

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Order: April 24, 2018

+ **W.P.(C) 4103/2018 & CMs 16151-53/2018**

HIMANI MALHOTRA Petitioner

Through: Ms. Neela Gokhle and Ms.
Shradha Agrawal, Advocates

Versus

THE INDRAPRASTHA COLLEGE FOR WOMEN AND ANR.

.....Respondents

Through: Mr. Rajesh Gogna, Advocate for
respondent No.1

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

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

(ORAL)

1. Impugned order of 4th April, 2018 rejects petitioner's prayer for
recusal by Inquiry Officer while noting as under: -

"To deal with her first contention, I fail to understand as to how my past membership of University Court and of Executive Council of University of Delhi can affect my independence and impartiality to conduct the present enquiry against the DE and how the same can be against the principles of natural justice. University Court of Delhi University is an Apex Body of University of Delhi comprising of Professors, Principal, Vice Chancellor, Deans, Vice President of India, Chief Justice of India, Members of Parliament, Representatives of the Alumni and various professionals under different categories as per Delhi University Act and therefore my past membership in University Court cannot be a reason for me to recuse from the present enquiry. Similarly, I being a

part of the Executive Council of University of Delhi for one term which is a highest policy making body of University of Delhi can afford any ground to the DE to seek my recusal from the present enquiry. The judgment of the Hon'ble Supreme Court in the case of Professor Ramesh Chandra Versus University of Delhi is hardly of any help to DE as in the facts of that case the challenge was to the appointment of a retired Judge to act as an Enquiry Officer who was earlier a Counsel for Delhi University. Indisputably, the same is not the case as far as the facts of the present case goes. It cannot be denied that the Enquiry Officer has to be a person who is independent, impartial and unbiased so that he can decide the enquiry in a most fair and in a just manner. At the same time to challenge the independence and impartiality of the Enquiry Officer, the challenge should be supported with strong reasons and not the kind of reasons as have been advanced by the DE in the present application."

2. Learned counsel for petitioner assails impugned order while relying upon Supreme Court's decision in *Union of India and Others v. Sanjay Jethi and Another*, (2013) 16 SCC 116 and submits that likelihood of bias itself is a ground for recusal, particularly, when the Inquiry Officer has been a Member of respondent-University's Court, which is its highest body, and Member of the Executive Council of respondent-University. She further submits that the aforesaid background would affect the independence and impartiality of the Inquiry Officer to conduct the inquiry proceedings.

3. Reliance is also placed by petitioner's counsel upon Supreme Court's decision in *Ramesh Chandra v. Delhi University and Others*, (2015) 5 SCC 549 to submit that reasonable apprehension of bias is

required to be considered by adopting a practical approach. So, it is submitted that there may not be actual bias, but the apprehension of bias itself warrants change of Inquiry Officer. It is brought to the notice of this Court by petitioner's counsel that the Inquiry Officer was a Member of respondent-University's Court from 1995 to 2010 and the Executive Council of respondent-University from 1998 to 2001. It is also brought to the notice of this Court that the Inquiry Officer was appointed in October, 2015 and prior thereto, the Inquiry was being conducted by Justice S.L. Bhayana from the year 2010 onwards.

4. On the contrary, learned counsel for respondents support impugned order and submit that the inquiry is at the stage of final hearing and prayer for change of Inquiry Officer is nothing but a ploy to delay the inquiry proceedings and that there is no basis to allege bias against the Inquiry Officer. It is pointed out by respondents' counsel that the decisions relied upon are of no avail, as in the said decisions, the case of a Professor of respondent-University was under consideration, whereas petitioner is an employee of respondent-College and the outcome of inquiry has no co-relation with the allegations of bias. It is further pointed out that the Inquiry Officer has not been appointed by respondent-University, but has been appointed by respondent-College. Learned counsel for respondent-University maintains that all the payments to Inquiry Officer are being made by respondent-College and not by respondent-University.

5. Upon hearing and on 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 ₹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.

7. In light of the aforesaid, this petition and the applications are accordingly disposed of.

(SUNIL GAUR)
JUDGE

APRIL 24, 2018

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