

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 27.08.2018

+ **W.P.(C) 7915/2018**

SOMAYA GUPTA

..... Petitioner

versus

JAWAHARLAL NEHRU UNIVERSITY AND
ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner :Ms Sneha Mukherjee, Advocate.

For the Respondents :Ms Ginny Jetley Rautray and Ms Anushka
Ashok, Advocates.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, challenging the constitution of the Internal Complaints Committee (hereafter 'ICC') constituted in terms of Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereafter 'the Act').

2. The petitioner claims that the ICC is biased as it was constituted by the Executive Committee of the Jawaharlal Nehru University (hereafter 'the University') which includes the Vice Chancellor and Rector-I of the University against whom the petitioner has made a complaint of sexual harassment under the Act. The petitioner also

claims that constitution of the ICC is contrary to the University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Institutions) Regulations, 2015 (hereafter ‘the UGC Regulations’) inasmuch as the ICC also includes the Chief Proctor, which is a senior administrative position in the University.

3. The aforesaid controversy arises in the context of the following facts:-

3.1 The petitioner has made a complaint of sexual harassment against Mr Jagadesh Kumar, the Vice Chancellor of the University; Mr Chintamani Mahapatra, Rector-I of the University; and Mr Ramesh Pawar, a Security Guard. The said complaint relates to an incident which is stated to have occurred on 28.02.2017 at approximately 4.35 p.m. At the material time, the petitioner was a student of the University.

3.2 In her complaint, the petitioner stated that a meeting had taken place in KRN Committee Room (Room No. 225) in the JNU Administrative Block at about 3.00 p.m. on 28.02.2017. She states that about 30 students were present for a meeting with the Vice Chancellor, Rector, Proctor, DOS, Registrar and few other members from the JNU Administration. It is stated that the said meeting was on account of various demands made by the student community. The petitioner claims that at about 4.30 PM, the Vice Chancellor, the Rector and other persons stood up to leave the room. At that time, the petitioner

was standing inside the room in front of the exit door. She claims that she politely asked the said authorities not to leave in the middle of the meeting and to answer all the questions. The door in front of which the petitioner was standing was latched. She states that Mr Chintamani (the Rector of the University) screamed at her, while he unlatched the door. She further alleged that she was pushed by Mr Jagadesh Kumar, the Vice Chancellor, as he moved out of the room. The relevant extract of her complaint is set out below:-

“While the meeting was on in the 225 (Committee Room), Admin Block with the VC, Rector, Proctor, Registrar of some 30 students regarding the AC meeting, UGC gazette and the recent changes, the VC & Rector suddenly stood up to leave despite students till asking them questions. There were a couple of female students sitting & standing around the door. Seeing the VC & Rector leave in the middle of the conversation, I started asking them as to why were they leaving and since I was standing right in front of the door, Chintamani screamed at me. Despite knowing that only female students are standing, the Rector, VC along with R. Pawar pushed me and the Rector and Pawar touched me inappropriately. Please NOTE, there were no female guards or any woman called for this (despite female guards standing right outside). The VC exited and while he was exiting, both the Rector and R. Pawar pushed me holding my arm and pushing me against my chest with their hand. The VC, Rector could have simply asked me to move or stand aside, except all 3 men used their physically farce (sic) on me.”

3.3 The aforesaid claim was lodged with the Gender Sensitization Committee against Sexual Harassment (hereafter ‘GSCASH’) of the University.

3.4 Thereafter, on 01.03.2017, the petitioner addressed an e-mail to the three persons who had allegedly subjected her to sexual harassment –Mr Jagadesh Kumar, Mr Chintamani Mahapatra and Mr Ramesh Pawar.

3.5 The petitioner deposed before the GSCASH Inquiry Committee on 06.03.2017.

3.6 The petitioner states that on 26.07.2017 she was called for two Proctorial inquiries on charges of indiscipline, which she claims are false. She has also made a grievance of the said inquiry proceedings being video recorded against her consent.

3.7 On 01.08.2017, the petitioner received a show cause notice from the Chief Proctor, Ms Vibha Tandon regarding the incident that had taken place outside room no. 225 of the JNU Administration Block on 28.02.2017. The said show cause notice referred to a report received from the Chief Security Officer, which was enclosed with the said show cause notice. The said report indicated that certain students from the “Committee of Suspended Students” had gathered at the Administration Building on 27.02.2017 and had demanded to meet the Vice Chancellor immediately. Some of the students had occupied room no. 225 and had been advised to leave the room. Some of these students (who were named in the report) had stayed inside the room for the entire night of 27.02.2017. It was reported that one of the students also threatened to commit suicide and had climbed on the roof of the

Administrative Block despite requests of the security personnel to refrain from such activity.

3.8 It was reported that the Vice Chancellor, Rector-I and Rector-II, Dean of Students and the Chief Proctor of the University had reached room no. 225 to talk to the agitating students at about 3.10 p.m. The petitioner was named as one of the students who was present in the said room at the material time. It was reported that despite the Vice Chancellor not being well, he had answered several queries made by the students. It was reported that some of the students had uttered “humiliating words” against the Vice Chancellor and keeping in view the “indecentcy shown by the students” the Vice Chancellor and Rector-I had left the room “through human chain made by the security officials”.

3.9 The petitioner was called upon to attend a hearing before the Proctor on 08.08.2017 at 3.00 p.m.

3.10 The petitioner has also annexed a communication, which is stated to have been sent on 08.08.2017 at 4.00 p.m. A reading of the said communication indicates that the petitioner had questioned the show cause notice as being ambiguous and bereft of any details. She had further claimed that no evidence of her presence was given.

3.11 The petitioner has made several allegations with regard to the manner in which Ms Vibha Tandon, the Chief proctor, has been conducting the proctorial inquiry. She claims that the actions of the

Chief Proctor's office are retaliatory and vindictive occasioned by the complaint made by her on 28.02.2017.

3.12 The ICC was constituted and GSCASH was replaced by the said ICC at the 269th Council meeting of the University held on 18.09.2017. It is stated that the office of the GSCASH was locked in the evening of 18.09.2017 by the University administration.

3.13 The petitioner was served with a show cause notice dated 17.10.2017 by the Chief Proctor office alleging misconduct on her part. The petitioner claims that the details of the sexual harassment incident of 28.02.2017 were discussed during the proctorial inquiry, which caused great mental and emotional stress to the petitioner.

3.14 By an office order dated 15.11.2017, the petitioner was imposed a fine of ₹15,000/-. The petitioner has received a letter dated 04.12.2017 from the Chief Proctor's office communicating that the Vice Chancellor had rejected the petitioner's appeal and upheld the order dated 15.11.2017. The petitioner states that the Vice Chancellor of the University is not entitled to hear the petitioner's appeal on account of the allegations made by her.

3.15 The petitioner states that the University Administration has blocked her registration for the winter semester of 2018 and, therefore, she was constrained to file a writ petition bearing No. W.P. (C) 262/2018 captioned "*Somaya Gupta v. Chief Proctor, JNU & Ors.*", *inter alia*, praying for quashing of the order dated 15.11.2017, which is pending before this Court.

3.16 It is relevant to note that a writ petition challenging the constitution of the ICC and the *vires* of the UGC Regulations is pending before the Division Bench of this Court (in W.P. (C) 8446/2017 captioned “*Madhu Shani and Ors. v. JNU & Ors.*”). In a Special Leave Petition (SLP (C) 10920/2018) preferred against one of the orders passed in that petition, the Supreme Court has, by an order dated 23.04.2018, has made it clear that the ICC would proceed with all complaints in the meanwhile.

4. The limited question that arises for consideration of this Court is whether the constitution of the ICC can be faulted on account of bias. The ICC consists of the following persons:-

1. Professor Vibha Tandon - Presiding Officer.
2. Dr. Gautam Jha - Faculty Representative
3. Dr. Manoradha Chaudhary - Faculty Representative
4. Mr. Rajeev Kumar - Staff Representative
5. Ms. Rajni Vaid - Staff Representative
6. Ms. Mansi Gupta - NGO Representative
7. Mr. Adarsh Garg - Student Representative
8. Ms. Ayushi Chauhan - Student Representative
9. Ms. Sonal Kumari - Student Representative

5. However, the University has clarified that an Inquiry Committee has been setup which does not include Professor Vibha Tandon as she is one of the witnesses. The Inquiry Committee as constituted for inquiring into the petitioner’s complaint consists of the following persons.

- “1. Dr. Manuradha Chaudhary (Inquiry Officer)
2. Dr. Manorama Tripathi (ICC Member)

3. Ms. Sonal Kumari (Student Representative)
4. Ms. Ayushi Chauhan (Student Representative)
5. Ms. Adarsh Garg (Student Representative)
6. Ms. Mansi Gupta (NGO Representative)”

6. In the aforesaid facts, this Court is not persuaded to accept that the constitution of the ICC or the Inquiry Committee is vitiated by any bias. It is relevant to state that the ICC as constituted by the Executive Committee is not specific to the petitioner’s case alone, but is constituted under Section 4 of the Act to consider all cases in accordance with the Act. It is also relevant to note that the ICC has been constituted in accordance with the UGC Regulations. Regulation 4(1) of the UGC Regulations expressly provides that every Executive Authority would constitute an Internal Complaints Committee (ICC) with an inbuilt mechanism for gender sensitization against sexual harassment. The UGC Regulations also specifies the composition of the ICC. Regulation 4 of the said regulations is set out below:-

“4. Grievance redressal mechanism—

(1) Every Executive Authority shall constitute an Internal Complaints Committee (ICC) with an inbuilt mechanism for gender sensitization against" sexual harassment. The ICC shall have them following composition:-

(a) A Presiding Officer who shall be a woman faculty member employed at a senior level (not below a Professor in case of a university, and not below an Associate Professor or Reader in case of a college) at the educational institution, nominated by the Executive Authority;

Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from

other offices or- administrative units of the workplace referred to in sub-section 2(o);

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organization;”

(b) two faculty members and two non-teaching employees, preferably committed to the cause of women or who have had experience in social work or have legal knowledge, nominated by the Executive Authority;

(c) Three students', if the matter involves students, who shall be enrolled at the undergraduate, master's, and research scholar levels respectively, elected through transparent democrat procedure.

All student members elected under this clause shall be women, to ensure the majority of women members in the ICC.

(d) One member from amongst non-government organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, nominated by the Executive Authority.

(2) At least one-half of the total members of the ICC shall be women.

(3) Persons in senior administrative positions in the HEI, such as Vice-Chancellor, Pro Vice-Chancellors, Rectors, Registrar, Deans, Heads of Departments, etc., shall not be members of ICCs in order to ensure autonomy of their functioning.

(4) The term of office of the members of the ICC shall be for a period of three years. HEIs may also employ a system whereby one-third of the members of the ICC may change every year.

(5) The Member appointed amongst the non-governmental organizations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the Executive Authority as may be prescribed.

(6) Where the Presiding Officer or any member of the Internal Committee:

(a) contravenes the provisions of section 16 of the Act; or

(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

(c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(d) has so abused his position as to render his continuance in office prejudicial to the public interest, such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.”

7. The Executive Council of the University has acted in accordance with the aforesaid regulations in constitution of the ICC. It is also relevant to note that 22 members of the Executive Council were present at the 269th meeting. Thus, apart from the Vice Chancellor and Rector-I (against whom allegations have been made by the petitioner), the Executive Council consisted of 19 other persons who had

participated in the said meeting. In addition, there were four other special invitees. In the aforesaid view, the petitioner's contention that the ICC would be biased as it is constituted by the Executive Council is wholly unmerited.

8. The petitioner seeks reconstitution of the entire ICC on the ground of bias. In order to succeed, the petitioner would require to establish that there is real likelihood of bias. Mere apprehension in the petitioner's mind would be insufficient for securing such relief.

9. In ***S. Parthasarthi v. State of Andhra Pradesh: 1974 (3) SCC 459***, the Supreme Court had explained the test of bias in the following words:

“The tests of “real likelihood” and “reasonable suspicion” are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The Court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry.

10. In ***M.P. Special Police Establishment v. State of M.P.: 2004 (8) SCC 788***, the Constitution Bench of the Supreme Court was concerned with an allegation of bias in the context of sanction to prosecute Ministers. The Supreme Court referred to an earlier decision in the case of ***Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant & Ors: 2001 (1) SCC 182*** and observed as under:-

“.....The question in such cases would not be whether they would be biased. The question would be whether there is reasonable ground for believing that there is likelihood of apparent bias. Actual bias only would lead to automatic disqualification where the decision-maker is shown to have an interest in the outcome of the case. The principle of real likelihood of bias has now taken a tilt to “real danger of bias” and “suspicion of bias.....”

11. In the facts of the present case, it is difficult to accept that there is any real likelihood of bias against the petitioner. There is no allegation that any of the members of the ICC have any pecuniary or personal interest in the matter (except the Chairperson of the ICC). Indisputably, the Presiding Officer of the ICC (Chief Proctor, Ms Vibha Tandon) is a witness to the incident and, therefore, would be disqualified from acting as a member of the ICC in case of the petitioner. This Court is informed that she had already recused and would not be participating in any meeting of the ICC or the inquiry relating to the petitioner. She is also not a part of the Inquiry Committee which has been constituted. There is, thus, no material on record which would even remotely lead to any suspicion that the members of the Inquiry Committee so constituted have any personal interest that would conflict in their obligation to conduct an inquiry fairly and make a fair recommendation. The mere fact that the ICC was constituted by the Executive Council of the University that included two members were accused, is clearly insufficient to doubt the integrity or ability of the ICC to render an unbiased opinion.

12. It was contended on behalf of the petitioner that since the Presiding Officer of the ICC was disqualified, the entire ICC must be reconstituted. This Contention is also bereft of any merit. In ***Lalit Kumar Modi v. Board of Control for Cricket in India & Ors.: (2011) 10 SCC 106***, the Supreme Court considered a case where disciplinary proceedings were instituted against the respondent society (BCCI). In terms of the applicable byelaws of BCCI, the Disciplinary Committee included the President. The President of the Disciplinary Committee recused himself on the objections raised by the petitioner therein. In the aforesaid context, the petitioner contended that a new committee is required to be constituted. It was contended that since the byelaws were a matter of contract of membership and the President had recused himself, a new committee was required to be constituted with the consent of the petitioner. The Supreme Court repelled the aforesaid contention and held that if the President of the Committee had recused himself, BCCI could always substitute him from another person. The Court further referred to the “doctrine of necessity” and observed as under:-

“The doctrine of necessity is a common law doctrine, and is applied to tide over the situations where there are difficulties. Law does not contemplate a vacuum, and a solution has to be found out rather than allowing the problem to boil over. Otherwise, as proposed by Shri Jethmalani one will have to wait for one more year for a new President to be elected, which submission cannot be accepted.”

13. In the present case, the fact that the Presiding Officer has recused from the proceedings, does not mean that ICC or the Inquiry Committee so constituted, is disabled from continuing with the proceedings.

14. The only question that remains to be considered is whether the appointment of Chief Proctor as the Presiding Officer of the ICC in contrary to the provisions of Sub-regulation (3) of Regulation 4 of the UGC Regulations. In terms of Sub-regulation (3), persons in senior administrative positions such as a Vice-Chancellor, Pro Vice-Chancellors, Rectors, Registrar, Deans, Heads of Departments etc. cannot be appointed as members of the ICC in order to ensure its autonomy. In this regard, it does appear that the aforesaid contention is merited. There is no dispute that the office of the Chief Proctor is at senior administrative position in the University. However, it is not necessary to issue any directions in this petition, as the Chief Proctor has recused from the proceedings and would not be participating in the inquiry in respect of the complaint made by the petitioner. Further, this Court is informed that the challenge to the *vires* of the UGC Regulations and the constitution of the ICC is pending before the Division Bench of this Court and the Supreme Court has expressly directed that the ICC would continue to carry out its functions.

15. In view of the above, the petition is dismissed.

VIBHU BAKHRU, J

AUGUST 27, 2018/pkv/RK