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

+ **W.P.(C) 6633/2018**

AMIT KUMAR

..... Petitioner

Through: Mr Vishwendra Verma, Advocate
along with petitioner in person.

versus

BHARATI COLLEGE, (UNIVERSITY OF DELHI)
& ORS

..... Respondents

Through: Mr Sudhir Nandrajog, Senior
Advocate with Ms Beenashaw N.
Soni, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **12.07.2018**

CM No. 25293/2018

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 6633/2018 and CM No. 25292/2018

3. The petitioner – professor with Bharati College (respondent no.1) – has filed the present petition impugning a communication dated 06.06.2018 (hereafter ‘the impugned communication’), whereby the Internal Complaints Committee (hereafter ‘ICC’) has rejected the objections raised by the petitioner with regard to the inquiry being conducted against the petitioner in respect of allegations of sexual harassment.
4. Mr Verma, the learned counsel appearing for the petitioner assails the impugned communication on two grounds. First, he submits that the inquiry pertains to complaints that have been filed beyond the period of limitation as

prescribed under Section 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereafter ‘the Act’). Second, he submits that one of the complaints has been made by a person who has got no connection with respondent no.1 inasmuch as she is neither a student nor a part of the staff of respondent no.1. He earnestly contends that the said complaint cannot be considered as a complaint of sexual harassment within the “work place” and, therefore, the ICC of respondent no.1 would have no jurisdiction to examine or inquire into any such complaints.

5. Mr Nandrajog, learned Senior Counsel appearing for respondent no.1 submits that the aforesaid contentions are not merited. He further submits that, notwithstanding the same, the petitioner is also precluded from raising any such ground, as similar grounds had been raised in another petition (W.P. (C) 5486/2018) filed by the petitioner. The said petition was disposed of by an order dated 25.05.2018, which has attained finality. He further submitted that the directions issued were by consent of the parties and, therefore, it is not open for the petitioner to once again re-agitate the issues that were not pressed.

6. The learned counsel for the petitioner does not dispute that the petitioner had in the petition (W.P. (C) 5486/2018), specifically pleaded that the complaints, pursuant to which inquiry had been instituted, were barred by limitation.

7. The plain reading of the order dated 21.05.2018, whereby the petitioner’s writ petition – W.P. (C) 5486/2018 captioned “*Amit Kumar v. Bharati College New Delhi and Ors.*” – was disposed of clearly indicates that the petitioner had limited his grievance to only two issues. First, the

petitioner had urged that the inquiry could not be conducted by a sub-committee and was necessarily required to be heard by the ICC as constituted. Second, he had submitted that the ICC had not taken any steps for exploring the possibility of conciliation in terms of Section 10 of the Act.

8. It is thus apparent that the petitioner had given up his objections for challenging the jurisdiction of ICC to entertain the complaints on the ground that they were barred by limitation. On the contrary, the petitioner had insisted that the inquiry be conducted by the ICC *en banc* and not by a sub-committee. Mr Nandrajog who was appearing for respondent no.1 in the said proceedings had suggested that as the complainants' evidence had been concluded, the evidence of the petitioner could be recorded by the ICC. This suggestion found favour with the Court. Further, the learned counsel for the petitioner also concurred with the suggestion that the petitioner's evidence be recorded by the ICC and not by the sub-committee. He also did not press his objection that since the evidence of the complainants was recorded by a sub-committee, it could not be examined by the ICC. The relevant extract of the said order is set out below:-

“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 revictimisation 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 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 favorable, 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.”

9. A plain reading of the aforesaid order also clearly indicates that Mr Verma, the learned counsel appearing for the petitioner, had readily agreed that the petitioner would participate in the proceedings before the ICC. He specifically agreed that the evidence of the petitioner would be recorded by ICC en banc. Mr Verma had further stated that the petitioner would be satisfied if the option to take recourse to conciliation was put up to the complainants at that stage. And, this was agreed to by respondent no.1.

10. Plainly, it is not open for the petitioner to now re-approach this Court to challenge the jurisdiction of the ICC after having obtained specific directions for the ICC to record his evidence and also explore the possibility of conciliation under Section 10 of the Act. First of all, the petitioner did not press any objection with regard to limitation and thus – on the principle of constructive resjudicata – is precluded from filing a second petition to agitate the said issue. Secondly, the order dated 21.05.2018, which was passed at the instance of the petitioner is destructive of the petitioner’s contention that the ICC could not hold an inquiry for want of jurisdiction.

11. Insofar as the contention that one of the complaints cannot be construed as sexual harassment in a “work place” is concerned, the same would be considered by the ICC while submitting its final report. This Court finds no reason to interdict the inquiry at this stage.

12. This Court is also of the view that the ICC must not be constrained in any manner from completing the inquiry and finds no reason to interdict the same. The petitioner would, of course, have his remedies against the inquiry report if the ICC finds that the allegations against the petitioner are proved and recommends any action against the petitioner. Accordingly, this Court finds no reason to interfere at this stage.

13. In view of the above, this Court finds no ground to interfere with the proceedings with the ICC. The petition is, accordingly, dismissed. The pending application is also disposed of.

14. Order *dasti* under the signature of Court Master.

VIBHU BAKHRU, J

JULY 12, 2018

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