*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 27.04.2018
Pronounced on: 30.05.2018

+   **LPA 237/2018, C.M. APPL.16802-03/2018**

RUCHIKA SINGH CHHABRA ..... Appellant

Through: Ms. Nandita Rao and Ms. Srilina Roy, Advocates.

versus

M/S. AIR FRANCE INDIA AND ANR. ..... Respondents

Through: Sh. Manish Dembla with Sh. Nachiketa Goyal, Advocates, for Respondent No.1.
Ms. Manika Tripathy Pandey with Sh. Ashutosh Kaushik and Ms. Raveena Tandon, Advocates, for Respondent No.2.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A.K. CHAWLA

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MR. JUSTICE S. RAVINDRA BHAT

1. An unsuccessful writ petitioner appeals to this Court against an order of the learned single judge dated 30.01.2018 (in W.P(C) No. 1382/2016).

2. The facts of the case are that Ruchika Singh Chabra (the appellant, hereafter "Appellant") joined the first respondent (hereafter "the first Respondent" or "Air France") in the year 2001 as Commercial Assistant. She alleges to having become a victim of sexual harassment by a certain employee, Stanislas Brun (hereafter "Brun"), a French National, currently serving as Managing Director of Air France, who was transferred to India as Marketing Manager, Cargo (India, Nepal and Bhutan) in 2013.The Appellant alleges to being harassed by Brun on multiple occasions and cited several incidents supporting her averment that she was subjected to repeated sexual advances inspite of her repeated or express refusal.

3. The Appellant finally confided in two people from Air France at a meeting in Delhi. She alleged that in order to victimise her for complaining against incidents of Sexual Harassment, she was compelled to submit her resignation on 23.09.2017 by three people in Air France and claims that this was under the threat of immediate termination along with being threatened against getting any letter or documents of service and provident fund/gratuity from the company. She alleges that when she tried resisting, she was gheraoed and molested by three male senior executives who got the resignation letter scribed and signed by her for reporting against her senior. After getting the resignation forcefully signed, she was asked to leave the premises within maximum half an hour without her belongings. When she requested them to collect her personal belongings and data she was blatantly refused. The Appellant after coming out of her confinement was compelled to call the Women Helpline and requested the police to come to her office. The police then came to the office and took her to the Police Station at Gurgaon and thereafter she lodged FIR No.550/15 with DLF Police Station, Gurgaon.

4. The Appellant also lodged a complaint with the Internal Complaints Committee ("ICC"), Air France on 26.09.2015 constituted in terms of Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter "the Workplace Harassment Prohibition Act"). In furtherance to the aforesaid complaint, the Appellant also approached the Delhi Commission for Women (hereinafter "Respondent no. 2" or "DCW") on 30.09.2015 to ensure that a proper ICC is put in place to investigate the complaint of the Appellant.

5. The Appellant contended that the constitution of the said Committee is contrary to the provisions of the POSH Act as the external member appointed on the committee was not associated with a non-governmental organization and his qualifications have not been informed to her until much later in the course of the proceedings of the ICC. She also contends that the procedure followed by the ICC

is not in accordance with law. The Appellant alleged that despite repeated submissions of complaints to the ICC via email by her, the ICC was not set up according to law and she was informed that the attachments in the email were inaccessible. The Appellant avers that she wrote several emails requesting the ICC to set up a personal hearing/meeting and also to inform her of the members constituting the ICC, including the details of the independent NGO member so as to facilitate her complaint.

6. The Appellant received an email from the ICC on 06.11.2015, about the names of the members constituting the ICC being Ms. Taruna Jain, Ms. Himanshu Sharma, Mr. Jeff Anthony and she was also informed about the nomination of Mr. Michael Dias, Secretary, the Employers' Association, Delhi as the external member on account of having the necessary qualifications prescribed under the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act/Rules 2013.The Appellant sent several emails to the ICC seeking clarifications with regard to the affiliation of Air France with the Employer's Association as she was not convinced of the independence of the external member appointed by the ICC; they went unanswered.

7. The Appellant raised objections with regard to the manner in which the proceedings of the ICC were conducted. Her objections included choice of a neutral venue, right to have her mother attend the proceedings, cross examination of and by the accused among other grounds. The Appellant contends that the conduct of the Air France in constituting an ICC not in compliance with the guidelines issued by the Supreme Court in the case of *Vishaka and others vs. State of Rajasthan and Others,* 1997 (6) SCC 241 ("Vishaka Guidelines") and the Workplace Harassment Prohibition Act and that the ICC was conducting its proceedings in a manner which is not in accordance with law or the principles of natural justice. It is also contended that Air France is duty bound to ensure the enforcement of all laws and safeguards related to women and is also duty bound to

redress violation of these laws and Constitutional provisions. She invoked the writ jurisdiction of this Court.

8. Air France urged a preliminary objection with respect to the jurisdiction of this Court to entertain the appellant's writ petition asserting that no cause of action arose within the National Capital Territory of Delhi and, therefore, this Court lacked jurisdiction to entertain the writ petition. The learned Single Judge had initially entertained the writ petition, directing that a final report would not be prepared, while issuing notice. Upon the respondents' entering appearance, and articulating their objection about lack of territorial jurisdiction of this court, the learned Single Judge heard the parties, who were also asked to file their submissions. On 14.02.2017, the Appellant sought leave to amend the prayer clause of the writ petition to include the following: (a) Declare Rule 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 ultra vires to Rule 4(c) of the Workplace Harassment Prohibition Act (b) Declare Rule 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 ultra vires of Article 14, 15 and 19 of the Constitution of India. On 14.02.2017, another application was moved by her seeking impleadment of Union of India through Ministry of Law and Justice as proper and necessary party. The learned Single Judge issued notice on the application.

9. The case was thereafter listed before the learned single judge who on 30.01.2018, dismissed the petition for want of territorial jurisdiction on the ground that the court was not persuaded to accept that any part of the cause of action has arisen within the National Capital Territory of Delhi and on 30.01.2018, the ICC passed its final report exonerating Mr. Stanislas Brun of all allegations and charges. Against this order, the Appellant has filed a Letters Patent Appeal before this Court.

10. It is argued by the Appellant that the impugned judgment is in error in stating that this Court does not have territorial jurisdiction to entertain the writ petition. The Appellant contends that she and Brun were both employed in their respective capacities at the Delhi Office of Air France as is evident from the termination letter dated 23.09.2015 issued by the Delhi Office accepting her resignation. Further, the first complaint regarding the alleged harassment suffered by her was made at a meeting in Delhi to certain employees and thus, part of the cause of action arose in Delhi. The learned counsel for the Appellant also drew the attention of this Court to a notice issued by Air France indicating the constitution of the ICC for its various offices. She pointed out that a common ICC had been constituted for the offices of Air France at Gurgaon and Delhi.

11. The Appellant also challenged the constitution and procedure of the ICC as being contrary to the provisions of the Workplace Harassment Prohibition Act, 2013. With regard to the constitution of the ICC, the Appellant has contended that the ICC constituted by the Respondent No. 1 is in violation of Section 4 (c) of the Workplace Harassment Prohibition Act as no NGO member familiar with the issue of sexual harassment was appointed on the Committee. The external member appointed on the committee is not associated with a non-governmental organization and his qualifications have not been informed to the Appellant. Further, the external member, Mr. Michael Dias was in fact a labour lawyer and had not disclosed that either he or his organization, (i.e. Employers Association) has not been engaged for profit by the Air France before and/or there is no conflict of interest. The counter affidavit of Air France suggests that his appointment was made in compliance to Rule 4 of the Sexual harassment of Women at Workplace (Prevention, Prohibition & Redressal) Rules, 2013 which provides that persons familiar with issues relating to sexual harassment may include a person who is familiar with *"labour, service, civil or criminal law"*. However, Rule 4 does not apply to the ICC constituted under section 4 (c) and only applies to District

Committee under Section 7 because the constitution of district committees already includes independent members. Mr. Dias's profile suggests however, that he is primarily a labour lawyer with no expertise in sexual harassment matters and his appointment contravened Section 4 (c) of the Act.

12. In respect of the procedure followed by ICC, the Appellant urged that the learned Single Judge has not appreciated that the ICC, constituted for both Delhi and Gurgaon did not declare the procedure to be adopted for the enquiry of the allegations of sexual harassment made by her and was biased and evidently favoured the accused person. The procedure adopted by the ICC whereby the complainant first cross examined the accused person and then was cross examined by the accused, is patently illegal. Further, the ICC's insistence to hold the proceedings in the office of Air France rather than a neutral venue initially with a view to intimidate and put off the Appellant is contrary to the guidelines as laid down in the *Vishaka* judgment to assure objectivity and observe neutrality in its inquiry. The appellant was also denied the right to take her mother along with her to the proceedings, which is in contravention to the Sexual Harassment (Prevention, Prohibition and Redressal) Rules, 2013 which permit her to be accompanied by a family friend or even a social worker or a psychiatrist. It is stated also that the ICC failed to conduct an enquiry and investigate the matter as it is bound in law to do and instead started a trial without framing the charges and thus, put the entire onus to prove the case on the appellant, but has reserved the right to call anyone as witnesses, which is in violation of the Workplace Harassment Prohibition Act and the principles of natural justice. The entire proceedings conducted by the Committee as evident by the inquiry report reeks of bias which is contrary to law.

13. It was further contended that the second respondent, a statutory body of the Government of Delhi, who was seized of the appellant's complaint did not investigate the matter to ensure that the ICC was constituted in accordance with

the *Vishaka* Guidelines and the Workplace Harassment Prohibition Act. DCW has similar powers o that possessed by the National Commission for Women, and was duty bound under Section 10 of the Delhi Commission for Women Act, 1994 to investigate into the matter on receipt of the complaint from the Appellant to ensure that the Respondent No. l had constituted an ICC in accordance with the *Vishaka* guidelines and the Act and that the said committee was conducting the proceedings in accordance with the law.

14. Counsel for Air France disputed the jurisdiction of this court in the present matter by contending that the appellant was working in the Gurgaon office of Air France and that no part of the cause of action arose in Delhi as none of the alleged incidents of sexual harassment have been alleged to have happened in Delhi. Accordingly, it has been argued by the respondent that DCW has no authority over the proceedings of the ICC which is acting as the committee for the Gurgaon office in the present case. They have argued that the concerned authority, if any, is Haryana State Commission for Women over which this Court does not exercise jurisdiction. All the meetings of the ICC also took place in Gurgaon. Further, it is stated that the Delhi office of Air France is only a communication address and have placed reliance on the judgement of the Supreme Court in *Eastern Coalfields Ltd. and Ors. vs. Kalyan Banerjee,* (2008) 3 SCC 456 to contend that mere existence of place of office/residence within the territorial limits of the state cannot confer jurisdiction upon a Court.

15. Air France also justified the appointment of Mr. Michael Dias, submitting that even if *arguendo* it cannot be justified as falling under Rule 4, because of section 7, nevertheless, his objectivity cannot be questioned merely because he had supported or had been engaged by employers in the past. As an independent legal professional with vast experience, his independence could not be doubted and in the absence of any specific challenge to his qualifications, or experience, his claim that he had advised in the framing of sexual harassment prohibition policies at

private employers' workplaces or participation on similar occasions could not be dismissed. Therefore, the charge to lack of qualification in accordance with law was repelled by the respondent employer.

16. DCW argued that while it has been given the power to investigate and examine matters relating to women and deprivation of their rights, it lacks the power to issue directions in this regard and that it has not been made the Appellate Authority under the Workplace Harassment Prohibition Act. Thus, where on one hand, it has been restricted from issuing directions, on the other, the powers which were being exercised by it in cases of sexual harassment at the workplace, before the statute came into force, have also been clipped. As a result, many hapless women are suffering, for their grievances against ICC formulated by their employers which do not get suitably redressed by way of the appellate mechanism under Section 18 of the Workplace Harassment Prohibition Act and the rules thereunder. However, DCW undertook to comply with directions of this Court if the provisions of law that exist in this regard are suitably given a harmonious construction and DCW is empowered to take suitable action as has been sought for by the appellant.

Analysis and Conclusions

17. The question that arises for determination in the present appeal is whether the learned Single Judge has erred in dismissing the case on the ground of absence of territorial jurisdiction. At the outset, Air France objects on the issue pg jurisdiction of the court to entertain her writ petition. Its reply affirms that no cause of action has arisen within the National Capital Territory of Delhi and, therefore, this Court does not have the jurisdiction to entertain the writ petition as the cause of action did not arise within Delhi. The respondent contended that the office of Air France in Delhi is only a communication address and thus, not a proper functional office. Counsel appearing for the appellant however contended that this Court has jurisdiction to entertain the present petition as Air France's registered

office is located in Delhi. She submitted that since the constitution of ICC has been challenged in the petition as one of the principle issues raised, this Court has jurisdiction to examine the matter due to the fact that a common ICC had been constituted for the offices of Air France at Gurgaon and Delhi.

18. Under Article 226(1) of the Constitution of India, every High Court has the power, throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases any Government, within those territories, directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, or the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. Under Article 226(2), the power conferred by Clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

19. There was earlier a dichotomy of opinion in relation to the necessity of a cause of action having arisen, in whole or in part, within the territorial jurisdiction of a High Court for the Court to exercise jurisdiction. The law as it stood earlier was that the exercise of jurisdiction of the High Court under Article 226 depended upon the seat of the respondents within its territory. Explaining the purport of the provision before amendment of Article 226, the Supreme Court has stated in *Election Commission v. Saka Venkata Subba Rao,* AIR 1953 SC 210 and in the subsequent cases of *Khajor Singh v. Union of India,* [1961] 2 SCR 828 and *Collector of Customs v. E. I. Commercial Co*., [1963] 2 SCR 563 that place of office and/or residence of the respondents was the only factor for invocation of the jurisdiction of Article 226 and there was no necessity that the cause of action ought to have arisen within the territorial limits of the relevant High Court. To obviate

the difficulties in the proposition of law enunciated by the Supreme Court, Article 226 (1A) was introduced by the Constitution (Fifteenth Amendment) Act, 1963 which was subsequently renumbered as Clause (2) by 42nd Amendment Act, 1976. The effect of the said amendment is that it made the accrual of cause of action an additional ground to confer jurisdiction to a High Court under Article 226. Thus, after insertion of Clause (2) the legal position is that a writ can be issued by a High Court against a person, Government or authority residing within the jurisdiction of that High Court or within whose jurisdiction the cause of action in whole or in part arises.

20. The Appellant has contended that Air France has its registered offices in Delhi. The company has not disputed this fact but asserted that the Delhi office is merely a communication address. The appellant disputes this assertion by suggesting that the ICC was constituted for both the Delhi and Gurgaon office and that the letter of termination of employment issued to the appellant shows that they were employed by the Delhi office. Therefore, it cannot be said that the Delhi office is only a communication address. Air France argued that mere existence of registered office cannot confer jurisdiction on this Court and relied on the judgment of the Supreme Court in the case of *Eastern Coalfields (supra)* wherein the Supreme Court held that the mere fact that an office and/or residence of the respondents is situated in the territorial jurisdiction of the Court is not sufficient to confer jurisdiction on the Court. Air France reasoned that there was nothing to prove that there was any need for approval from the head office or any connection between the functioning of the two offices and, therefore, concluded that the mere fact that the head office was located in a state would not confer jurisdiction upon the courts in that state. Accordingly, for this court to exercise jurisdiction, it is imperative that the registered office at Delhi have some nexus to the cause of action in the present case, in the absence of which, this court is devoid of any jurisdiction. Learned counsel for Air France contends that in the present case, no

incidents of sexual harassment allegedly took place in Delhi, and the Appellant has filed an FIR at a police station in Gurgaon and further, since the proceedings of the ICC has been conducted in Gurgaon, therefore, no part of the cause of action has arisen in Delhi and thus, this court cannot exercise jurisdiction in the present matter.

21. To ascertain the existence of cause of action within the territorial limits of this court, it is thus, pertinent to delve into the question of what facts must be considered to constitute the cause of action in this case. *Kusum Ingots & Alloys Ltd. v. Union of India,* (2004) 6 SCC 254, a three-judge bench decision of the Supreme Court clearly held that while determining the jurisdiction of one High Court *vis-a-vis* the other, the facts pleaded in the writ petition must have a nexus with the claim made and the facts which have nothing to do therewith cannot give rise to a cause of action to invoke the jurisdiction of a court. It is clarified by the Supreme Court in the case of *Eastern Coalfields Ltd. (supra)* by reference to the earlier three-judge bench judgment of the Supreme Court in the case of *Kusum Ingots & Alloys Ltd. (supra)* that facts pleaded in the writ petition must have a nexus to the reliefs sought and on the basis of which reliefs can be granted. The facts which have nothing to do with the prayers made cannot be said to give rise to a cause of action which would confer jurisdiction on a Court. Therefore, it is apparent that only those facts relevant to the prayer claimed in a writ petition would be the bundle of facts constituting the cause of action.

22. In light of the above principles as laid down by the Supreme Court, it is necessary to notice that the primary relief which the appellant in the present case seeks is with respect to the constitution of the ICC. She contended that the ICC has failed to comply with the provisions of the Workplace Harassment Prohibition Act by not appointing an independent and impartial member who works at a non-governmental organisation.

23. In regard to the objection with respect to lack of territorial jurisdiction to entertain and decide the writ petition, the court is of the opinion that in light of the fact that the ICC constituted by Air France is for both the Delhi and Gurgaon office, the jurisdiction of the court over the proceedings of the ICC has been established. Moreover, the court also notices that the appellants' appointment letter was issued by Air France's office at Delhi. She also stated in her complaint that the letter of resignation was coerced from her in Delhi. Therefore, this court holds that in the present case, it is clear that the cause of action is directly related to the constitution and functioning of the ICC and since the ICC has been constituted both for the Delhi as well as the Gurgaon office, and further, Delhi office being the registered office of Air France in India, all these facts constitute direct nexus to the cause of action in this case. Therefore, to this extent, the facts in the present case can be distinguished from those in the case of *Eastern Coalfields Limited (supra).*Unlike in that case, the registered office of the respondents are not devoid of any linkage to the cause of action in the present case. Further, the mere fact that the FIR was registered in a particular state does not imply that no cause of action has arisen even partly within the territorial limits of another state (*Navinchandra N. Majithia vs. State of Maharashtra, AIR 2000 SC 2966*). Lodging of an FIR in one state cannot confer exclusive jurisdiction in the Court of that state.

24. Considering the entire facts of the case narrated, and the reasons stated hereinabove, in the considered opinion of this Court, the learned Single Judge should not have dismissed the writ petition for want of territorial jurisdiction. In the aforesaid situation, it would not be possible to hold that not even a part of the cause of action has arisen at Delhi so as to deprive this court the jurisdiction to entertain the writ petition filed by the Appellant. The impugned order, of the learned Single Judge, therefore, is accordingly set aside.

25. The Court being convinced that it has jurisdiction in the present case also found it prudent to hear the arguments of the parties on the merits of the case to

ensure effective and expeditious remedy to the parties. The primary issues raised by the Appellant in the writ petition pertain to the composition and the proceedings of the ICC constituted by Air France under the Workplace Harassment Prohibition Act which the Appellant contends was biased, in contravention of law and against natural justice.

26. The appellant urged that the ICC constituted did not meet the criteria under the Workplace Harassment Prohibition Act as the independent member appointed on the panel of members to conduct inquiry into the allegations made by the Appellant, Mr. Michael Dias is not associated with any non-governmental organization and his qualifications have not been informed to the Appellant. It is necessary to reproduce the relevant provision of the Workplace Harassment Prohibition Act hereunder:

> *"4. (1)Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee":*
> *(2) The internal Committee shall consist of the following members to be nominated by the employer. namely:-*
> *...*
> *(c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment."*

27. Air France contended that the independent person appointed is a lawyer with expertise in deciding labour issues. His *curriculum vitae* is on record for confirming the averments made with regard to the criteria for his selection. According to Air France, the requirement of a person familiar with issues pertaining to sexual harassment under Section 4(2)(c) of the Workplace Harassment Prohibition Act is to be read with Rule 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 which provides that this would be a person who is familiar with labour, service, civil or

criminal law. However, Air France is clearly in error in relying on Rule 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 which is to be applied only to Section 7(1)(c) of the Workplace Harassment Prohibition Act which deals with the constitution of the Local Complaints Committee and not the ICC as in the instant case.

28. There is nothing on record, in the facts of this case to show the experience of Mr. Michael Dias in dealing with cases of sexual harassment, the cause of women in general and that he is from a non-governmental organisation. After repeated inquiries by the Appellant in this regard, only vague clarifications were given by the ICC. It is important here to recollect and underline Parliamentary intent in enacting the Workplace Harassment Prohibition Act. The objective behind the requirement of a member from non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment in the Workplace Harassment Prohibition Act is to prevent the possibility of any undue pressure or influence from senior levels as was laid down by the Supreme Court in the case of *Vishaka (supra)*. In fact, Parliamentary objective of providing a NGO member is to keep in ICC, an independent and impartial person in position to command respect and compliance from influential management (*Jaya Kodate vs. Rashtrasant Tukdoji Maharaj Nagpur University, decision of Bombay High Court in writ petition nos. 3449, 3450 & 3451 of 2013*). One of the cardinal principles of natural justice is: *'Nemo debet esse judex in propria causa'* (No man shall be a judge in his own cause). The deciding authority must be impartial and without bias. The basic object of the Parliament is to provide security to the woman. It is imperative that a woman who is alleging sexual harassment feels safe during the course of the proceedings of the ICC and has faith that the proceedings are unbiased and fair.

29. This court in *U.S. Verma, Principal and Delhi Public School Society Vs. National Commission for Women and Ors*., 163 (2009) DLT 557 (delivered by the

author of this judgment), held that the entire thrust of the complaints committee procedure and its underlying premise is that the complainant employees are assured objectivity and neutrality in the inquiry, insulated from the employers' possible intrusions. To achieve that end, the requirement under law with respect to the qualification of the independent member on the ICC is an indispensable necessity for meting out justice under the Workplace Harassment Prohibition Act.

30. Having regard to the conspectus of circumstances in the present case, apart from the issues discussed hereinabove, this Court also views with concern, the procedure adopted by the ICC in the present case. In all, the Committee appears to have not conducted the proceedings according to principles of natural justice. It is contended by the appellant that no charges were framed by the ICC, that independent witnesses admitted to having read the evidence of the accused and yet, they were not disqualified, the Appellant was forced to cross examine and be cross examined by the accused and there was apparent unresponsiveness on the part of Respondent no. 1 in dealing with the complaint of the Appellant. The no-cause sudden termination of employment of the Appellant also raises concerns regarding there being bias in the proceedings of the ICC. Apart from non-compliance with employers in the composition, and the alleged bias by members of the ICC, that body did not take steps to lend confidence or assurance to the Appellant as she repeatedly raised concerns of not feeling comfortable in the manner in which the proceedings were being conducted and also expressed her discomfort in being around the accused, which was so vital for the fairness in the enquiry, and mandated by *Vishaka (supra).*This court is of the opinion, that although allegations about the conduct of inquiry are serious and can have the effect of invalidating the process altogether, it would not be appropriate to return them as findings, given that what was addressed during the hearings, were the question of jurisdiction and the validity of appointment of Mr. Dias.

31. This court wishes to emphasize here that the *Vishaka* Guidelines are to be taken seriously, and not followed in a ritualistic manner. The march of our society to an awareness and sensitivity to the issue of sexual harassment and its baneful effects, flagged in *Vishaka (supra),* culminated in the path breaking Workplace Harassment Prohibition Act over 17 years later. Even today, the world over is rocked by horrific tales of all forms of sexual harassment of female co-workers at varied workplaces. Decision makers, Parliament, courts and employers are to be ever vigilant in ensuring that *effective policies are swiftly and impartially enforced* to ensure justice and see that no one is subjected to unwelcome – and unacceptable behavior. Unlike stray cases of individual indiscipline, which are dealt with routinely, upon employers lie the primary obligation to ensure the effectuation of these laws and rules, aimed at securing a safe workplace to their women employees. A permissiveness or infraction in implementation in one case, implies the employer's lack of will, or inability to assure such safety and equality at its workplace. A complainant who takes courage to speak out against unwelcome behavior regardless of the perpetrator is not merely an object of pity or sympathy, but as Alex Elle said:

> *"You are not a victim for sharing your story.*
> *You are a survivor setting the world on fire with your truth.*
> *And you never know who needs your light, your warmth,*
> *And raging courage…"*

And upon us all- the employer, courts and the society as a whole, lies the duty to root out such wholly unwholesome behavior.

32. The ICC appointed, for the reasons discussed earlier, was clearly invalid, inasmuch as Mr. Dias did not answer the qualifications spelt out by section 4 (1) (c) of the Workplace Harassment Prohibition Act. Consequently, the constitution of the ICC by Air France and all its resultant proceedings, including the report submitted by it, are declared invalid and accordingly set aside. It is hereby directed that the ICC should be reconstituted in strict compliance with the requirements

under law within thirty days and the committee should conduct its inquiry afresh. LPA 237/2018 is allowed in terms of the above directions. There shall be no order on costs.

S. RAVINDRA BHAT
(JUDGE)

A.K. CHAWLA
(JUDGE)

MAY 30, 2018

HIGH COURT OF DELHI