
(2011) 07 GAU CK 0040

In the Gauhati High Court

Case No : Writ Petition (C) No. (SH) 167 of 2011

Dr. Malavika Desai

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-07-2011

Acts Referred:

Citation : (2011) 07 GAU CK 0040

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Advocate : A. Paul and K. Paul, for the Appellant; S. Sen, for the Respondent

Final Decision : Dismissed

Judgement

T. Vaiphei, J.—After extensively hearing Ms. A Paul, the learned Counsel for the Petitioner, and Mr. S. Sen, the learned Counsel for the Respondent-Institute for two days, I do not think it necessary to issue formal notice to the Respondent-Institute and decide to dispose of the writ petition at the motion stage.

2. The sole question which falls for consideration in this writ petition is whether the presence of Prof. Keya Sengupta, in the Inquiry Committee to inquire into the allegation of sexual harassment made against the Director of the Respondent-Institute by the Petitioner will be fair, impartial and unbiased when she is not only working under him but has also sworn and filed the affidavit-in-opposition on behalf of the Respondent-institute to defend the impugned action of the Director of the Institute. The Petitioner filed her first case against the Respondent-Institute in WP(C) No. 108(SH) of 2011 challenging the order dated 29-4-2011 terminating her appointment as Assistant Professor of the Institute with effect from 5-5-2011 as her performance was not found satisfactory. The Respondent-Institute filed its affidavit-in-opposition on 2-6-2011, the writ petition is now pending for disposal. It is interesting to note that in that affidavit, the answering Respondent annexed a copy of the memorandum dated 6-10-2009 constituting a Standing Committee comprising of Professor Kenya Sengupta as

the Chairperson of the Committee to inquire into any allegations of sexual harassment of women in the Institute. Curiously, no whisper of statement was made by the Petitioner challenging the participation of Professor Sengupta in the Inquiry Committee on the ground of bias even at this stage. Shortly thereafter, another writ petition being WP (C) No. 142(SH) of 2011 was filed by her for directing the Respondent-Institute to initiate appropriate inquiry into her complaint of sexual harassment at workplace (under sealed envelope) made against the Director of the Institute. The writ petition was disposed of by this Court on 13-6-2011 by directing the Respondents to open the seal envelope and place the same before the competent authority to decide the complaint in accordance with the standing practice of the Institute.

3. On 17-6-2011, the Respondent-Institute filed Misc. Case No. 211(SH) of 2011 before this Court in connection with the disposed WP(C) No. 142(SH) of 2011 informing this Court that the sealed envelop, when opened by the Committee, did not contain the said complaint and prayed for passing an appropriate order accordingly. This Court by the order dated 24-6-2011 disposed of the Misc. Case by directing the Committee to commence the inquiry into sexual harassment on the basis of the Xerox copy of the said complaint and complete the same within two weeks. At this stage, it is worthy of notice that even if the Petitioner pleaded ignorance about the said Memorandum dated 6-10-2009 constituting the Committee under the Chairmanship of Professor Sengupta before filing the Misc. Case, the fact that Professor Keya Sengupta was the Chairperson of the Committee had already been made known to her as evident from Annexure-B of the affidavit-in-opposition dated 2-6-2011 filed in connection WP(C) No. 108(SH) of 2011, a copy whereof was actually received by her on that day itself. Yet, as already noted, no objection was ever raised by the Petitioner about the participation of Professor Keya Sengupta in the Committee. It was only when the Committee commenced the inquiry that this writ petition came to be filed by her. Under the circumstances, I find it irresistible to conclude that the apprehension of bias expressed by the Petitioner is an after-thought and merely a device to stall the proceeding of the Inquiry Committee even if the writ petition is not barred by constructive res judicata.

4. However, Ms. A. Paul, the learned Counsel for the Petitioner, drawing my attention to the decision of the Apex Court in *Secy. to Govt., Transport Deptt., Madras v. Munuswamy Mudaliar* and Anr. 1988 (Supps) SCC 651 submits that when Professor Sengupta filed the affidavit-in-opposition on behalf of the Institute defending the impugned action/inaction of the Director of the Institute, there is reasonable apprehension in the mind of the Petitioner that she (Professor Sengupta) will have a predisposition to decide in favour of her superior authority and against the Petitioner. I have given my anxious consideration to this submission of the learned Counsel. The test for adjudging bias, plainly stated, is real likelihood of bias or a predisposition to decide for or against one party, without proper regard to the true merits of the dispute. However, vague suspicions of whimsical, desperate or paranoid and insecure people should not be

made the standard to regulate normal human conduct. In the instant case, as already noticed, the apprehension of bias is expressed by the Petitioner belatedly knowing fully well that Professor Sengupta has already been associated with the Committee for quite sometime. Therefore, the apprehension of bias entertained/expressed by her is fanciful, unreasonable and is more apparent than real.

5. It is next contended by the learned Counsel for the Petitioner that when all the members of the Inquiry Committee are virtually working under the Director against whom serious allegation of sexual harassment has been made by the Petitioner, it is quite certain that no fair and impartial inquiry will be conducted by the Committee as majority of them will have a predisposition to decide against the Petitioner. It must be noted that the inquiry being conducted is a domestic inquiry and not a judicial inquiry, and to demand constitution of the Committee comprising of persons from outside the Institute is most unreasonable and is a practice unheard of, be it a case of sexual harassment or otherwise. Even in a normal departmental enquiry also, the same procedure is followed but that cannot be a ground for disqualification of the Inquiry Officer. Moreover, Annexure-11 would show that Professor David R. Syiemlieh, Pro-Vice Chancellor of the North Eastern Hill University, Shillong (NEHU) and one NGO have now been roped in as additional members of the Committee, which is apparently in conformity with the guidelines issued by the Apex Court in Vishaka and others Vs. State of Rajasthan and Others, . In the final analysis, the question to be determined is whether a reasonable person viewing the facts as well as the conduct of the Petitioner as noticed earlier would think that there is real likelihood of bias. The answer, I am afraid, must be in the negative.

6. Resultantly, there is no merit in this writ petition, which is hereby dismissed, but by directing the parties to bear their respective costs. Let the enquiry proceed expeditiously.