

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

Pronounced on: December 08, 2015

+ **W.P.(C) 3573/2014 & CM No.7291/2014 (stay)**

AMRAPALI BASUMATARY & ANR Petitioner
Through: Mr.Sanjeev Kumar Dubey,
Mr.Rajmangal Kumar and Mr.Udit
Malik, Advs.

Versus

UNION OF INDIA AND ANR. Respondents
Through: Mr.Hashmat Nabi along with
Mr.Saroj Bidawat, Advs. for R-1.
Mr.Santosh Kumar, Adv. for R-
2/University of Delhi.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

J U D G M E N T

: **Ms.G.ROHINI, CHIEF JUSTICE**

1. This petition by way of Public Interest Litigation is filed with a prayer to quash the Notification dated 09.01.2014 issued by the respondent No.2/ University of Delhi and seeking a declaration that Ordinance XV(D) of the University continues to be in operation

2. We have heard the learned counsel for both the parties and perused the material available on record.

3. In pursuance of the judgment of the Supreme Court in *Vishaka and Ors. vs. State of Rajasthan & Ors.*, **(1997) 6 SCC 241** laying down

guidelines and norms for due observance at all work places and other institutions to prevent or deter the commission of acts of sexual harassment and directing the employers or other responsible persons in workplaces to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment, the Executive Council of the University of Delhi promulgated Ordinance XV(D) by Resolution No.96 dated 30.09.2003. The said Ordinance contained various provisions prescribing detailed procedure to ensure the prevention of sexual harassment of girl students as well as academic and non-teaching staff of Delhi University so as to maintain and create an academic work environment free of sexual harassment. The Ordinance was made applicable to outsiders and residents of the Delhi University campus to the extent specified therein. One of the essential features of the said Ordinance was the constitution of the committees including College Complaints Committee involving not only the teaching and non-teaching staff, but also the students.

4. While so, the Parliament enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as 'the Act'), which has come into effect on 09.12.2013. In the light of the said enactment, the Registrar of the University of Delhi issued the impugned notification dated 09.01.2014 to the effect that Ordinance XV(D) stood superseded with immediate effect.

5. The said Notification is assailed in the present writ petition contending that in view of Section 28 of the Act, the provisions of the said Act are in addition and not in derogation of the provisions of any law for the time being in force and therefore, Ordinance XV(D) ought not have been

superseded. It is also contended that Ordinance XV(D) is gender neutral since it includes the victims of sexual harassment both men and women. That apart, the Ordinance is not limited to employees, but covers incidents of sexual harassment committed against any person including members of University, residents as well as outsiders. Thus, it is sought to be contended that Ordinance XV(D), which was drafted after wide range discussions and broad consultation involving all the stakeholders of the University provides for elaborate and independent methodology of inquiry apart from being more accessible to the victims of sexual harassment. Therefore, according to the petitioners, the said Ordinance cannot be whittled down pursuant to the enactment of the Act, which operates in a much narrower field than the Ordinance XV(D), particularly in view of Section 28 of the Act. The power and authority of the Registrar of the University to issue such Ordinance has also been questioned.

6. A detailed counter affidavit has been filed on behalf of the University of Delhi stating that it is mandatory for every employer to follow the Act and that the impugned notification has been issued only in terms of the enactment. It is further stated that the University of Delhi is a central university established under the University of Delhi Act, 1922 and that Section 33 of the said Act empowers the Executive Council of the University to make Ordinance in exercise of which power Ordinance XV(D) had been promulgated. Subsequently, on enactment of the Act 2013, the Executive Council of the University approved the action of the Vice Chancellor to supersede the Ordinance by its resolution dated 06.03.2014. The same was

subsequently approved in the meeting of the University held on 23.03.2014 and that the Registrar had merely notified to the public the said decision.

7. We have given our thoughtful consideration to the issue raised by the petitioners.

8. It was made clear by the Supreme Court in *Vishaka (supra)* that in the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at workplaces, the guidelines and norms are specified for due observance at all workplaces or other institutions, until a legislation is enacted for the purpose. It was done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it was further emphasised that it would be treated as the law declared by the Apex Court under Article 141 of the Constitution. It was also made clear in Para 18 of the said judgment that the guidelines laid down therein would be binding and enforceable in law until suitable legislation is enacted to occupy the field.

9. Coming to Section 28 of the Act, a plain reading of the same makes clear that it refers to the provisions of any other law for the time being in force. Ordinance XV(D) that was made by the University of Delhi in terms of the direction in *Vishaka (supra)* for implementation of the guidelines laid down by the Supreme Court cannot be treated as law for the time being in force since it was made clear by the Supreme Court that the guidelines laid down therein would be enforceable in law until suitable legislation is enacted to occupy the field.

10. The other contention that the Registrar of the University is not competent to supersede the Ordinance is also untenable since the Registrar has simply notified the decision of the Executive Council, the competent authority to take a decision on behalf of the University. Even assuming that the plea of the petitioners that the Act enacted by the Parliament operates in a much narrower field than the Ordinance XV(D) is true, according to us, it cannot be a ground to hold that the Ordinance that was made as an interim arrangement till a full-fledged enactment is made, would continue even after the Parliament has made the enactment.

11. It may also be mentioned that the petition does not point out any specific incident of infringement of anybody's right, but the petition appears to have been filed seeking determination of an academic issue. The issues cannot be decided by this Court on the ground of academic importance in the absence of any cause of action. In fact, the Act and the Rules made therein contained detailed procedure to be followed by the Complaint Committee and some of the provisions specifically addressed students in educational institutions also. Hence, the contention that the Act is not gender neutral cannot be accepted.

12. For the aforesaid reasons, we do not find any substance in any of the contentions and accordingly the writ petition is dismissed.

CHIEF JUSTICE

JAYANT NATH, J.

DECEMBER 08, 2015

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