

#15

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 08.05.2018

LPA 13/2018 & CM Nos. 1287/2018 (stay) & 1337/2018 (stay)

HIMANI MALHOTRA

..... Appellant

versus

THE INDRAPRASTHA COLLEGE FOR WOMEN & ANR

..... Respondents

Advocates who appeared in this case:

For the Appellant : Ms. Neela Gokhale, Ms. Ilam Paridi and Ms. Shradha Agrawal, Advocates.

For the Respondents: Mr. Rajesh Gogna and Ms. Liu Gangmei, Advocates for respondent No. 1.

Mr. Mohinder J.S. Rupal, Mr. Prang Newmai and
Ms. Slomita Rai, Advocates for University of Delhi.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

CM Nos. 1286/2018 & 1336/2018 (Exemption)

Exemption allowed, subject to all just exceptions.

The applications stand disposed of.

LPA 13/2018 & CM Nos. 1287/2018 (stay) & 1337/2018 (stay)

1. The present proceedings between the parties is the third occasion on

which the appellant has sought to interdict the disciplinary enquiry initiated against her, by the respondent-College.

2. In an earlier round of litigation, as far back as on 5th July, 2013, a learned Single Judge of this Court had disposed of Writ Petition (Civil) No. 5758/2012, instituted on behalf of the appellant with the following order:

“Learned counsel appearing for respondent nos. 2, 3 and 4 states that Justice S.L. Bhayana (Retired), a Judge of this Court has been appointed as an Enquiry Officer in the present case. It is therefore, agreed that the writ petition be disposed of and is accordingly disposed of with the following directions:-

(i) The enquiry proceedings against the petitioner will be completed within a period of four weeks from today. Enquiry Officer will fix the first date for fixing the effective date of hearing in the case within a period of 10 days from today. This date will be communicated to the petitioner through her counsel appearing in court today and which is being done to avoid any delay in communication to the petitioner of the first date to be fixed. Both the parties will have three opportunities each for leading evidence, and counsels for the parties agree that none of the parties will take unnecessary adjournments which will cause any delay to the enquiry proceedings. It is agreed that the Enquiry Officer can impose costs on the person seeking unnecessary adjournments.

(ii) The Enquiry Officer, before preparing the final enquiry report, will hear the parties or their representatives as per the Rules as applicable.

(iii) Both the parties are entitled to urge all their

respective cases and stands before the Enquiry Officer in support of their cases, including as per the pleadings in the present writ petition.

The writ petition is disposed of with the aforesaid observations.”

3. A perusal of the order extracted hereinabove, clearly reflects that, in view of the agreement of the parties and on account of the circumstance that a retired judge of this Court had been appointed as an Enquiry Officer, the said proceedings were disposed of. It was clearly directed that the enquiry proceedings initiated against the appellant be completed within a period of four weeks from the date of the said order. It was also directed that the parties were entitled to urge all their respective contentions and stands before the Enquiry Officer in support of their respective cases.

4. It is with great dismay that we are constrained to observe that, despite the directions of this Court, the appellant in the present writ petition has sought to delay and stall the enquiry on grounds similar to the ones urged in the earlier rounds of litigation.

5. We are also informed that subsequent upon the rendering of the order impugned in the present appeal, the appellant has instituted yet another writ petition seeking recusal of the Enquiry Officer. The writ petition being W.P.

(C) No. 4103/2018 has since been dismissed by a learned Single Judge of this Court vide order dated 24th April, 2018, with the following findings:

“5. Upon hearing and no perusal of impugned order, material on record and the decisions cited, I find that the Inquiry Officer was a Member of respondent-University’s Court and Executive Council of respondent-University long ago and thus, the apprehension of bias is not well founded. It is true that the test and the manner in which issue of bias is to be considered, is to adopt a realistic and pragmatic approach. Upon testing the bias aspect on the touchstone of legal position as highlighted in the abovesaid decisions, I find that the plea of bias has been belatedly raised at the stage of final arguments. The Inquiry Officer has been conducting the inquiry since the year 2015. Had there been any substance in the allegations of bias, then the plea of bias ought to have been taken in the first instance, which has not been done. Otherwise also, petitioner in the application seeking recusal of the Inquiry Officer has not laid any foundation on the basis of which it could be inferred that there is any likelihood of bias.

6. In the impugned order, the Inquiry Officer has concluded that the plea of bias has been raised just to delay the inquiry proceedings and has imposed nominal costs of Rs.10,000/-. In the considered opinion of this Court, impugned order does not suffer from any infirmity whatsoever. However, the costs imposed vide impugned order stand waived.”

6. A perusal of the above order clearly reflects that the finding arrived at by the Enquiry Officer to the effect that the appellant is employing dilatory

tactics repeatedly was held not to suffer from any infirmity. The costs being nominal were, however, waived.

7. It is observed that the said order dated 24th April, 2018 has so far not been impugned on behalf of the appellant by way of an intra Court appeal.

8. It is trite to state that, the Courts frown upon litigants who instead of participating in the disciplinary proceedings pending against them, keep challenging the same at every stage before the Courts. The Apex Court in a catena of decisions has held that where the disciplinary enquiry is pending, unless it is concluded, any challenge to it is premature and not maintainable.

9. As observed hereinabove, the appellant is seeking to reagitate an issue, which was duly considered by the learned Single Judge in the earlier round of litigation, as indicated in the order dated 5th July, 2013, which has since attained finality.

10. A learned Single Judge of this Court vide the impugned order dated 2nd January, 2018, assailed in the present appeal, dismissed the writ petition bearing W.P. (C) No. 11251/2017, instituted on behalf of the appellant for the following reasons:

“8. Since the order of 5th July, 2013 passed in the earlier writ petition W.P. (C) 5758/2012 was an agreed order, therefore, there is no escape from the conclusion that petitioner had intentionally waived the right to challenge the initiation of disciplinary proceedings on the ground of respondent-College’s governing body being truncated. Supreme Court in Davinder Pal Singh Bhullar (supra) has reiterated that waiver is an intentional relinquishment of right. Once petitioner has agreed to conclusion of disciplinary proceedings within a particular time frame, then the logical conclusion is that she had intentionally waived her right to challenge the initiation of disciplinary proceedings, in which she is participating now. In such a situation, petitioner cannot be now permitted to turn around amidst inquiry to reagitate the plea which she had earlier waived. It is impermissible to do so, even if some material has now come to light.

9. In the light of aforesaid, this Court finds that petitioner’s challenge to impugned minutes of meetings of respondent-College’s governing body, is not maintainable, as petitioner had made an attempt to do so in the earlier round of litigation in W.P. (C) 5758/2012 and because it is evident from the order of 5th July, 2013 (Annexure P-7) that the said challenge was not taken to its logical end. Rather, petitioner had agreed to get the earlier writ petition W.P. (C) 5758/2012 disposed of with directions to conclude the inquiry proceedings within a particular time frame.”

11. The opinion expressed by the learned Single Judge in the impugned order was evidently predicated *inter alia* on the ground that, the earlier writ petition praying for identical reliefs had been disposed of, with an agreed order, as far back as on 5th July, 2013. It is in this backdrop that, the learned

Single Judge came to a conclusion that the appellant had waived the right to challenge the initiation of disciplinary proceedings on the ground of respondent-College's governing body being truncated, by consenting to participate in the enquiry, which was directed to be concluded within a specific time frame.

12. In this view of the matter, we concur with the findings arrived at by the learned Single Judge that, in such a situation, the appellant cannot now be permitted to turn around amidst the enquiry and that too at such a belated stage and reagitate the plea which she had earlier waived.

13. In view of the foregoing, the present appeal is devoid of merits and is accordingly dismissed. Pending applications also stand disposed of.

SIDDHARTH MRIDUL
(JUDGE)

DEEPA SHARMA
(JUDGE)

MAY 08, 2018
RS