

**Central Administrative Tribunal
Madras Bench**

OA/310/00340/2017

Dated the 25th day of September Two Thousand Eighteen

P R E S E N T
Hon'ble Mr.R.Ramanujam, Member(A)
&
Hon'ble Mr.P.Madhavan, Member(J)

Smt. Rema Srinivasan Iyengar,
Assistant Registrar of Trade Marks & GI,
Intellectual Property Building,
GST Road, Guindy,
Chennai 600 032. .. Applicant
By Advocate **M/s.R.Iyappan**

Vs.

1. Union of India, rep. By
The Secretary to the Government,
M/o Commerce & Industry,
Department of Industrial Policy & Promotion,
Udyog Bhavan, New Delhi 110 011.
2. The Controller General of Patents,
Designs, Trade Marks & GI,
BoudhikSampadaBhawan, S.M.Road,
Near Antop Hill Post Office,
Mumbai 400 037.
3. Smt. Sunita Yadav,
Director,
Department of Industrial Policy & Promotion,
M/o Commerce & Industry,
IPR-Section I, UdyogBhawan,
New Delhi 110 011.
4. Shri V.Natarajan,
Deputy Registrar of Trade Marks & GI,
BoudhikSampadaBhawan,
Plot No.32, Sector 14, Dwaraka,
New Delhi 110 075. .. Respondents

By Advocate **Mr.G.Dhamodaran (R1&2), Mr.L.S.Muthaiah (R4)**

ORDER

Pronounced by Hon'ble Mr.P.Madhavan, Member(J)

Heard. The applicant has filed this OA seeking the following relief:-

“(a) To set aside the letter dated 10.2.2017 sent by the 3rd respondent to the applicant herein vide letter No.F.No.01/7/2016-SHC/10 and

(b) to direct the 2nd respondent to implement the order of the Local Complaint Committee under proceeding No.3675 dated 25.2.2016 of recommendation to initiate detailed Departmental Enquiry against the 4th respondent under the provisions of Rule 14 of CCS/CCA Rules 1965 and to pass such further and other orders that is just and necessary in this circumstances of the case.”

2. The applicant is working as an Assistant Registrar of the Trade Marks & GI at the Intellectual Property office at Guindy. The said office is managed under the administrative control of Shri V.Natarajan, Deputy Registrar. According to her, R4 Dy.Registrar had misbehaved to her in an indecent manner and she had reported the matter to her superior authority R2 on 02.12.2013. Even thereafter, R4 continued his activities and she again reported the matter to R2 but R2 did not take any action. She again sent a reminder on 01.9.2015. R2 did not give any reply. Since R2 was not taking any action, she approached Tamil Nadu State Commission for Women, Anna Salai for necessary action.

3. The Tamil Nadu Women's Commission had forwarded the complaint to the Local Complaints Committee, Chennai (constituted as per provisions of the Sexual Harassment of Women at Work Place (Prevention, Prohibition & Redressal) Act,

2013. The Local Committee had filed the report after enquiry on 25.2.2016 seeking departmental action. The enquiry report shows that a *prima facie* case is made out under Section 3(2)(iii)(iv)(v). R2 has not taken any action against R4 on receipt of the report. Instead of taking action on the basis of the report, R2 had appointed R3 as a Chairperson to make a preliminary enquiry as per letter dated 22.12.2015 UdyogBhavan, New Delhi. Though this order was issued 15 months back, no action was taken as per this letter. According to the counsel for the applicant, preliminary enquiry was already conducted by the Local Complaints Committee and there cannot be a second preliminary enquiry. All the members of the Committee under R3 were subordinate to R4 and such a Committee cannot do justice. The counsel drew our attention to Section 6 of the act which reads thus “Every District Officer shall constitute in the district concerned, a committee to be known as the “[Local Committee]” to receive complaints of sexual harassment from establishments where the [Internal Committee] has not been constituted due to having less than ten workers or if the complaint is against the employer himself.” So according to him when the complaint is made against the Head of the Office or employer, only Local Complaints Committee alone can conduct preliminary enquiry. So constitution of another committee under R3 is against Section 6 of the Act and it is liable to be quashed. The applicant had produced the impugned order dated 10.2.2017 wherein the department had ordered to continue with the preliminary enquiry as Annexure 1.

4. The respondent No.4 entered appearance and filed a detailed reply denying the averments made in the petition. R1&2 also filed reply against the averments in the

petition. R2 had constituted an Internal Complaints Committee headed by Smt.J.Meena, Assistant Controller of Patents and Designs as early as 16.7.2014. The complaint was referred to it and a date was fixed for hearing on 16.7.2014. The applicant objected to the constitution of the said Committee as Smt.Meena is a junior officer to R4. As there was no senior women officer available, as per instructions of Department of Industrial Policy and Promotion (DIPP) dated 22.12.2015, R3 Smt. Sunitha Yadav was nominated as Chairperson. According to them, only Internal Complaints Committee has jurisdiction to deal with the matter.

5. We have heard both sides. Section 3(g) of the Act defines employer as follows:-

“(i) in relation to any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organization, 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.”

6. On going through the pleadings and reply, it is seen that R4 was the Head of Office of the Department at Chennai. R4 had also admitted this fact in his reply filed. So as per Section 2(g) of the Act, R4 has to be treated as the “employer.” Section 4 of the Act makes provisions for constitution of Internal Complaints Committee and Section 6 gives the jurisdiction of Local Committee. The section says that the Local Committee has to deal with the complaints received if there is no internal committee constituted or if the complaint is against the employer himself.

7. In the instant case R4 being the 'employer' the Internal Complaints Committee constituted has no authority to conduct a preliminary enquiry in the complaint filed by the applicant. Only the Local Committee constituted by the District Officer alone can deal with the matter. Therefore, we find merit in the arguments raised by the applicant herein. The Local Complaints Committee had conducted a preliminary enquiry and had submitted the report for taking further disciplinary action. Now the respondents are to initiate the disciplinary proceedings and conduct a formal enquiry and dispose the matter under Section 11 of the Act.

8. So the appointment of R3 for conducting a further preliminary enquiry is against the law. Accordingly, we quash the proceedings as per F.No.1/7/2016 SHC/10 dated 10.2.2017. The respondents are directed to take appropriate action under the law as per preliminary enquiry report filed by the Local Complaints Committee without fail. OA is allowed with the above direction. No costs.

(P.Madhavan)
Member(J)

25.09.2018

(R.Ramanujam)
Member(A)

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