

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

+ **W.P.(C) No.2342/2014**

% **9th January, 2015**

NANDITA NARAIN

.....Petitioner

Through: Mr. Jayant Bhushan, Senior Advocate
with Mr. Sunil Mathews, Advocate,
Ms. Shikha Pandey, Advocate and Mr.
Kartik Prasad, Advocate.

VERSUS

DELHI UNIVERSITY & ORS.

..... Respondents

Through: Mr. Santosh Kumar, Advocate for
respondent No.1.
Mr. A. Mariarputham, Senior Advocate
with Mr. K. Vijeyekumar, Advocate for
respondent Nos.2 and 3.
Mr. Romy Chacko, Advocate for
respondent No.4.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition under Article 226 of the Constitution of India
is filed by the petitioner who is a teacher of the respondent no.2-college and

also a member of the governing body of the respondent no.2-college. In the writ petition, the following reliefs are prayed:-

- “(a) directing the Respondent No1 to intervene and ensure that the Respondents 2 to 4 function in accordance with the applicable law inclusive of the Delhi University Statutes and Ordinances; and
 - (b)restraining the Respondents 2 to 4 from taking any disciplinary action against the Petitioner; and
 - (c)quashing the decision DT 8.1.2014 of the Respondent 3 body in relation to the Petitioner; and
 - (d)quashing the Inquiry notice dated 3.4.2014 issued to the Petitioner; and
 - (e) For any other appropriate writ, order and/or direction in the facts and circumstances of the case as this Hon’ble Court may deem just and equitable:”
2. A reading of the reliefs claimed shows that essentially what is challenged is the decision of the governing body dated 8.1.2014 and the enquiry notice issued pursuant thereto dated 3.4.2014.

3. At this stage, let me reproduce the minutes of the meeting dated 8.1.2014 which are challenged by the petitioner and which read as under:-

“4. MATTERS ARISING

A member raised the issue of a statement, derogatory to the College as well as the Principal, reportedly made by a member of the Governing Body, who is also a senior member of the faculty, in an article that appeared in the issue dated June 17, 2013 of the New Indian Express. The member said that such a comment has been made in spite of

strictures against such conduct by the same member in the previous meeting (229th Ordinary Meeting) of the GB held on 16th May 2013 under the agenda item “Any Other Matter”. The Member concerned had assured the Government Body that she would desist from such activities. The member took strong objection to this statement by the Member concerned and emphasized that this was all the more serious because the person is also a senior faculty member. The member read out the sentence which says, “The principal seems to be running this anti-thesis, Talibanised *pathshaala*. He is himself marred by allegations of sexual harassment”.

Another member said that to accuse a person of criminal misconduct is per se defamatory and is an extremely serious matter.

The member who was quoted in the news report denied the charges of defamation and said that she had not used the words attributed to her. She said that while speaking to the reporter of the paper on the phone, what she had actually said was, “The Principal seems to be running this anti-thesis, Talibanised pathshaala. He is himself mired in allegations of sexual harassment.” The correspondent had attributed the wrong word (“marred” rather than “mired”) to her. She further said openness is needed and criticism should not be suppressed.

Another member said that making baseless and unsubstantiated allegations against the head of the institution is a matter of serious concern as it defames not only the individual, but also tarnishes the reputation of the institution. The member suggested that an inquiry should be instituted to look into the matter.

Another member said the member concerned has herself admitted, before the Governing Body, to have made allegations of sexual harassment, though she claims to have used the word “mired” and not “marred” while making the allegation. The Member concerned wanted this admission on the part of the teacher representative to be recorded.

Another member said that an inquiry is essential to find the true facts. Another member supported instituting an inquiry and cautioned members publicizing such allegations in the press instead of taking them up in a proper forum.

The Governing Body decided to constitute an Inquiry Committee comprising the following members of GB to look into the allegations of defamatory statements made to the press by Ms Nandita Narain.

- i. Justice Manmohan Sarin (Chair)
- ii. Dr. Sudhir Joseph
- iii. Prof Satwanti Kapoor

The Inquiry Committee was requested to give its report within two months of the commencement of the Inquiry.

5. APPOINTMENT OF VICE PRINCIPAL

The Principal reported that Rev. Dr. Clement Rajakumar has been appointed Vice Principal till his retirement on 31st January 2014. The Governing Body expressed its appreciation of the long. Record of distinguished service to allege by Rev. Dr. Clement Rajakumar.”

4. The enquiry notice dated 3.4.2014 issued pursuant to the decision of the governing body dated 8.1.2014 reads as under:-

“1. Whereas the Governing Body of St. Stephen’s College, vide decision taken in its 230th Meeting, constituted a Committee comprising Justice Manmohan Sarin, Convenor with Dr. Sudhir Joseph and Prof. Satwanti Kapoor as Members, to enquire into the allegations of derogatory and defamatory statements allegedly made by Ms. Nandita Narial regarding the College and in particular the Principal.

2. Whereas the Committee perused the news report appearing in New Indian Express dt. 17.06.2013 and email dt. 26.07.2013

purported to have been sent by Ms. Nandita Narain addressed to the Editor, New Indian Express.

1. Whereas the Committee had also directed issuance of notice to Editor, New Indian Express (copy enclosed) seeking the following information and documents from the Newspaper :-

(a) Whether the newspaper and its reporter stand by the News Report dt. 17.06.2013 as published and in particular the comments and quotes attributed to Ms. Nandita Narain?

(b) Whether the newspaper and its editor and /or reporter had responded to Ms. Nandita Narain's email dt. 26.06.2013 and made any amends, if not, the reasons thereof ? In case a response was given to the email, copy of the response be furnished.

(c) Whether the newspaper reporter retained his notes of interview/telephonic conversation? If available, copy of the same be furnished.

(d) Any other information relevant to the above news report?

2. And Whereas the Committee vide its order dated 26th March 2014 has given further time to M/s New Indian Express and its reporter till the next date to respond.

3. And Whereas the Committee also consider it necessary to seek the explanation of Ms. Nandita Narain regarding alleged derogatory and defamatory imputations of College and the Principal, attributed to her in the report "Glass ceiling yet to be broken" specifically the following defamatory imputations :-

"Nandita Narain, head and associate professor fo mathematics at St. Stephen's College is supportive of the students. She says, "The principal wanted an ordinance passed in other for him to rule out any protest against his authority and so that the complaints committee members be selected by him. It this Ordinance 16-B is passed in Parliament, it will misused by the likes of him . Thankfully, it has not become an Act of Parliament yet because people from his own church are opposed to its undemocratic statutes".

Narain says that students have been fighting for this issue for quite some time but have mercilessly been shot down by authorities. “The principal seems to be running this antithesis, talibanised pathshaala. He is himself marred by allegations of sexual harassment. The point is that there is nothing wrong in having a debate to solve issues,” she says.

6. To enable you to respond, the following documents and records of Inquiry Proceeding are being made available to you:-

(a) Copy of extract of para 17 of the Minutes of 229th ordinary meeting of Governing Body, St. Stephen’s College held on 16th May 2013.

(b) Copy of the extract of para 4 under “Matter arising” of the minutes of 230th ordinary meeting held on 8th January 2014

(c) Proceeding of the 1st sitting of Inquiry Committee held on 8th March 2014

(d) Proceeding of the 2nd sitting of inquiry Committee held 26th March 2014

(e) Copy of News report titled “Glass Ceiling yet to be broken”

(f) Copy of Email dated 26th July 2013

4. You are required to give your written explanation if any, on or before the next date of hearing ie., 4.30 P.M on 18th April 2014 at 2nd Floor, 109, Golf Link, New Delhi. You may also avail the opportunity of personal hearing on the said date.

Sd/-

Subha Kumar Dash

Secretary to the Inquiry Committee

St. Stephen’s College

Delhi-110007”

5. Learned senior counsel for the petitioner also relies upon the minutes of the ordinary meeting of the governing body of the respondent

no.2-college dated 1.5.2014 and para 13 thereof to argue that the present enquiry proceedings are with respect to misconduct alleged against the petitioner. This para 13 reads as under:-

“13. Inquiry into the alleged Misconduct of Ms. Nandita Narain-Justice Manmohan Sarin to report.”

6. At the commencement of hearing itself, I put it to the counsels who are appearing for the respondent nos.2 to 4, viz the college, its governing body and the college principal as to whether against the petitioner in terms of the aforesaid decisions of the governing body and the show cause notice any departmental proceedings have been initiated viz the proceedings in question which have to be held whether are in the nature of disciplinary authority enquiry either for the purpose of recommending a punishment or for the purpose of imposition of punishment on the facts and issues which are mentioned in the minutes of the meeting of the governing body dated 8.1.2014 read with the minutes of the ordinary meeting of the governing body dated 1.5.2014 and the show cause notice dated 3.4.2014. To this query, counsels who appear for the respondent nos.2 to 4 specifically confirm to this Court that irrespective of the language of the minutes of the meeting of the governing body as per the respondents the same in fact are only with respect to a preliminary enquiry and/or a fact finding body enquiry

only. Counsels for the respondents no. 2 to 4 state that even in the reply filed by these respondents it has been so stated by the respondent nos.2 to 4. Also, a statement to the same effect is made before this Court today that by virtue of the show cause notice dated 3.4.2014 read with the minutes of the meetings of the governing body dated 8.1.2014 and 1.5.2014, no departmental proceedings or departmental enquiry or disciplinary proceedings under conduct rules etc etc are commenced against the petitioner and at present there is only a preliminary enquiry or fact finding body constituted and which body has no right whatsoever either to recommend or to impose a punishment against the petitioner.

7. The law with respect to holding of a preliminary enquiry, and which is only a fact finding enquiry, is well-settled. Such a preliminary enquiry which is done by a fact finding body does not result in the said body recommending a punishment, leave aside the same resulting in imposition of any punishment on the noticee. In fact, the law is that a preliminary enquiry can in fact be an *ex parte* enquiry without any notice. Thus, merely because a show cause notice has been issued against the petitioner, and only which shows that the stand of the petitioner is to be heard by the preliminary enquiry body or the fact finding body, the same cannot mean that the body

will not remain only a preliminary enquiry body or a fact finding body and that body which becomes an enquiring authority or a disciplinary authority or any other departmental authority under the conduct rules to look into the conduct or misconduct of a person and thereafter to give a finding of misconduct for imposition of punishment or recommend imposition of punishment. By holding of a preliminary enquiry and constitution of a fact finding body which has to do the preliminary enquiry, no legal rights of the petitioner are in any manner affected because the preliminary enquiry body as stated above has no right to even recommend a punishment, leave aside imposing a punishment upon the petitioner. No judgment has been pointed out to me which shows that at the stage of a preliminary enquiry itself a person has a right to challenge the appointment of a fact finding body which has to do a preliminary fact finding enquiry.

8(i) Learned senior counsel for the petitioner places reliance upon the judgment of the Supreme Court in the case of *Union of India and Another Vs. Vicco Laboratories (2007) 13 SCC 270* (para 31) and a judgment delivered by this Court in the case titled as *Dr. M.S. Frank Vs. Delhi University & Ors.* in W.P.(C) No.9037/2011 decided on 29.10.2013 to argue that a person being the respondent no.4 and who is the principal of the

respondent no.2-college cannot be a member of the governing body which would initiate the enquiry against the petitioner because respondent no.4 is biased and in fact a complainant against the petitioner. It is also argued that in accordance with the aforesaid judgments, petitioner has a right to challenge the preliminary enquiry at the stage of issuing of a show cause notice by the preliminary enquiry body.

(ii) I am unable to agree with the arguments urged on behalf of the petitioner because the judgment of the Supreme Court in the case of ***Vicco Laboratories (supra)*** is a judgment where departmental proceedings had commenced and at that stage show cause notice issued by the disciplinary authority was challenged whereas in the present case departmental proceedings under the conduct rules definitely has not commenced. Surely, a show cause notice which is issued by the disciplinary authority can be challenged on certain legal grounds including of lack of jurisdiction in the disciplinary authority or any other such equal ground which would nullify or hold as void the show cause notice, however, in the present case, the show cause notice has not been issued by any disciplinary authority/departmental authority or the similar body etc etc and therefore the judgment in the case of ***Vicco Laboratories (supra)*** will have no application with respect to a

show cause notice issued by a preliminary enquiry body. For the selfsame reasoning, judgment in the case of *Dr. M.S. Frank (supra)* will also not apply because in the facts in the case of *Dr. M.S. Frank (supra)* departmental enquiry proceedings had commenced against the charged officer.

9(i). Learned senior counsel for the petitioner then argued that the preliminary enquiry body consists of three members, and one of which is the nominee of the respondent no.4 in the governing body and therefore such a person will have bias against the petitioner and in favour of the respondent no.4 and accordingly the proceedings of the preliminary enquiry are to be quashed. It is argued that the initiation of the preliminary enquiry is therefore to be faulted with on this ground itself and accordingly the preliminary enquiry proceedings cannot go on.

(ii) I cannot agree with the argument urged by the petitioner because a petitioner has a right to approach the Court only if his/her legal rights are violated. By a preliminary enquiry, no legal rights of a person are violated because the findings of a preliminary enquiry body have no legal backing either for imposition of punishment or even for recommending of punishment. I have already stated above that it is the categorical stand of the

respondent nos.2 to 4 that under no circumstances the preliminary enquiry body will either recommend a punishment or impose any punishment against the petitioner and which in any case cannot be in view of the fact that such a body is not a body under the conduct rules in the nature of disciplinary authority or departmental authority or a similar such body. The issue therefore of bias cannot come into existence at the present stage and the same will be an aspect in the main departmental proceedings if the departmental authority relies upon the report of the preliminary enquiry body so as to hold the petitioner guilty in such departmental proceedings and take action on the basis of the enquiry report.

(iii) Also, I cannot agree with the argument urged on behalf of the petitioner for another reason that an automatic legal bias of a nominee of the respondent no.4 to the governing body cannot be presumed as a legal presumption because bias has to be a factually supported bias. There is no law that merely on account of nomination of a person in a governing body that nominee in the governing body will necessarily ditto the line of the person who nominates him and that the nominee will have a bias in the proceedings against whom misconduct is alleged by the person who has

nominated the person in the governing body. There is no principle of legal bias as is sought to be argued on behalf of the petitioner.

(iv) Finally, it also bears note that the preliminary enquiry body consists of three members and is not a single member body being the nominee of the respondent no. 4 in the governing body and that this nominee, who is a retired Judge of this Court, cannot be fastened with the charge of presumed legal bias.

10. In view of the above, since no legal rights of the petitioner are violated at this stage, and no legal cause of action thus accrues in favour of the petitioner and which can accrue only when the departmental proceedings are initiated, there is no merit in this petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

JANUARY 09, 2015
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VALMIKI J. MEHTA, J