

GAHC010264452019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7942/2019

D. KUTESWAR RAJU
S/O- V SATYANARAYANA RAJU, R/O- FALT NO. 82, BLOCK 7, TYPE- III
QTRS, NIT SILCHAR CAMPUS, PIN- 780010, DIST- CACHAR, ASSAM

VERSUS

NATIONAL INSTITUTE OF TECHNOLOGY AND ANR
ESTD UNDER THE NATIONAL INSTITUTES OF TECHNOLOGY ACT, 2007
BEING REP. BY ITS CHAIRMAN, NIT SILCHAR, PIN- 788010, DIST- CACHAR,
ASSAM

2:INTERNAL COMPLAIN COMMITTEE NIT
SILCHAR BEING REP. BY ITS PRESIDING OFFICER MRS UJWALA BARUAH
NIT SILCHAR
PIN- 788010
DIST- CACHAR
ASSAM

3:THE REGISTRAR
NIT SILCHAR
PIN- 788010
DIST- CACHAR
ASSA

Advocate for the Petitioner : MS. P CHAKRABORTY

Advocate for the Respondent : SC, NIT

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

25.05.2023

1. The instant writ petition has been filed challenging a proceeding initiated under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (herein after the Act). The petitioner has put to challenge in particular the Reports of the Internal Complaint Committee dated 29.05.2019 and 27.09.2019 and the subsequent show cause notice dated 21.10.2019 issued on the basis of such Reports.

2. Before going to the issue which has arisen for adjudication, the basic facts of the case may be narrated in the following manner.

3. The petitioner is an Assistant Professor of Grade II in the Department of Electrical Engineering at Level 10 of the Pay Matrix and was on probation at the NIT, Silchar. The case projected is that on 10.10.2018, a complaint was lodged against him by a student alleging harassment. Based on the said complaint, under the Act in question, an Internal Complaint Committee (herein after ICC) was constituted to enquire into the matter. The ICC accordingly made an enquiry and had furnished a Report on 29.05.2019 which was followed by a Final Report dated 27.09.2019.

4. Being aggrieved by such Reports, the petitioner had also submitted a representation dated 14.10.2019. However, the representation was rejected and a show cause notice dated 22.10.2019 was issued. The petitioner had also

submitted reply on 25.10.2019 to the said show cause notice. The petitioner has based the present challenge on gross violation of the procedure laid down in the Act and also has alleged violation of the principles of natural justice.

5. I have heard Ms. P. Chakraborty, learned counsel for the petitioner. I have also heard Shri S.P. Choudhury, learned Standing Counsel for the NIT, Silchar.

6. I have also heard Ms. D. Saikia, learned counsel acting as Amicus Curiae, who was appointed by this Court vide an order dated 15.11.2022 pursuant to which the learned Amicus Curiae has also submitted a Report in sealed cover after going through the evidence recorded by the ICC. On a query by this Court, it transpires that copies of the said Report were subsequently furnished to the learned counsel for the contesting parties. The Report furnished by the learned Amicus Curiae has been carefully examined along with the evidence which are also placed before this Court.

7. Ms. Chakraborty, the learned counsel for the petitioner has submitted that the allegations made against the petitioner are absolutely incorrect and figments of imagination. She, however, submits that even without going into the veracity of such allegations at this stage, the procedure adopted is wholly against the mandate of the Act. Reference has been made to the provisions of Section 4 and 11 of the Act. Reference is also made to Rule 7 (4) and 7 (7) of the Sexual Harassment of Women at Workplace Rules, 2013 (herein after called as the Rules).

8. The learned counsel for the petitioner has submitted that though the

constitution of the ICC appears to have been done in consonance with the requirement of Section 4 of the Act, the evidence were adduced in gross violation of the provisions connected to such constitution of the ICC. Referring to the provision of Rule 7 (7), the learned counsel submits that in the inquiry, a minimum of three Members of the Complaints Committee including the Presiding Officer or the Chairperson is required to be present. However, in the instant case, the evidence was recorded only by the President of the Committee in his Chamber.

9. Reference has also been made to the requirement of adherence to the principles of natural justice which has been laid down in Rules 7 (4). She submits that the evidence was recorded behind the back of the petitioner without giving him any opportunity to cross examine the witnesses. It is further been alleged that none of the documents connected to the allegations have been furnished to the petitioner and therefore, the petitioner was deprived of an effective opportunity to make a reply. The learned counsel accordingly submits that the basis of the show cause notices which are the Reports of the ICC being without jurisdiction, the Departmental Proceeding which has been initiated cannot be held to have any legal sanction. The learned counsel has also referred to Section 11 of the Act which requires that an inquiry made by the ICC is to be done in accordance with the provisions of the Service Rules applicable and in the instant case, those are the CCS Rules. It is submitted that the provision of the said Rules have not been followed and therefore, the entire proceeding initiated against the petitioner is liable to be interfered with.

10. *Per contra*, Shri Choudhury, the learned Standing Counsel for the NIT has

submitted that the allegations made by the petitioner do not appear to be correct. He submits that the constitution of the ICC was strictly in accordance with Section 4 of the Act and there is no violation. The learned Standing Counsel also refutes the allegation that there was violation of the principles of natural justice and also the allegations that the evidence was recorded only by one member. He submits that the proceedings would reveal that it was signed by all the members. The learned Standing Counsel accordingly submits that the allegation of violation of the Act and the Rules are unfounded and therefore, there is no ground for interference by this Court.

11. Ms. Saikia, the learned Amicus Curiae by referring to the Report dated 24.01.2023 has submitted that a reading of the evidence would suggest that there was no opportunity granted to the petitioner. She submits that it also transpires that though the signatures of the Committee Members are appearing in the proceedings, the same was done in form of questionnaire wherein there was no scope of the petitioner to cross examine.

12. Rejoining her submissions, Ms. Chakraborty, the learned counsel for the petitioner, by referring to the statements of the University in the counter affidavit has submitted that the University has accepted the fact that opportunity of cross examination was not given, however with an explanation that since the purpose of the ICC was only a fact finding one, there was no requirement to give such opportunity.

13. Ms. Chakraborty, the learned counsel further submits that there is no denial in the affidavit regarding the averment made that the evidence was taken by

only the President which is in violation of the requirement of the Act and the Rules. She submits that though some statements have been made in paragraph 24 of the affidavit-in-opposition, there is no specific denial and therefore, it may be construed that the averments are uncontroverted and hence correct.

14. After hearing the parties and on perusal of the materials on record including the Report dated 24.01.2023 of the learned Amicus Curiae, this Court is of the view that considering the grounds set forth in support of the challenge, there is no requirement for this Court to enter into the merits of the complaint. As observed above, the grounds of challenge are mostly with regard to violation of the procedures laid down in the Act and the Rules. This Court after perusal of the records finds force in the argument made on behalf of the petitioner that there has been violation of the provisions of the Act and the Rules, more particularly Rules 7 (4) and 7 (7). It is an admitted case that the statements of the witnesses were recorded without granting an opportunity to the petitioner to cross examine. There is a specific requirement of Rules 7 (4) for adherence to the principles of natural justice which otherwise is also a necessity under the law. The allegations made regarding the recording the statements of the witnesses by only the President in his Chamber also appears to be substantiated by the Report of the learned Amicus Curiae. The specific requirement under Section 11 of the Act for following the provisions of the applicable Service Rules which in this case is the CCS Rules also appears to be substantiated.

15. It is a settled principle of law, that when a procedure is laid down to do a certain thing in a certain way, the things should be done in that way only. In this connection, reference can be made to the landmark case of the privy council,

namely **Nazir Ahmed Vs. King Emperor**, reported in **AIR 1936 253 PC (II)**, wherein, it has been stated as follows:

“The rule which applies is a different and not less well recognized rule—namely, that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.”

16. Under the aforesaid facts and circumstances, this Court is of the opinion that the Reports dated 29.05.2019 and 27.09.2019 of the ICC are not sustainable in law and consequently the show cause notice dated 21.10.2019 issued on the basis of the Report is also unsustainable. Accordingly, the impugned action in the form of the aforesaid Reports and the proceeding initiated while the show cause notice dated 21.10.2019 are set aside. It is however made clear that the present interference is only on the violation of the procedure laid down in the Act and the Rules and this Court has not made any comments or observation on the merits of the allegations against the petitioner. Consequently, while this writ petition is allowed and the impugned Reports and the show cause notice dated 21.10.2019 are set aside, the respondent University would be at liberty to initiate a fresh proceeding under the Act which however has to be strictly in accordance with the procedure laid down.

17. Before parting, this Court acknowledges the valuable assistance provided by the learned Amicus Curiae, Ms. D. Saikia and she would be entitled to the remuneration which is prescribed to be paid by the State Legal Services Authority.

JUDGE

Comparing Assistant