

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.02.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

W.P.No.19264 of 2020
and W.M.P.No. 23854 of 2020

J.Mani .. Petitioner

Versus

- 1.The Union Of India,
rep.by the Joint Director,
National Institute of Fashion Technology,
NIFT Campus,
Rajiv Gandhi Salai, Taramani,
Chennai 600 113.
- 2.The Presiding Officer,
Internal Complaints Committee,
National Institute of Fashion Technology,
NIFT Campus, Rajiv Gandhi Salai,
Taramani, Chennai 600 113.
- 3.Prof.Dr.Anita Manohar
Director, National Institute of Fashion Technology,
NIFT Campus, Rajiv Gandhi Salai, Taramani,
Chennai 600 113.
- 4.The Registrar,
Central Administrative Tribunal,
Chennai Bench,
City Civil Courts Buildings,
High Court Campus,
Chennai 600 104. ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the entire records pertaining to the order made in O.A.No. 487 of 2020 dated 12.11.2020 on the file of the Registrar, Central Administrative Tribunal, Chennai Bench and all relevant records pertaining to the impugned e-mail Notices dated 24.10.2020 and 26.10.2020 issued by the presiding officer, Internal complaints committee, National Institute of Fashion Technology, NIFT campus, Rajiv Gandhi salai, Taramani, chennai-600 113, the 2nd respondent herein and quash them as highly illegal arbitrary, unreasonable, being violative of rules and principles of natural justice and

pass such further or other orders.

For Petitioner : Mr.A.R.Suresh for Ms.G.Dharoga
For RR1 & 2 : Mr.K.Srinivasa Murthy
For R3 : Mr.K.Sridhar

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

Heard the submissions of Mr.A.R.Suresh, learned counsel appearing for the petitioner and Mr.K.Srinivasa Murthy, learned Standing Counsel appearing for respondents 1 and 2, Mr.K.Sridhar, learned counsel appearing for the 3rd respondent.

2. The 3rd respondent who is the Director of National Institute of Fashion Technology, NIFT Campus, Rajiv Gandhi Salai, Taramani, Chennai 600 113, has lodged a complaint on 05.10.2020, to the 2nd respondent, alleging certain acts including the acts of the petitioner's misbehaviour and intruding into her personal affairs. It appears that in contemplation of the disciplinary proceedings, the petitioner was placed under suspension, vide order dated 05.10.2020, by the Joint Director of NIFT.

3. The learned counsel appearing for the petitioner would submit that in terms of the proceedings of the Assistant Director (Establishment-II) of NIFT, Head Office, New Delhi dated 10.10.2020, a Fact Finding Committee has been constituted with regard to the issue raised by the Director of NIFT against two subordinates and the grievances raised by them.

4. According to the learned Standing Counsel appearing for the 1st respondent, since the term of the said Committee had expired, a new Committee has also been constituted and a communication dated 24.10.2020, was issued to the petitioner to attend an enquiry on Zoom platform on 7th day of receipt of the complaint and since the petitioner is not acquainted with the language of English, yet another e-mail communication dated 26.10.2020 was sent in Tamil. The petitioner has filed O.A.No.487 of 2020, on the file of the Central Administrative Tribunal, Madras, to call for the records and quashment of the e-mail notices dated 24.10.2020 and 26.10.2020 and prayed for appropriate orders. The petitioner, in the original application before the Tribunal, has raised an issue as to the want of jurisdiction on the part of the Internal Complaints Committee in ordering the petitioner to appear through Video Conference and it is unreasonable and discriminatory and in the light of the fact that the simultaneous Fact Finding Authority is also looking into the said fact, further proceedings in terms of Sexual Harrassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

and rules framed thereunder, ought to have been deferred. The Tribunal after considering the rival submissions and taking note of the factual aspects, found that the Internal Complaints Committee is requesting the applicant to give certain facts and having found that the Original Application is not maintainable, has dismissed the same with costs of Rs.25,000/- to the Central Administrative Tribunals' Bar Association and challenging the legality of the same, the present Writ Petition is filed.

5. The learned counsel appearing for the petitioner has reiterated the very same submissions before this Court and would plead that until the Fact Finding Committee gave its finding in all fairness, the proceedings initiated under the above said Act have to be stayed.

6. Per contra, Mr.K.Srinivasa Murthy, learned Standing Counsel appearing for the respondents 1 and 2 would submit that the fact of Fact Finding Committee, going into the very same issue, cannot be put against the respondents, for the reason that under Section 28 of the Women Harassment Act, 2013, the provisions of this Act shall be in addition to and not in derogation of the provisions or any other law for the time being in force and as such, it is open to the 2nd respondent to proceed further with the enquiry against the petitioner on the basis of the complaint given by the 3rd respondent.

7. The learned counsel appearing for the 3rd respondent would submit that the present Writ Petition is nothing but an abuse of process of law and also premature, for the reason that the 2nd respondent Committee was proceeded strictly in accordance with the provisions of the above said Act and Rules framed thereunder and having taken note of the other factual circumstances, the Tribunal has rightly rejected the Original Application with costs of Rs.25,000/- and prays for dismissal of this Writ Petition with exemplary costs.

8. This Court paid its best attention to the rival submissions and also perused the materials placed before it.

9. It is relevant to extract Section 11 of the Sexual Harassment of Women at Workplace (prevention, Prohibition and Redressal) Act, 2013 and Rule 7 of the rules framed thereunder:

Section 11 of the Sexual Harassment of Women at Workplace (prevention, Prohibition and Redressal) Act, 2013:

''(1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or

in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

(2) Notwithstanding anything contained in section 509 of the Indian Penal Code (45 of 1860), the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

(3) For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents; and

(c) any other matter which may be prescribed.

(4) The inquiry under sub-section (1) shall be completed within a period of ninety days.

Rule 7 of the Sexual Harassment of Women at Workplace (prevention, Prohibition and Redressal) Rules, 2013:

<https://hcservices.ecourts.gov.in/hcservices/> 7. Manner of inquiry into complaint.— (1)

Subject to the provisions of section 11, at the time of filing the complaint, the complainant shall submit to the Complaints Committee, six copies of the complaint along with supporting documents and the names and addresses of the witnesses.

(2) On receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved woman under sub-rule (1) to the respondent within a period of seven working days.

(3) The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses, within a period not exceeding ten working days from the date of receipt of the documents specified under sub-rule (1).

(4) The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice.

(5) The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an ex parte decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings convened by the Chairperson or Presiding Officer, as the case may be:

Provided that such termination or ex-parte order may not be passed without giving a notice in writing, fifteen days in advance, to the party concerned.

(6) The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee.

(7) In conducting the inquiry, a minimum of three Members of the Complaints Committee including the Presiding Officer or the Chairperson, as the case may be, shall be present. "

10. In the considered opinion of this Court, the impugned notices which were the subject matter of challenge before the Tribunal came to be issued in terms of Section 11 read with Rule 7 of the Sexual Harrassment of Women at Workplace (prevention, Prohibition and Redressal) Act, 2013 and therefore, it cannot be faulted with. Time line granted in the said Notice is also in compliance of the statutory provisions. As rightly pointed out by the learned Standing Counsel appearing for the respondents 1 and 2, the proceedings under the Sexual Harassment of Women at Workplace (prevention, Prohibition and Redressal) Act, 2013, is not in derogation but only an addition to the proceedings initiated under the other Act and therefore, the fact that the Fact Finding committee is not dealing with the very same fact, cannot be put against the

2nd respondent, rather forbearing them from proceeding with the enquiry.

11. Now coming to the imposition of exemplary costs is concerned, it may open to the petitioner to challenge the particular proceedings and on advice, the petitioner did so in the form of filing an Original Application before the Tribunal and as such the imposition of exemplary costs, in the considered opinion of this Court, cannot be warranted and therefore, the said portion of the order alone is cancelled. At this juncture, the learned counsel appearing for the petitioner would submit that he may be granted 10 days time from the date of receipt of a copy of this order / uploading of the order in the website, for submitting his response with supporting documents to the 2nd respondent. On the said submission, this Court heard the submission of the learned Standing Counsel appearing for the respondents 1 and 2 and the learned counsel appearing for the 3rd respondent also.

12. The petitioner is granted 10 days time from the date of receipt of a copy of this order / uploading of the order in the website, to submit his response with relevant and authenticated documents, if any, to the 2nd respondent and upon receipt of the same, the 2nd respondent Committee shall proceed further in the light of the statutory provisions and rules framed thereunder under the Sexual Harassment of Women at Workplace (prevention, Prohibition and Redressal) Act, 2013.

13. In the result, the Writ Petition is dismissed subject to above observations. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Joint Director,
The Union Of India,
National Institute of Fashion Technology,
NIFT Campus,
Rajiv Gandhi Salai, Taramani,
Chennai 600 113.

2.The Presiding Officer,
Internal Complaints Committee,
National Institute of Fashion Technology,
NIFT Campus, Rajiv Gandhi Salai,
Taramani, Chennai 600 113.

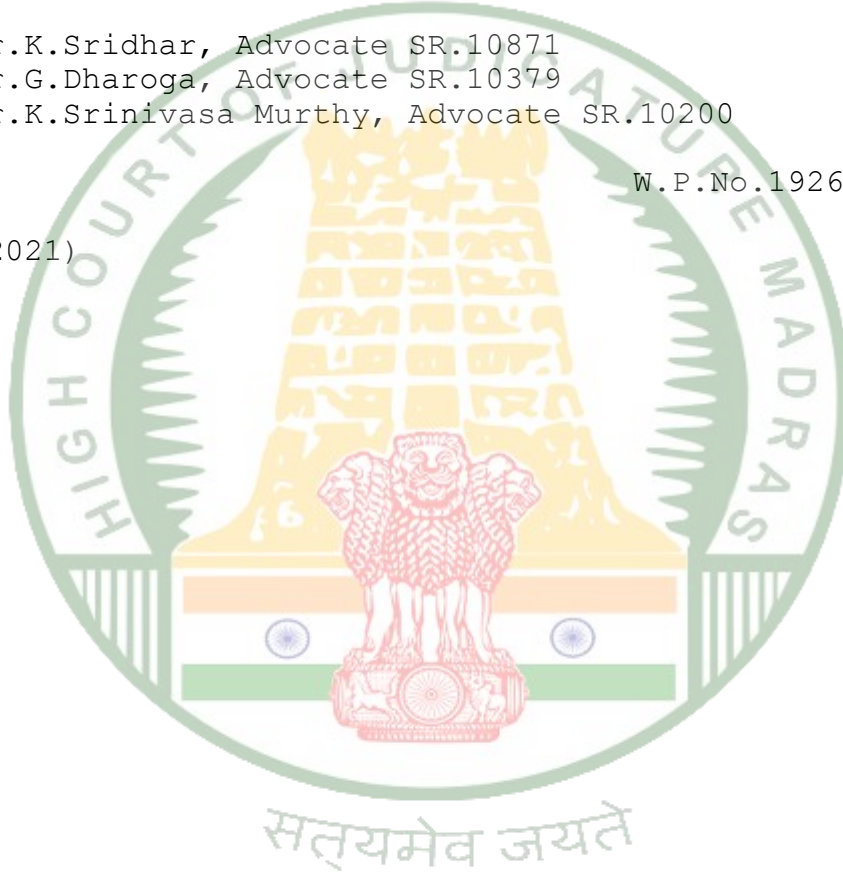
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Chennai 600 104.

+1cc to Mr.K.Sridhar, Advocate SR.10871
+1cc to Mr.G.Dharoga, Advocate SR.10379
+1cc to Mr.K.Srinivasa Murthy, Advocate SR.10200

W.P.No.19264 of 2020

PMK (CO)
CB(12/03/2021)



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