

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 05.02.2020

Delivered On : 17.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

WP.Nos.10689, 24290 and 4339 of 2019
and
WMP.Nos.4868 and 11170 of 2019

WP.No.10689 of 2019

- 1.Union of India,
Represented by
The Secretary to Government,
M/o.Commerce & Industry,
Department of Industrial Policy and Promotion,
Udyog Bhavan, New Delhi - 110 011.
- 2.The Controller General of Patents,
Designs, Trade Marks & GI,
Boudhik Sampada Bhawan,
S.M.Road, Near Antop Hill Post Office,
Mumbai - 400 037.
- 3.Smt.Sunita,
Yadav, Director,
Department of Industrial Policy and Promotion,
M/o.Commerce & Industry,
IPR - Section I, Udyog Bhawan,
New Delhi - 110 011. ...Petitioners

vs.

- 1.Smt.Rema Srinivasan Iyengar,
Assistant Registrar of Trade Marks & GI,
Intellectual Property Building,
GST Road, Guindy,
Chennai - 600 032.
- 2.Shri.V.Natarajan,
Deputy Registrar of Trade Marks & GI,
Boudhik Sampada Bhawan,
Plot No.32, Sector 14, Dwaraka,
New Delhi - 110 075.

3.The Registrar,
Central Administrative Tribunal,
Chennai.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records relating to the order passed by the third respondent in RA.No.15 of 2018 dated 02.01.2019 confirming the order in OA.No.340 of 2017 dated 25.09.2018 and quash the same.

For Petitioners : Mr.V.Chandrasekaran

For Respondents : Mr.T.Mohan for R1
Mr.T.Saikrishnan for R2

WP.No.24290 of 2019

V.Natarajan
Son of Late B.S.Venkataraman,
Aged about 59 years
Joint Registrar of Trade Marks & GI,
Government of India,
Intellectual Property India Office Building,
GST road, Guindy, Chennai - 600 032.Petitioner

vs.

- 1.State of Tamil Nadu,
Represented By its
Secretary to Government,
Department of Social Welfare,
Fort St.George,
Chennai - 600 009.
- 2.Tamil Nadu State Commission for Women,
Rep. by its Chairperson,
No.1, Panagal Maligai Building,
2nd Floor, Near Kalaaignar Arch,
Jeenis Road, Saidapet,
Chennai - 600 015.
- 3.District Social Welfare Officer-Chennai,
Singaravelar Maligai, 8th Floor, Rajaji Salai,
Parry, Chennai - 600 001.
- 4.The Local Complaints Committee,
Rep. by its Chairperson,
Tamil Nadu State Commission for Women,
735, Anna Salai,
Chennai - 600 002.

5.Smt.Rema Srinivasan Iyengar,
Daughter of N.R.Srinivasan Iyengar,
Residing at House of Sanath Ghosh,
No.MB418/1, Mohisbathan,
(PO) Krishnapur, (PS),
Electronics Complex, Kolkata. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records on the file of the respondents pertaining to the impugned order dated 25.02.2016 in Proceedings.No.3675 passed by the fourth respondent and quash the same.

For Petitioner : Mr.T.Saikrishnan

For Respondents: Mr.R.Vijayakumar,
Additional Government Pleader for R1 to R4
Mr.T.Mohan for R5

WP.No.4339 of 2019

V.Natarajan
Son of Late B.S.Venkataraman,
Aged about 59 years
Deputy Registrar of Trade Marks & GI,
Intellectual Property India Office Building,
GST road, Guindy, Chennai - 600 032.Petitioner

vs.

1.Union of India,
Represented by
The Secretary to Government,
M/o.Commerce & Industry,
Department of Industrial Policy and Promotion,
Udyog Bhavan, New Delhi - 110 011.

2.The Controller General of Patents,
Designs, Trade Marks & GI,
Boudhik Sampada Bhawan,
S.M.Road, Near Antop Hill Post Office,
Mumbai - 400 037.

3.Smt.Sunita Yadav, Director,
Department of Industrial Policy and Promotion,
M/o.Commerce & Industry,
IPR - Section I, Udyog Bhawan,
New Delhi - 110 011.

4.Smt.Rema Srinivasan Iyengar,
Deputy Registrar of Trademarks & GI,
Trade Marks Office Kolkata,
Boudhik Sampada Bhawan,
CP-2 Sector V, Salt Lake City,
Kolkata - 700 091.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records pertaining to the impugned orders (1) dated 25.09.2018 in OA.No.310/00340/2017 and (2) dated 02.01.2019 in RA.No.310/00015/2018 passed by the Central Administrative Tribunal, Chennai of the 4th respondent and quash them as illegal, arbitrary and perverse, mala fide, in abuse of law and ultravires the Constitution of India and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

For Petitioner : Mr.T.Saikrishnan

For Respondents: Mr.V.Chandrasekaran for R1 to R3
Mr.T.Mohan for R4

C O M M O N O R D E R

(Order of the Court was made by R.HEMALATHA, J.)

The brief facts to go through quickly are that the petitioner in WP.No.24290 of 2019 (henceforth referred as petitioner) was the Deputy Registrar of Trade Mark & GI, in Chennai and one 'X' henceforth referred as complainant) preferred a complaint dated 02.12.2013 against him to the Registrar and Controller General of Trade Marks and GI and Patents and Design. The complaint basically was on the high handedness of the petitioner and the hurt to her self respect due to his arrogant behaviour. The Registrar and Controller General of Patents (2nd writ petitioner in WP.No.10689 of 2019) on his part responded vide his letter dated 16.07.2014 constituting an Internal Committee on sexual harassment at work place. Subsequently, the complainant preferred another complaint dated 30.06.2015 in which she had narrated many incidents about the rude behaviour of ***the Petitioner** In this complaint, which was not different from the earlier one, she had mentioned the word 'sexual harassment' repeatedly. Subsequently, the complainant also wrote a letter to the Tamil Nadu State Commission for Women stating her apprehension that the Internal Committee would not render justice to her and that all the members were subordinate to the petitioner, and therefore her complaint to be referred to the Local Committee. On the date of proceedings (17.02.2016) of Local committee, constituted by the Social Welfare Department (Tamil Nadu State

Government) the complainant appeared and gave a written complaint, while the petitioner did not present himself, though he had given reasons for his non-appearance. In the meanwhile, the Director of Ministry of commerce and Industry also appointed one Smt.Sunita Yadav, Director, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry as the Chairperson of the Sexual Harassment Committee vide its letter dated 22.12.2015. This was in response to the objections of the complainant on the composition of the Internal Committee. On 30.12.2015, the District Social Welfare Officer forwarded the letter of the aggrieved complainant to the Controller General of Trade Marks requesting to expedite the enquiry on her complaint, but since it was not allegedly acknowledged, the District Social Welfare Officer conducted an enquiry on 17.02.2016 after obtaining a written complaint from the complainant which was hand written and elaborate in nature. The Proceedings of the said enquiry was intimated vide letter dated 25.02.2016 and it found that prima facie case is made out under Sec 3(2)(iii)(iv)(v) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Hence, the Local Committee recommended an immediate detailed departmental enquiry against the petitioner by his employer. The petitioner had replied to the District Social Welfare Officer on 28.04.2016 stating that he also ought to have been heard and also that two parallel proceedings cannot be construed as legally valid. The complainant vide her letter dated 16.11.2016 objected to the new Internal Committee also, stating that except for the Chairperson who was changed, the others remained the same. She felt that no justice could be expected from the Committee and therefore, approached the Central Administrative Tribunal, Madras Bench in OA/310/00340/2017 to declare that the constitution of the Internal Committee is invalid. The Central Administrative Tribunal, Madras Bench concluded that Local Committee had already conducted a preliminary enquiry and that the Internal Committee formed by the employer is against law due to the sole reason that the petitioner himself was the Head of the Department and therefore a complaint against him can be enquired into only by the Local Committee. The appeal against this order in RA.301/00015/2018 by the petitioner was dismissed by the Central Administrative Tribunal, Madras Bench. The Writ Petitions arise out of this orders of the Central Administrative Tribunal, Madras Bench and also against the exparte order of the Local Committee. The aspects to be decided in these writs are

1) Whether the ICC and Local Committee can do the preliminary enquiry parallely?

2) Whether the findings of the Local Committee which is exparte need to be complied with?

3) Whether the original complaint in December 2013 had any allegation warranting the institution of formation of committee for enquiry into sexual harassment of women in work

place?

4) Whether the person who is charged was the employer in the strictest sense?

2. Mr.T.Mohan, learned counsel appearing for the complainant drew the attention of this Court to Section 2 (g) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 which reads thus,

"(g) "employer" means-

(i) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;

(ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.

Explanation- For the purposes of this sub-clause "management" includes the person or board or committee responsible for formulation and administration of policies for such organisation"

(iii) in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;

(iv) in relation to a dwelling place or house, a person or household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker"

His specific contention is that since the petitioner, was the Administrative Head of the Office of the Department at Chennai, as admitted by him in his reply statement filed in the main OA.No.310/00340/2017, he has to be treated as an employer, as per Section 2 (g) of the Act. He also drew the attention of this Court to Section 6 of the Act which gives the Jurisdiction of Local Complaints Committee. He would submit that the Local Complaint Committee alone has Jurisdiction to deal with the complaint made by the complainant. In this regard, Mr.R.Vijayakumar, learned Additional Government Pleader was directed to produce the entire file containing the report of the Local Committee, since the order passed by the Local Committee is a non

speaking order. A perusal of the entire file reveals that the Local Committee has passed a cryptic order without recording statements of the complainant and others. Absolutely, there is no material to show that the petitioner was actually served with a copy of the orders so as to enable him to file an appeal under Section 18 of the Act. However, it is found that an intimation was sent to the employer of the petitioner. At this juncture, it is relevant to extract Section 27 of the Tamil Nadu General Clauses Act, 1891, which reads that,

"27. Meaning of service by post -

Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, where the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

3. At the outset, it may be observed that the original complaint dated 02.12.2013 was generic in nature. It elaborated upon how the petitioner was authoritative and also to some extent biased in his action and decisions. This is in sharp contrast to the written complaint dated 17.02.2016. The latter, though did not mention the date and sequence of events, talked about physical advances made by the petitioner and also his lewd remarks on her physical appearance. While the original complaint dated 02.12.2013 does not even give an iota of what is stated in the latter, the Local Committee concluded that there is a prima facie case without questioning the original complaint. In between the two complaints, one complaint dated 30.06.2015, repeatedly mentions the word 'sexual harassment' without describing it. It gives an appearance as to that instructing a woman employee to do something officially or even scolding a woman employee itself is sexual harassment. The first two complaints also deal about corruption, favouritism and so on and so forth. Mr.T.Saikrishnan, learned counsel for the petitioner in his defence has also contended that complainant was an Assistant Registrar in a quasi judicial position and interference in her decision making was not possible. It was further contended that the petitioner was the Head of the office in Chennai but was subordinate to his Superiors in New Delhi and therefore not an employer and that both the first and second complaints were sent to the Registrar and Controller General in New Delhi. The learned counsel for the petitioner also contended that the Registrar and Controller General ought not to have

constituted an Internal Committee for enquiry into complaints of sexual harassment in the first place for a generic complaint with no sexual harassment allegation in it. The complaint could have been redressed by the Superiors in the Department in a better manner. It was further contended that the complainant on her part had never raised the plea that it was a complaint against her employer when she approached the Local Committee. Mr.T.Saikrishnan's contention is that the objection of the complainant regarding the members of the Internal Committee was accepted by the employer and a senior lady officer was made the Chairperson which only shows the bonafide intention of the employer and that instead of respecting the superior office, the complainant went ahead with the complaint to the Local Committee which was unwarranted. His another contention is that whether the Local Committee went through the two earlier complaints and the other correspondence between the complainant and her superiors in New Delhi since they do not find a place in the report of the Local Committee and that the finding of the Local Committee is a non speaking one, besides setting the petitioner exparte.

4. It is well settled that under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the enquiry has to be a full fledged one, not a preliminary one. It is also mandatory for the person accused to be provided an opportunity to defend himself. Section 14 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, provides for penalising the complainant if the complaint is found to be false with malicious intent. Section 14 of the Act was to check false complaint. At the same time, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 also brought in two provisions in order not to deter women from filing complaints. One was that their inability to prove a complaint will not render it false. Secondly, the malicious intent has to be specifically established before disciplinary action is recommended against the complainant.

5. The findings of the Local Committee in the light of the above provisions becomes invalid. The contention of the complainant that she approached the Local Committee only because the complaint was against her employer is an after thought. This was accepted by the Central Administrative Tribunal, Madras Bench. When the formation of the Internal Committee itself is not decided by the petitioner, terming him as the employer does not have any logic. In the first place, there was no need for an Internal Committee to redress the first complaint dated 02.12.2013. Having set one, it is clear that the petitioner was not the employer. The complainant's complaint dated 17.02.2016 before the Local Committee smacks of tutoring. This letter fits into the definition of sexual harassment complaint and contains all ingredients to make out an offence under the Sexual Harassment of Women at Workplace

(Prevention, Prohibition and Redressal) Act, 2013. However, it lacks details of the alleged incidents. This complaint like the earlier complaints is too generic. This also appears to be an after thought. Sub-clause (2) of Section 3 of the Act provides that no woman shall be subjected to sexual harassment at any workplace - (i) implied or explicit promise of preferential treatment in her employment; or (ii) implied or explicit threat of detrimental treatment in her employment; or (iii) implied or explicit threat about her present or future employment status; (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or (v) humiliating treatment likely to affect her health or safety. Therefore, a solitary allegation of intemperate language against a female employee does not constitute an offence under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Intemperate language used by the petitioner was the essence of the first complaint other than the bias and favouritism he (the petitioner) allegedly exhibited. The constitution of an Internal Committee for enquiry into sexual harassment allegations was not warranted in the instant case. However, having formed the Committee, the defiant attitude of the complainant in not attending the Internal Committee hearing and the metamorphosis of the original complaint into a sexual harassment one before the Local Committee expose the real intentions of the complainant. The complainant was well aware of the Internal Committee and ought to have faced it, had her complaint been true. Instead, approaching the Tamil Nadu State Commission for Women and giving a different picture there, are all perplexing. Thus, the decision of the Internal Committee in not taking cognizance of the Local Committee order, was reasonable. The Central Administrative Tribunal, Madras Bench had erred in concluding that the petitioner was the employer and therefore, the Internal Committee would not have any relevance. In the instant case, the Local Committee gave an erroneous decision with a non speaking order which is also exparte. The complainant, it appears, made a futile attempt to settle her personal score with the petitioner.

6. Every office has to maintain a certain decorum and women employees cannot be allowed to go scot free without completing their assignments. The Administrative Head or the Chief has every right to extract work and he or she has his or her own discretion and prerogatives. If a woman employee is discriminated against due to her inefficiency or for any other official reasons, the recourse for her is not the one taken by this complainant. Though the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is intended to have an equal standing for women in the work place and to have a cordial workplace in which their dignity and self respect are protected, it cannot be allowed to be misused by women to harass some one with an exaggerated or non existent allegations.

7. We find no merit in the decision of the Central Administrative Tribunal, Madras Bench. Therefore,

(i) W.P.No.10689 of 2019 is allowed. The order dated 02.01.2019, passed by the Central Administrative Tribunal, Madras Bench in RA.No.15 of 2018 is quashed.

(ii) W.P.No.24290 of 2019 is allowed. The order dated 25.02.2016, passed by the Local Complaint Committee in Proceedings No.3675 is quashed.

(iii) W.P.No.4339 of 2019 is allowed. The orders (1) dated 25.09.2018, passed in OA/310/00340/2017 and (2) dated 02.01.2019, passed in RA/310/00015/2018 by the Central Administrative Tribunal, Madras Bench are quashed.

No order as to costs in all the above Writ Petitions. The connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-III)

***corrected as per order
of this court dated 05.03.2020
in WP.No.10689 of 2019
&WMP.No.4049/2019,WMP.24051/19
WP.24290/19, WP.4339/19
WMP.4868 of 2019,WMP.11170/2019
-s/d-
Assistant Registrar
dt 21/08/2020**

//True copy//

Sub Assistant Registrar

mbi

To

1. Assistant Registrar of Trade Marks & GI,
Intellectual Property Building,
GST Road, Guindy,
Chennai - 600 032.

2. Deputy Registrar of Trade Marks & GI, **To be Substituted
for the order already
despatched 04.03.2020**
Boudhik Sampada Bhawan,
Plot No.32, Sector 14, Dwaraka,
New Delhi - 110 075.

3. The Registrar,
Central Administrative Tribunal,
Chennai.

4. Secretary to Government,
State of Tamil Nadu,
Department of Social Welfare,
Fort St. George,
Chennai - 600 009.

5. The Chairperson,
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No.1, Panagal Maligai Building,
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Chennai - 600 015.

6. District Social Welfare Officer-Chennai,
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8th Floor, Rajaji Salai,
Parry, Chennai - 600 001.

7. The Chairperson,
The Local Complaints Committee,
Tamil Nadu State Commission for Women,
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9. Director,
Department of Industrial Policy and Promotion,
M/o. Commerce & Industry,
IPR - Section I, Udyog Bhawan,
New Delhi - 110 011.

10. The Secretary to Government,
M/o. Commerce & Industry,
Department of Industrial Policy and Promotion,
Udyog Bhavan, New Delhi - 110 011.

11. The Deputy Registrar of Trade Marks & GI,
Trade Marks officer, Kolkata, Boudhik
Sampada Bhawan

CP-2 sector V, Salt Lake city
Kolkata 700 091

+3cc to Mr.G.Rajan, Advocate SR.No.12911, 12912, 12913

+2cc to Mr.V.Chandrasekaran, Advocate SR.No.12841, 12842

+2cc to Mr.T.Saikrishnan, Advocate SR.No.12835, 12836

WP.Nos.10689, 24290 and 4339 of 2019

WMP.Nos.4868 and 11170 of 2019

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