



सत्यमेव जयते

**न्यायालय मुख्य आयुक्त विकलांगजन**  
**COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES**  
विकलांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities  
सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment  
भारत सरकार / Government of India

Case No.5866/1024/2016

Dated:- 21.06.2016

In the matter of:

Shri Mohit Mahajan, *0147*  
B-55, Sector – 41,  
Noida – 201 301 (U.P.)  
e-mail: mahajanipr@yahoo.co.in

Complainant

Versus

Indian Institute of Technology, *0148*  
(through Director),  
Hauz Khas, New Delhi-110016.  
e-mail: driegal@admin.iitd.ac.in

Respondent No.1

Foundation for Innovation and Technology Transfer(FITT),  
(through Chairman),  
Indian Institute of Technology, *0149*  
Hauz Khas,  
New Delhi-110016.  
e-mail: mdfitt@gmail.com

Respondent No.2

Date of hearing : 25.05.2016

Present :

1. Shri Mohit Mahajan, Complainant alongwith Sh.Pankaj Sinha, Advocate.
2. Shri S.N. Tiwari, AR(Legal) on behalf of Respondent No. 1.
3. Shri Rahul Narayan, Advocate alongwith Ms. Mala Narayan, Advocate on behalf of the Respondent No.2.

**ORDER**

The above named complainant, a person with 100% visual impairment filed a complaint dated 01.02.2016 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to the 'Act' regarding removal from designated work functions, discrimination and absence of reasonable accommodation for enabling performance towards continuation of employment.

2. The complainant submitted that he is a contractual employee since November, 2001, with the Foundation for Innovation and Technology Transfer (FITT). The contract was renewed multiple times until the present contract dated 27.05.2015 was signed. Para 1 of the contract dated 27.05.2015 states that "pay and benefits as per the expired contract." The conditions for renewability of the employment of complainant depends upon his performance, conduct and integrity. All the remaining terms (2 to 8) constitute the deliverables from the side of the complainant. The work function of

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"Technology Transfer and IPR" is a sanctioned post which was approved by the GC of FITT. He was appointed to this post for his exact matching of the required educational qualifications and past experience that were stipulated for this post. The complainant was the sole holder of this post for 12 years since its creation.

3. The complainant further submitted that since 2008, he was given the additional charge of the IIR Liaisoning Officer by the office of the Dean of IRD, IIT, Delhi. This charge of IPR Liaisoning was also in consonance with the approved objectives of FITT as per its MoU. The designated functions of this post are also clearly identified for both low vision as well as person with blindness. The complainant made appeals to the MD, FITT to provide him the needful training. The complainant has made the following prayers:-

- (i) The complainant be allowed to work on his originally appointed/designated post of 'Technology Transfer and IPR' and be provided with reasonable accommodation and a bonafide performance measure.
- (ii) Stop creation of handicapping environment and discrimination against the complainant in providing his entitled benefits and opportunities.
- (iii) The services of the complainant be renewed and continued.

4. The matter was taken up with the Director, Indian Institute of Technology, Delhi and the Chairman, Foundation for Innovation and Technology Transfer (FITT) vide this Court's letter dated 29.02.2016.

5. The respondent no. 1, IIT, Delhi vide letter No. IITD/Legal/2016/68 dated 17.03.2016 submitted that that the Institute is an autonomous body established by an Act of Parliament and its main objective amongst others is to impart education in the field of science & technology, research and educational development. The perusal of complaint reveals that the complainant is an employee of Foundation for Information and Technology Transfer (FITT). It is relevant to state that the Institute is entirely distinct and separate entity from the FITT. The only commonality is that the office of FITT is housed within the Institute premises. The FITT is an independent identity and registered establishment and the Institute has no administrative and financial or any other kind of control over it. The nature of interaction between Institute and the FITT is limited to some projects and consultancy programmes relating to patent and IPR issues for which the Institute pays prescribed professional fees to FITT. The Institute is not the appointing authority or the disciplinary authority for any

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employee of FITT and, therefore, in the event that any relief sought in the complaint in question is to be granted, the same would only be against FITT. Since there is no privity of contract or any service relationship between the Institute on one hand and the FITT/its employees at the other hand, the prayer is completely misconceived in the extent that the Institute has any connection whatsoever with complainant. In view of the above, the name of the Institute as party to the issue may, therefore, kindly be dropped.

6. The complainant vide e-mail dated 07.03.2016 submitted that following the filing of the subject complaint dated 01.02.2016 notified vide letter dated 29.02.2016 of this Court, the respondent no. 2, namely Foundation for Innovation and Technology Transfer (FITT) has suddenly initiated the following actions against the complainant that are grossly prejudicial to the prayers made therein by him:-

- (i). An arbitrary performance appraisal is being undertaken by FITT in a completely non-bonafide manner in so much so that the same has been initiated – (a) without even restoring the designated work functions of (TT & IPR) of the complainant. (b) In contravention to the duly approved and well established method of appraisal that is followed for the core staff like the complainant. (c) convening an unusual meeting on 08.03.2016 by way of letter dated 04.03.2016 which is full of contradictions and infirmities visible therein.
- (ii) It is further submitted that the Appraisal is also prejudicial to the impending response that is awaited from the respondents. This preemptive action of the respondents is thus constructed in derogation of the contents of para 7, 8 and particularly para 9 of his complaint against which perverse and discriminatory actions only, the complainant was forced to make the complainant on an urgent basis.

In view of the aforesaid, it is most humbly requested to the respondents through this humble Court that pending the adjudication on the matters that are prayed in this complaint, any official proceedings carried out by the respondents in respect of such matters be allowed to be carried out only in a written bonafide manner so that the same become part of the testified record of this case. The meeting dated 08.03.2016 may, therefore, be deferred in the meantime.

7. The Managing Director, FITT vide letter dated 07.04.2016 has interalia submitted that FITT had challenged this matter before the Hon'ble High Court of Delhi by filing WP(C) No.2846/2016 making following prayers:-

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- (a) Issue an appropriate Writ, order or direction in nature of Certiorari quashing and setting aside communication dated 29.02.2016 bearing dispatch no. R1245 issued by Respondent No. 1 pursuant to Case No., 5866/1024/2016 as being ultra vires its powers and authority in law;
- (b) Issue a Writ, order or direction quashing and setting aside all proceedings emerging from Case No. 5866/1024/2016 as being barred by law and constituting an abuse of process;
- (c) Issue a Writ, order or direction quashing and setting a side complaint dated 1.02.2016 filed by Respondent No. 2 before Respondent No.1.

8. The Hon'ble High Court of Delhi on 01.04.2016 recorded the submissions of FITT as submitted by their Senior Counsel and was pleased to hold "Learned Senior Counsel for the petitioner further submitted that the contract of the respondent no. 2 (Mohit Mahajan) was not renewed by the petitioner after expiry of the contractual tenure. Respondent no. 2 filed the complaint under Section 47 of the Persons with Disabilities Act, 1995. Respondent No. 1 (CCPD) dismissed the complaint vide Order dated 02.12.2014 and it was held that the petitioner was not an establishment under Section 2(k) of the Persons with Disabilities Act and as a contract employee respondent no. 2 was not entitled to protection under Section 47 of the Persons with Disabilities Act. The petition as well as application re-dismissed as withdrawn. However, the petitioner is directed to file reply to the complaint within one week from today and the respondent.no. 1 is directed to decide the complaint expeditiously and preferably within a period of two months in accordance with law."

9. The respondent further submitted that the complainant is employed only on a contract for one year in accordance with the Order of the Hon'ble High Court dated 27.05.2015 in WP(C) No.8947/2014 and the signed contract terms that were a part of the order. The Hon'ble High Court has held that Section 47 of the Persons with Disabilities Act does not apply to contract employees and that the conduct of the complainant is not upto the mark. It is pertinent to state that the progress as sought by the complainant cannot be granted by this Court as they are beyond the scope of the Persons with Disabilities Act itself. The allegation as regards his alleged "work function" need to be looked at in the light of the contract of employment dated 27.05.2015 which has the imprimatur of the Hon'ble High Court which the complainant specifically agreed in clause 3 that he needs to be responsible for proper documentation and reporting to Managing Director, FITT on each and every assignment. He will not question the authority or judgment or direct orders from the MD, FITT or

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other superiors in the organization or attempt to substitute your judgment for theirs. He will respond promptly when updates are requested by both FITT and external clients and not for replying or providing proper updates on one pretext or another. He will work only on assignments entrusted specifically to you. He will not question the chain of command and disrupt smooth functioning of the office and shall not level baseless and personal allegations against colleagues.

10. Upon considering the reply dated 07.04.2016 of respondent No.2 and complainant's letter dated 07.03.2016, a hearing was scheduled on 20.05.2016 which was further re-scheduled on 23.05.2016 and finally on 25.05.2016.

11. During the hearing on 25.05.2016, the complainant reiterated his written submissions and submitted that Section 47 of the Persons with Disabilities Act, 1995 is applicable on me. I have made my submission on Section 47 of the Persons with Disabilities Act, 1995 read with clause 1(a) of Article 27 of the United Nations Conventions on the Rights of Persons with Disabilities (UNCPRD). His case under Article 14 read with Article 41 of the Constitution should be considered. His complaint is apart from Section 47 of the Persons with Disabilities Act and his prayers are completely covered under the Objects and Reasons of Persons with Disabilities Act, which may kindly be considered.

12. The representative of Respondent No. 1 (IIT, Delhi) submitted that the complainant is not an employee of IIT, Delhi. He is a contractual employee of Foundation for Innovation and Technology Transfer (FITT), which is a separate entity registered establishment under Society Act and IIT, Delhi is entirely distinct and separate entity from the FITT. However, FITT is tenant of IIT, Delhi on monthly rental basis. The nature of interaction between Institute and the FITT is limited to some projects and consultancy programmes relating to patent and IPR issues for which the Institute pays prescribed professional fees to FITT. In view of the above, it is submitted and prayed that the name of the IIT as Party to the issue may kindly be dropped from the respondents list.

13. The counsel appearing on behalf of the respondent no. 2 submitted that the complainant is admittedly a contractual employee of Foundation for Innovation and Technology Transfer (FITT) and FITT is not covered by the definition of establishment as FITT is an autonomous Society registered under the Society Registration Act. As per previous Order dated 02.12.2014 in Case No.669/1024/2013 (Shri Mohit Mahajan Vs. Ministry of Social Justice & Empowerment & Ors.) of this Court, these issues which have been raised again by the complainant, have already been dealt with and settled by this Court. It has been observed in Para 22 in the said Order dated 02.12.2014 by this Court that the complainant is not covered under Section 47 of the Persons with Disabilities Act, 1995

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(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)  
(Please quote the above file/case number in future correspondence)



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and FITT is not an establishment as defined under section 2(k) of the Persons with Disabilities Act. Thus the issues raised by the complainant were settled in favour of FITT and against the complainant. These findings were not overruled by the Hon'ble Delhi High Court, where a settlement was arrived at, wherein again it was re-affirmed that the complainant is a contractual employee and the contract will be for a limited period for one year only expiring on 26.05.2016. It was also undertaken by the complainant that he will not project himself to be a permanent employee of the FITT or IIT and that all complaints made by him were incorrect and stood withdrawn.

14. After hearing both the parties and looking into the prayer made in the complaint of the complainant, this Court observes that complainant is working in FITT (Respondent No.2) on contractual basis and as per DoP&T's letter No. 43011/8/2015-Estt.(Res) dated 12.08.2015, there is no provision for reservation for persons with disabilities in contractual/temporary appointments. As regards the definition of "establishment", the issue was already decided by this Court vide Order dated 02.12.2014. As there is no violation of any provision of the Act, Rules, Bye-Laws, instructions in the matter, this Court cannot give any direction to the respondents.

13. The case is disposed off.

( Dr. Kamlesh Kumar Pandey )  
Chief Commissioner  
for Persons with Disabilities

~~N.O.O.:~~

✓ Copy to:- D.O. (A) – for record.