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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment decided on: 21.05.2018

+ W.P.(C) 5486/2018

AMIT KUMAR

..... Petitioner

Through: Mr. Vishwendra Verma, Mr. K.G.
Verma and Ms. Shivali, Advocates.

versus

BHARATI COLLEGE NEW DELHI AND ORS Respondents

Through: Mr. Sudhir Nandrajog, Sr. Advocate
with Ms. Beenashaw and Mr. Akash
Yadav, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1. Issue notice.
2. Ms. Beenashaw accepts notice on behalf of respondent nos.1 and 2.
3. With the consent of learned counsel for parties the writ petition is taken up for hearing and disposal at this stage itself.
4. The prayers made in the writ petition are as follows:
*“(i) To set aside the letter dated 15.02.2018 issued by the Convener of the ‘Enquiry Committee’;
(ii) To set aside the letter no. BC/2018/1557 dated 1.3.2018 issued by the Convener of the ‘Enquiry Committee’*

(iii) To aside the letter dated 05.04.2018 issued by the 'Enquiry Committee'

(iv) To declare that the constitution of the Internal Complaints Committee constituted by Respondent No.1 is illegal and set aside the said Internal Committee;

(v) To declare that the constitution of the Enquiry Committee by the Internal Committee is illegal and set aside the Enquiry Committee;

(vi) To declare that the inquiry against the Petitioner is illegal and set aside the inquiry; and"

5. There are two principal grievances that the petitioner has raised: First, that the Internal Complaint Committee (in short 'ICC') has delegated its role to the Sub Committee, which is contrary to the provisions of the Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereafter referred to as 'Act'). Second, that no attempt was made to take recourse to Section 10 of the Act which provides for conciliation.

6. Mr. Nandrajog, learned senior counsel, who appears for respondent no.1 and 2 says that the ICC had entrusted the task of recording evidence to the Sub-Committee comprising of Members of the ICC and that this was done in line with the recommendations contained in the "Saksham Report" which has, broadly been adopted by the UGC, vide its impugned notification dated 07.05.2016.

6.1 Furthermore, learned senior counsel says that since the complainant's evidence has been concluded grievance, if any, of the petitioner with regard to a delegation by ICC of the aforesaid task to the Sub-committee, can be redressed by having his evidence being recorded by the ICC.

6.2 This suggestion is made by Mr. Nandrajog, learned senior counsel, is constructive as this would prevent re-victimisation of the complainants.

6.3 Insofar as the grievance raised by the petitioner qua the failure on the part of respondents to trigger section 10 of the Act is concerned, Mr. Nandrajog, says that this aspect was put to the complainants, who, in turn had declined to take recourse to conciliation.

6.4 However, Mr. Nandrajog, says that this aspect will be put to the complainants, once again, and if, they are so inclined parties the conciliation process could be triggered in accordance with provisions of the Act.

7. Mr. Verma, who, appears for the petitioner says that he is agreeable to the suggestion made by Mr. Nandrajog, Insofar as first aspect is concerned, which is, that the, petitioner's evidence would be recorded by the ICC and not by the Sub-Committee. In words Mr. Verma says the petitioner would not press his objection that since the evidence of the complainant was recorded by a Sub-committee it cannot be examined by the ICC.

7.1 As regards the other aspect of the matter is concerned, Mr. Verma says that the petitioner would be satisfied if it is put to the complainants even at this stage that they had an option to take recourse to conciliation. Mr. Verma's only other request is that the decision of the complainants in this regard should be communicated to the petitioner.

7.2 Mr. Nandrajog states the decision of the complainants would be

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communicated to the petitioner.

8. In addition to above, Mr. Verma says that the petitioner would like to engage the services of a defence assistant, who is not instructed in law.

9. Mr. Nandrajog, says that if an application in that behalf is made to the ICC, this aspect of the matter will be considered and in all probability. Permission sought would be granted, subject, though, to objections, if any, of the complainants.

10. Having heard the learned counsel for the parties and perused the record, the writ petition is disposed of with the following directions:-

(i) The evidence of the petitioner will be recorded by the ICC en banc.

(ii) The ICC will put to the complainants as to whether or not they want to take recourse to Section 10 of the Act.

(iii) Upon the petitioner making an application for engaging a Defence Assistant, who, is not instructed in law, the ICC will consider the same favourably, subject to objections, if any, of the complainants. In case complainants have any objection, ICC will pass a speaking order.

(iii)(a) The ICC will afford similar opportunity to the complainants as well.

11. At this stage, I am told, by Mr. Nandrajog, that there is one difficulty in having the ICC sit en banc. Learned counsel says that one of the student as representative is passing out from respondent no. 1 College and therefore may not be available to sit in on the ICC

meetings.

11.1 Mr. Verma fairly concedes that he would be satisfied if, out of the 10 members, 9 members will sit in on the ICC meetings given the peculiar circumstances.

11.2 Mr. Verma's statement is taken on record.

12. The writ petition is disposed of with the aforesaid terms.

13. *Dasti* under the signatures of the Court Master.


RAJIV SHAKDHER
(JUDGE)

MAY 21, 2018
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