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## TRIPURA HIGH COURT ON DENIAL OF HEARING BY POSH COMMITTEE

### **A. Introduction**

Tripura High Court (**HC**), in *Shila Debnath* case,<sup>1</sup> held that an aggrieved woman must be given an opportunity of being heard in an inquiry before the internal complaints committee (now referred to as internal committee or IC).

### **B. Brief Facts**

1. In April 2021 Shila Debnath (**Debnath**) had filed a complaint alleging sexual harassment under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (**Act**).
2. It was referred to the internal complaints committee (**ICC**) of National Institute of Technology (**NIT**), Agartala
3. The ICC prepared its report (**Report**) and forwarded the same to Debnath with the following observations:<sup>2</sup>
  - a. The ICC finds it difficult to find probability of sexual physical contact or advances as Debnath has not described them in her complaint.
  - b. She has also not described the instance of demand or request for sexual favour or the messages indicating probability of demand or request.
  - c. She has not provided any circumstance in which sexually coloured remarks were made.
  - d. There exists no circumstance which indicated that pornography was shown by the respondent.
  - e. Debnath did not state any instance of unwelcome physical, verbal or non-verbal conduct of sexual colour in her complaint.
  - f. She also deleted the word sexual while referring to harassment from the last paragraph of the complaint.
4. Aggrieved by the Report, Debnath approached the HC seeking for the Report to set aside and a fresh inquiry be conducted by the IC.

### **C. Contentions of the Parties**

1. NIT claimed that the Act prescribes a limitation period which has already expired and the available remedies to Debnath are to either approach the ICC for a review or the competent authority of NIT for reconsideration.

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<sup>1</sup>*Shila Debnath vs. National Institute of Technology and Ors.* (07.12.2021 - Tripura): MANU/TR/0568/2021.

<sup>2</sup> Paragraph 3 of the Judgement.

2. Debnath contented that Section 11 of the Act which states that both parties must be given an opportunity to be heard was not followed by the ICC.

#### **D. Judgment & Reasoning of HC**

HC allowed the petition remanding the matter to the ICC for resumption of inquiry with the below observations:

- a. Debnath had not been given an opportunity of being heard.<sup>3</sup> Therefore, “[I]nfraction of laid down procedure has rendered the inquiry proceeding by the ICC unsustainable.”<sup>4</sup>
- b. Any woman who makes a complaint has the right to lay down further evidence in support of her complaint. Not allowing a woman to do so is a violation of the principles of fairness and equity.
- c. “*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.*”<sup>5</sup>

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<sup>3</sup> Paragraph 11 of the Judgement.

<sup>4</sup> Paragraph 12 of the Judgement.

<sup>5</sup> Paragraph 14 of the Judgement.

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