

**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH**

RA/310/00015/2018 in OA/310/00340/2017

Dated the 2nd day of January Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr.R.Ramanujam, Member(A)
&
Hon'ble Mr.P.Madhavan, Member(J)**

Shri V.Natarajan,
Deputy Registrar of Trade Marks & GI,
Intellectual Property Building,
GST Road, Guindy,
Chennai 600 032. .. Applicant/4th respondent
By Advocate **Mr.L.S.Muthaiah**

Vs.

1. Smt. Rema Srinivasan Iyengar,
Deputy Registrar of Trademarks & G.I.,
Trade Marks Office Kolkata,
Boudhik Sampada Bhawan,
CP-2 Sector V, Salt Lake City,
Kolkata 700091. ..Respondent(1)/Applicant
2. 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.
3. The Controller General of Patents,
Designs, Trade Marks & GI,
BoudhikSampadaBhawan, S.M.Road,
Near Antop Hill Post Office,
Mumbai 400 037.

4. Smt. Sunita Yadav,
Director,

Department of Industrial Policy & Promotion,
M/o Commerce & Industry,
IPR-Section I, UdyogBhawan,
New Delhi 110 011.

.. Respondents(2,3&4)/Respondents(1,2&3)

By Advocate **Mr.G. Dhamodaran**

ORDER (RA By Circulation))
(Pronounced by Hon'ble Mr.P.Madhavan, Member(J))

The 4th respondent in OA 340/2017 has filed this RA 15/2018 under Rule 49 of the Administrative Tribunals Rules to review and set aside the order passed by this Tribunal in the above said OA dated 25.9.2018.

2. The above OA was filed by the 1st respondent in RA seeking to quash the impugned order dated 10.2.2017 issued by Director, DIPP and Chairperson of the Committee, directing him to appear before the Committee. OA respondent 1 and 2 filed a detailed reply and respondent 4 had also filed a detailed reply in the OA. The said OA, after hearing both sides was allowed by this Tribunal on 25.9.2018 with the observation that the appointment of R3 for conducting a further preliminary enquiry was against the law. Accordingly, the proceedings as per F.No.1/7/2016/SHC/10 dated 10.2.2017 was quashed. The respondents were directed to take appropriate action under the law as per preliminary enquiry report filed by the Local Complaints Committee without fail.

3. The 4th respondent in OA has now filed this RA seeking review of the order passed by this Tribunal in above said OA alleging that there was an error apparent on the face of the record in as much as this Tribunal has not considered the following facts:-

“According to the RA applicant, the applicant in OA had filed a complaint on 02.12.13 to the 2nd respondent and the 2nd respondent had visited Chennai office and had made oral enquiries and found that there was no merit in the complaint and it was

closed. Even thereafter the OA applicant had persisted on filing fresh complaint against the RA applicant and the 2nd respondent had referred the matter to the Internal Complaints Committee (ICC) constituted under the provisions of Sexual Harassment of Women at Work Places (Prevention, Prohibition & Redressal) Act, 2013. The said Committee was headed by one Smt.Meena, Assistant Controller of Patents & Designs, Chennai. The OA applicant had again filed a complaint on 30.6.2015 against the RA applicant. The OA applicant had also filed objections regarding the constitution of Internal Complaints Committee (ICC) stating that the Chairperson is working under the control of the RA applicant and cannot be the chairperson. Thereupon, the 2nd respondent in OA had reconstituted the ICC. According to the RA applicant, the Local Complaint Committee(LCC) had conducted an enquiry while the ICC was seized of the matter and hence the said report of the LCC cannot be accepted. These aspects were not considered by this Tribunal while passing order in the OA. According to the RA applicant, the order passed by this Tribunal in OA is not a speaking order as many of the contentions raised by the RA applicant is not properly considered. The order passed by the LCC was passed behind the back of the RA applicant and the OA applicant has not made the Chairperson of the LCC as a party in the OA. He is not an 'employer' of the OA applicant. Therefore, the finding of the Tribunal that ICC cannot continue is not valid and legal. According to him, OA applicant has approached the ICC and LCC with an un-cleaned hands. It is only the ICC can look into the matters alleged in this case.”

4. Therefore, it is prayed that the order passed in the OA may be reviewed and set

aside the order dated 25.9.2018.

5. We have considered the plea raised in the RA. The main relief sought in the OA was to quash the impugned order dated 10.2.2017. On going through the impugned order, it can be seen that the ICC was reconstituted and it began functioning only in the year 2017. In this case it has to be noted that the RA applicant was the Head of Office at Chennai Branch at the relevant point of time. As per Section 3(g) of the Act -

“(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.”

As per Section 6 of the Act, if the complaint is against the employer himself, only Local Committee constituted under the Act has jurisdiction to conduct a preliminary enquiry into the allegation of sexual harassment. Here the 4th respondent ie., RA applicant, being the Head of Office, he has been considered as employer and ICC constituted within the said office cannot go into the allegation. It has come out that ICC was chaired by one Smt. Meena who was only a subordinate to the 4th respondent (RA applicant) in this case. The statute as per Section 6 says that when the allegation is made against the employer himself, it has to be enquired into by the Local Committee and not by ICC. The contentions raised in this RA was also raised in the reply filed by respondents 1, 2 & 4. The ground taken in the present RA could

not be termed a subsequent discovery or something not in the knowledge of the RA applicants even after exercising due diligence. The case is, therefore, not fit to be taken up in review. We are of the view that since the matter has already been heard and disposed of by this Tribunal, no review is called for. No glaring omission, patent mistake or grave error is brought to our notice that would impinge on the observations/directions contained in the order in the OA. We are not inclined to reopen the case. Accordingly, RA 15/2018 is dismissed.

(P.Madhavan)
Member(J)

02.01.2019

(R.Ramanujam)
Member(A)

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