sexual harassment or as the ICC calls it his “over familiar behaviour towards her by the petitioner”. The conclusion of the ICC is not borne out from the facts and hence it cannot be sustained. Furthermore, the petitioner has worked in the respondent Corporation for over 18 years in the capacity of a member of its senior management. No cognisable complaint of either misbehaviour or of sexual harassment has ever been made against him by his female colleague. The learned counsel for respondent at this stage submits that there was an anonymous complaint against the petitioner in the year 2005, however, the respondent did not take any action in that regard because the complaint was anonymous. The Committee concerned, filed a report stating no case of sexual harassment was made out against the petitioner. The learned Senior Advocate fairly submits that this would in any case have had to be done since it was an anonymous complaint.

17. The charges of the sexual harassment against the petitioner having not been corroborated by any of the complainant’s colleagues, or other employees of the respondent, therefore, the conclusion drawn by the Committee cannot be sustained and has to be set aside. Furthermore, the right to cross-examine the complaint as envisaged in law was denied to him, therefore, the inquiry proceeding suffer from severe legal infirmity.

18. In the circumstances, the impugned orders are quashed and set aside.
19. The writ petition along with all pending applications stands disposed off.

NAJMI WAZIRI, J

OCTOBER 24, 2016
dr