

**HIGH COURT OF TRIPURA**  
AGARTALA

**WP(C) 422 of 2021**

Smt. Shila Debnath

-----Appellant(s)

Versus

National Institute of Technology & Ors.

-----Respondent(s)

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For Petitioner(s)	:	Mr. Sankar Lodh, Advocate
For Respondent(s)	:	Mr. B Majumder, CGC
		Mr. KD Singha, Advocate

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**HON'BLE MR. JUSTICE S. TALAPATRA**

**ORDER (ORAL)**

**07.12.2021**

Heard Mr. Sankar Lodh, learned counsel appears on behalf of the petitioner whereas Mr. B Majumder, learned CGC appears for respondents No. 1 to 9 and Mr. KD Singha, learned counsel appears for the respondent No.10.

**2.** The petitioner filed a complaint in writing on 09.04.2021 against the respondent No.10 alleging *sexual harassment* within the meaning of Section 2(n) of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. For purpose of reference, hereinafter the petitioner will be referred to as the 'aggrieved woman' as defined by Section 2(a) of the said Act.

**3.** The complaint was referred to the Internal Complaints Committee (ICC) for inquiry by the authority of NIT, Agartala. It appears that the ICC after purported inquiry submitted their report on

17.05.2021 and the same was forwarded to the aggrieved woman by the covering letter dated 24.05.2021 (Anenxure-3 to the writ petition). The report has apparently dealt with all relevant aspects and opinion thereof has been laid against separate five issues:

(a) The Committee has observed that the aggrieved woman has been harassed sexually has not be described in her complaint with suitable narration. Hence, it is difficult for the committee to find the preponderance of probability of physical contact or advances which is of sexual nature.

(b) On the allegation of unwelcomed request, the committee has opined that instance of demand or request for sexual favour as well as the contents of the SMS have not been specifically described by the complaint. So the circumstances arising out from description of the aggrieved person are not indicating any probability of instance of demand or request for sexual favour.

(c) While giving opinion on the aspect whether making of sexually coloured remarks is probable, the Committee has observed that nowhere in the complaint, the aggrieved woman has introduced any circumstance which indicates that the respondent No.10 made sexually coloured remarks.

(d) On the aspects of whether pornography was shown, the Committee has observed that there is no existence of any circumstance which indicates that the respondent No. 10 showed pornography to the aggrieved woman.

(e) On the aspect of unwelcomed physical, verbal or non-verbal conduct of sexual colour, the Committee has observed that the respondent No. 10 behaved unwelcomingly by his verbal or non-verbal conducts of sexual nature has not been stated by the aggrieved woman in her complaint.

That apart, it has been observed that the aggrieved woman deleted the word 'sexual' while referring harassment from the last paragraph of the complaint when she asked for justice.

**4.** The aggrieved woman being aggrieved by the said report has approached this Court for the relief that the said report dated 17.05.2021 of the ICC of NIT, Agartala be set aside and the inquiry be done afresh on the basis of the complaint filed by the aggrieved woman.

**5.** The official respondents, including the ICC members have filed their reply through the Registrar In-charge, National Institute of Technology, (NIT) Agartala. It has been asserted in their reply that under the Act there is limitation for making the complaint. Similarly, any offence punishable under Section 509 of the IPC can only be taken cognizance of, within one year from the date of occurrence. After lapse of several years, the complaint had been filed under Section 9 of the said Act. It has been further asserted that since the findings of the ICC have been supplied to the aggrieved woman, she had two remedies, viz.(i) she can approach the ICC for review; or (ii) she can approach the competent authority of the NIT, Agartala for reconsideration for fresh hearing. They have categorically stated of availability of such remedy in the report having referred to Section 11(i) of the said Act.

**6.** The respondent No.10 has separately submitted his reply. He has also raised the question of limitation and availability of the effective alternative remedy. Even, he has embarked on the factual aspect to assert his defence that he has been falsely alleged of sexual conduct. According to him, the ICC has carried out the inquiry having

conformed to the procedural laws and the principles of fairness and therefore, the report cannot be faulted with.

**7.** The respondent No.10 has referred to that part of the report where it has been observed as follows:

**“An opportunity of being heard will be given and a copy of the findings shall be made available to the both of the parties enabling them to make representations against the findings before the appropriate forum in compliance of law laid down in Section 11(1) of the Act.”**

It has been referred by the respondent No.10 that he had been implicated in a criminal case being Jirania PS Case No. 2021 JRN 020 under Section 376/417/506 of the IPC. According to him, the allegation of the aggrieved woman is aimed at demolishing his reputation and nothing less.

**8.** Mr. Sankar Lodh, learned counsel appearing for the petitioner has raised a pertinent ground by stating that 2<sup>nd</sup> proviso to Section 11 of the said Act has not been complied. 2<sup>nd</sup> proviso to Section 11 reads as under:

**“Provided further that where 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.”**

A copy of the findings was made available to the aggrieved woman by the covering letter dated 24.05.2021 (Annexure-3 to the writ petition).

**9.** The other part of the 2<sup>nd</sup> proviso to Section 11 of the said Act has been incorporated in a distorted manner. Where the other part provides that "*a copy of the finding shall be made available to both the parties enabling them to make representation against the findings before the Committee*", the committee has incorporated that an opportunity of being heard will be given and the copy of the findings shall be made available to both the parties enabling them to make representations against the findings before the appropriate forum in compliance of law laid as down in Section 11(1) of the Act.

**10.** Section 11 of the Act did not provide what has been incorporated. It simply provides that the copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee, not to the "appropriate forum". In the case of the aggrieved woman, the petitioner herein, she was not given any opportunity to being heard. Even she was not apprised of her right to file representation before the ICC.

**11.** Mr. B Majumder, learned CGC appearing for the respondents No. 1 to 9 has confirmed that the aggrieved woman was not heard during the entire inquiry proceeding. He has admitted that it is an infraction of the laid down procedure.

**12.** Having scrutinised the records, we have noticed the opinion of the ICC. This court will not make any observation on merit of such findings. Infraction of laid down procedure has rendered the inquiry proceeding by the ICC unsustainable.

**13.** Without affording opportunity of being heard the aggrieved woman, how the ICC had come to the final finding is difficult to understand. Admittedly, the aggrieved woman, the petitioner herein, was not heard and as such she has been deprived of laying down the further evidence in support of her complaint. This is a clear denial of the principle of fairness in an inquiry.

**14.** When a particular procedure is provided in a statute a duty to observe such procedure cannot be shirked off under the cloak of meaningless exercise. To assess, vulnerability of the aggrieved woman is to be understood in the perspective of social censure. Therefore, when a complaint is filed coming out of the penumbra, the inquiry has to be done only after giving a substantive opportunity of hearing to the aggrieved woman. Denial of such opportunity is not only unacceptable but it shows the absence of required sensitivity of the complaint committee.

**15.** Having observed thus, the report dated 17.05.2021 (Anexure-3 to the writ petition) stands interfered with and quashed. The ICC shall start the inquiry afresh and record its findings only after

compliance of Section 11 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Needless to say, the aggrieved woman, the petitioner herein, shall be provided the scope of hearing in support of the complaint, or laying the evidence in support of her complaint. It would not be out of place to mention that affording the opportunity of hearing to the aggrieved woman or scope for laying any evidence in order to support the allegations of sexual harassment is fundamental to the statutory duty.

**16.** Hence, this matter is remanded to the ICC and for this purpose, the Registrar, NIT, Agartala shall issue due notification for resumption of inquiry by the ICC. The ICC shall supply a copy of the report containing findings based on the inquiry, so that representation can be made against the findings by the parties.

**17.** In the result, this petition stands allowed to the extent as indicated above.

There shall be no order as to costs.

**JUDGE**