

Delhi High Court

Prof. A.K. Mittal vs Registrar, Indian Institute Of ... on 30 April, 2015

Author: Rajiv Shakdher

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ W.P.(C) 6059/2014  
PROF. A.K. MITTAL ..... Petitioner  
Through: Petitioner in person

versus

REGISTRAR, INDIAN INSTITUTE OF  
TECHNOLOGY & ANR ..... Respondents  
Through: Mr.Gourab Banerjee, Sr. Advocate with  
Mr. Arjun Mitra, Mr.Sahil Tagotra and Ms. Charu  
Ambwani, Advocates

CORAM:  
HON'BLE MR. JUSTICE RAJIV SHAKDHER  
ORDER

% 30.04.2015 CM No.17178/2014 (for recalling the order dated 15.09.2014)

1. Yesterday, a detailed hearing was held in the matter when, the petitioner was represented by advocates, Messrs Chandra Shekhar and Mr. Udit Arora.

1.1 Today, quite strangely the advocates, despite being told that the matter will be taken up, to basically, enable Mr. Banerjee, the learned senior counsel for the respondent to revert with instructions, have decided to remain absent. The petitioner, who is present in person insists that he would like to argue the matter.

2. I have heard the petitioner in person in some detail, as also Mr. Banerjee in support of his client's stand.

3. To be noted, the captioned application has been filed in a W.P.(C) 6059/2014 page 1 of 10 disposed of writ petition. The petition was disposed of on 15.09.2014, by my predecessor.

3.1 The broad reason, given by my predecessor, in the order dated 15.09.2014, was that, since the report of the Inquiry Officer, who is a retired Judge of this court, was not taken up by the Board of Governors (in short the B.O.G.), the petitioner should appear before the B.O.G. and place his submissions before them. 3.2 The court made it clear that the B.O.G. would give not only full opportunity of hearing and making of representation by the petitioner, but would also allow him to make submissions qua the factual matrix of the case. For this purpose, a hearing was fixed before the B.O.G., on 03.11.2014.

4. Thereafter, it appears, that respondent no.1 moved an application i.e. CM No.15997/2014, for altering the date of hearing before the B.O.G.

4.1 Consequently, by order dated 30.09.2014, the request was accepted, in the presence of the counsel for the petitioner. Resultantly, the date of hearing, i.e. 03.11.2014, which was fixed by the court vide order dated 15.09.2014 was changed to 31.10.2014. 4.2 It is, at this stage, that is, a day prior to the date of hearing (i.e., 31.10.2014), that the, captioned application was moved. 4.3 The burden of this application, is that, the statement made on behalf of respondent no.1, that the B.O.G., had not reached a decision on the report submitted by the Inquiry Officer was inaccurate, and that, extracts of the minutes of the meeting dated 06.09.2014 of the W.P.(C) 6059/2014 page 2 of 10 B.O.G., would demonstrate to the contrary.

4.3 The learned Judge upon a preliminary hearing came to the conclusion that prima facie the contention of the respondents that no final decision had been taken in the matter was not correct. Accordingly, notice was issued in the captioned application. Consequent thereto, replies and rejoinder have been filed in the captioned application.

5. I have heard the learned counsel for the parties. 5.1 Before I proceed further, it would be important to note herein the relevant parts of the minutes of the meeting dated 06.09.2014 as extracted by the petitioner in the captioned application read as follows :-

"..The Board unanimously decided to impose a penalty of "Dismissal from Service" on Prof. A.K. Mittal.

RESOLUTION NO.BG/24/2014 : RESOLVED THAT a penalty of Dismissal from Service be imposed on Prof. A.K. Mittal in the matter related to charge sheet served upon him vide O.M. No.IITD/Estt./U-1/203/IES1/1429 dated 26.04.2013.

The Board further decided that a speaking order to this effect should be served upon Prof. A.K. Mittal by the Secretary, Board of Governors. The Board also authorised Chairman, Board of Governors to approve the draft of this speaking order..."

(emphasis is mine) 5.1 A perusal of the extract would show that the B.O.G. authorised the Chairman to approve the draft of the speaking order. It is the W.P.(C) 6059/2014 page 3 of 10 contention of respondent no.1 that this draft was not approved, and that, this is a procedure which, respondent no.1 has followed in several cases.

5.2 It is also the stand of respondent no.1 that at the approval stage, quite often, the initial decision is reversed. Respondent no.1 would prefer to call it a preliminary decision as against a final decision of the B.O.G.

5.3 Having heard Mr. Banerjee, I am of the view that the procedure appears to be one geared for only approving the contents of the meeting held and not a procedure whereby a substantive decision taken by B.O.G. could, unilaterally be, reversed by the Chairman; unless of course, the draft minutes contained patent errors. 5.4 It is in this context that I had asked Mr. Banerjee as to whether B.O.G. will agree to efface, completely, the minutes of the meeting dated 06.09.2014 from the record and grant a de-novo hearing to the petitioner. Mr. Banerjee has returned with instructions and his

instructions as conveyed to me are as follows :-

- (i). The minutes of the meeting dated 06.09.2014, shall stand effaced from the record.
  - (ii). The B.O.G. will give time to the petitioner, approximately, two and half hours for making submissions in the matter. This particular aspect has been brought to fore on account of the petitioner's insistence that he was not being given sufficient time by the B.O.G. in their previous hearings.
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- (iii). A minimum of ten (10) days prior written notice, will be given to the petitioner with regard to the date of hearing.
  - (iv). No previous report of the three member Committee, if generated, will be relied upon by the B.O.E. This situation came about, I am told because the petitioner made a representation to the B.O.G. running into 900 pages. Faced with this, the B.O.G. for its assistance had constituted a three member committee to examine the representation filed by the petitioner.
  - (v). The B.O.G. will hear the petitioner and independently apply its mind to the submissions made by him.
  - (vi). The minutes of meeting held by the B.O.G., on 31.10.2014 and 15.01.2015, will not be taken into account to the extent they relate to the petitioner.

6. I have put these aspects to the petitioner. The petitioner before me has again resurrected the aspect of jurisdiction of the Inquiry Officer. It is his contention that the Inquiry Officer appointed under Rule 14 of the Central Civil Services Rules, 1965 could not have conducted an enquiry pertaining to allegations of sexual harassment. In other words, the inquiry into the matter could have only been conducted by a Sexual Harassment Committee i.e., the Internal Complaints Committee. The petitioner, for this purpose, seeks to rely upon the judgements of the Supreme Court in Vishaka & Ors. Vs. State of Rajasthan, AIR 1997 SC 3011, and Medha Kotwal Lele Vs. UOI, 2013 (1) SCC 311. Reliance is also sought to be placed on the provisions of the Sexual Harassment of Women at Workplace :

W.P.(C) 6059/2014 page 5 of 10 (Prevention, Prohibition and Redressal) Act, 2013.

7. There are several difficulties in accepting, at the moment, the submissions advanced by the petitioner.

7.1 First and foremost, as indicated, right at the outset, the captioned application has been filed, in a disposed of writ petition. 7.2 Second, these very objections had been raised by the petitioner before the Inquiry Officer, who, has dealt with the same extensively. 7.3 A perusal of the report of the Inquiry Officer would show that the Sexual Harassment Committee was formed which, thereupon

returned a preliminary finding against the petitioner. The said Committee recommended initiation of a regular enquiry against the petitioner. It is, therefore, based on the committee's recommendation that, a charge sheet was served on the petitioner. 7.4 That the Inquiry Officer has dealt with the submissions made by the petitioner in her report, is evident from the following extract from the report :-.

"...In my order dated July 7th 2014, I had made a mention of the aforesaid communication received from Dr. Mittal and recorded therein that : "he has chosen not to appear before me despite repeated notices and despite his knowledge that the inquiry proceedings are going on. In this view of the matter, this communication is of no consequence."

In view of what has been said by me in the order dated July 7th 2014 though I am not obliged to take notice of what is stated in his communication, but on going through the same, I find, that he wants to get the matter investigated by the Internal Complaints Committee as per the provisions of Sexual Harassment of Women at Workplace : (Prevention, W.P.(C) 6059/2014 page 6 of 10 Prohibition and Redressal) Act, 2013 (hereinafter referred to as 'The Sexual Harassment Act') implying thereby, that I have no authority to conduct the inquiry. Since he has indirectly questioned my authority to hold the inquiry, I feel that I must clear the air and deal with his objection that it is the Internal Complaint Committee which is the rightful authority to deal with allegations made against him. He has also raised certain grievances about the Institute not having provided him with vital documents to the case. Furthermore, he has written that he suffered a heart attack and that when my appointment as an Inquiry Officer was made he was on medical leave. He has also written that after availing the medical leave on his joining the office his priority was to complete the pressing academic duties which were not attended to due to his absence from office.

It appears to me that Dr. Mittal is labouring under some misconception with regard to my appointment to inquire into the allegations made against him. It is true that under 'The Sexual Harassment Act' an Internal Complaint Committee is required to be constituted with regard to complaints of sexual harassment at workplace. But it is also true that this Act does not prohibit an inquiry to be conducted under Rule 14 of the CCS (CCA) Rules 1965, Central Civil Services (Conduct) 1964, and Statute 13(9) of the Institute. As a matter of fact, Section 28 of the 'The Sexual Harassment Act' says that "Provisions of this law will be in addition and not in derogation to any law for the time being in force". Reference in this regard may also be made to an office memorandum of IIT, Delhi, dated April 16th 1993 whereby, CCS (Conduct) Rules 1964, CCS(CCA) Rules 1965, fundamental and supplementary rules are made applicable to the employees of the Institute.

It is not that IIT Delhi on receiving complaints from Tropita and Priyanka did not act as per the directions of the Supreme Court in Vishaka's case. It did send the complaints W.P.(C) 6059/2014 page 7 of 10 to the SHCC which as noticed above, sent the same to the FFC and on receiving and perusing the report of the FFC, SHCC formed the view that a prima facie case was made out against

Dr. Mittal. It was further of the view that a regular inquiry be initiated against him and a charge sheet be issued to him. Again, as already noticed, the IIT issued a memorandum dated April 26th 2013 to Dr. Mittal, accompanied with the Statement of Articles of charge under Rule 14 of the CCS (CCA) Rules 1965, Central Civil Services (Conduct) Rules 1964, and Statute 13(9) of the Institute informing him that an inquiry was proposed to be conducted under the said Rules and also appointed an Inquiry Authority comprising of Dr. (Ms.) Saroj Mishra, Dr. (Ms.) Manjeet Jassal and Dr. T.C. Kandpal. What is of significance in this context is that Dr. Mittal submitted to the jurisdiction of the Inquiry Authority knowing fully well that it was to conduct the inquiry under Rule 14 of the CCS (CCA) Rules, 1965, Central Civil Services (Conduct) Rules, 1964, and Statute 13(9) of the Institute. For him, to now turn around and say that the allegations against him can only be inquired into by the Internal Complaint Committee is an afterthought and his objection to this effect is unsustainable. He may have had grievance against the Inquiry Authority for not supplying him documents as desired by him besides some other grievances but that Inquiry Authority has withdrawn itself from the inquiry, and consequently, it is no longer in existence. It is therefore wholly irrelevant for Dr. Mittal to harp on his grievances pertaining to that authority. The Inquiry which has been entrusted to me was to start de-novo and therefore had Dr. Mittal chosen to appear before me he would have got full opportunity to air his grievances, but he having not done so he has only to blame himself..."

7.5 Therefore, the third difficulty, which is, as to whether this court should intercede in the matter at this stage. Having regard to the observations of the Inquiry Officer, I am of the view that the W.P.(C) 6059/2014 page 8 of 10 petitioner would have to take his grievances to the B.O.G. In my opinion, this is not a stage for the court to intercede in the matter.

8. Having regard to the above, the captioned application is disposed of with the following directions, in line, with the instructions received by Mr. Banerjee :-

- (i). The minutes of the meeting dated 06.09.2014 shall stand effaced from the record.
- (ii). The Board will give, at least, ten (10) days prior written notice to the petitioner fixing the date and venue of the hearing.
- (iii). On the given date, as agreed by Mr. Banerjee, the hearing will take place from 10.30 a.m. to 1.30 p.m.
- (iv). The petitioner will be at liberty to place before the B.O.G., his written submissions as also any other material, he wishes to place reliance on.
- (v). The petitioner will hand over his written submissions, at least, three days prior to the date of hearing fixed by the B.O.G.
- (vi). The B.O.G. will not consider any input, by way of report or otherwise submitted by the three member committee, which was, earlier scrutinizing the submissions filed by the petitioner before the B.O.G.

(vii). The B.O.G. will not take into account the minutes of the meeting dated 31.10.2014 and 15.01.2015 to the extent they relate to the petitioner.

(viii). Lastly, the B.O.G. after giving opportunity to the petitioner, will pass a speaking order.

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9. Needless to say, a copy of the order passed by the B.O.G, will be furnished to the petitioner within one week of it being finalized. CM No.4302/2015 (for directions by the respondents)

10. Mr. Banerjee says that in view of the order passed in the aforementioned application (i.e., CM No.17178/2014), this application has been rendered inefficacious.

11. The said application is, accordingly, disposed of.

RAJIV SHAKDHER, J

APRIL 30, 2015

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