

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.960 of 2019 (O&M)
Date of decision: 22.03.2021**

Dr. Tanya Mander

...Petitioner

Versus

Rajiv Gandhi National University of Law (Punjab) and anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. DS Patwalia, Sr. Advocate with
Mr. Kannan Malik, Advocate
for the petitioner.

Mr. Puneet Gupta, Advocate
for the respondents.

ANIL KSHETARPAL, J.

Through this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner assails the correctness of constitution of the Internal Complaints Committee formed under Section 4 of the Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013 (in short 'the Act').

Keeping in mind the nature of the controversy involved, it would not be appropriate to set out the detailed facts. However, in order to complete the narration of facts, some skeleton facts are being noticed. The petitioner has been working as an Assistant Professor of English in the respondent-University since the year 2007. The respondent-University is a State University established and

incorporated under the Rajiv Gandhi National University of Law, Punjab Act, 2006.

After the judgment passed by the Hon'ble Supreme Court in **Vishaka and others VS. State of Rajasthan and others, (1997) 6 SCC 241**, the Parliament enacted 'the Act'. The complaint of the petitioner is that one of her senior colleagues had scribbled derogatory and lewd remarks on the wall of her office.

Section 4 of the Act mandates every employer employing 10 workers or more to constitute an Internal Complaints Committee. The members of the Committee are required to be selected in accordance with Section 4, which is extracted as under:-

“Constitution of Internal Complaints Committee.—

(1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the “Internal Complaints Committee”:

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

(2) The Internal Committees shall consist of the following members to be nominated by the employer, namely: —

(a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:

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(1):

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 organisation;

(b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

(c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

Provided that at least one-half of the total Members so nominated shall be women.

(3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

(4) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

(5) Where the Presiding Officer or any Member of the Internal Committee, —

(a) contravenes the provisions of section 16; 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.”

The University Grants Commission has also promulgated the University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Education Institutions) Regulations, 2015 (in short 'UGC's Regulations'). Regulation 4 lays down a grievance redressal mechanism which in turn provides for the constitution of an Internal Complaints Committee. Regulation 4 is extracted as under:-

“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 the 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 democratic procedure.

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

The petitioner’s grievance is that the committee as constituted by the respondent-University is not in accordance with Regulation 4 of UGC Regulations. It may be noted here that Internal Complaints Committee constituted by the respondent-University consists of nine members headed by a female Associate Professor of Law. The members of the Committee are as under:

Sr. No.	Name and designation	Capacity	In compliance of
1	Dr. Sharanjit, Associate Professor of Law	Presiding Officer	S. 4(2) (a)
2	Dr. Tanya Mander, Assistant Professor of English	Member	S. 4(2) (b)
3	Ms. Gagan Preet, Assistant Professor of Law	Member	S. 4(2) (b)
4	Dr. Manoj Sharma, Assistant Professor of Law	Member	S. 4(2) (b)
5	Dr. Renuka Soni, Assistant Professor of Law	Member	S. 4(2) (b)
6	Dr. Shilpa Jain, Assistant Professor of Law and Warden Girls Hostel	Member	S. 4(2) (b)

Sr. No.	Name and designation	Capacity	In compliance of
7	Dr. Abhinandan Bassi, Assistant Professor of Law	Member	S. 4(2) (b)
8	Dr. Gaytri Sharma, Medical Officer	Member	S. 4(2) (c)
9	Dr. Harjinder Kaur, Assistant Librarian	Member	S. 4(2) (c)

It is apt to notice that this Bench, after having heard learned counsel for the parties at some length, at one stage expressed that if the parties are open to an effort to reconcile the matter by the Bench. The petitioner and the other party readily accepted the offer and the Bench met the parties separately in the chamber. However, no reconciliation could be brought about. Thereafter, the parties were given an option whether they would like the case to be decided by the Bench. On 17.02.2021, the parties through their counsel made a statement that they have no objection to this Bench deciding the matter.

This Court has heard the arguments of learned counsel for the parties at length and with their able assistance perused the paper book alongwith the written synopsis.

Learned senior counsel representing the petitioner submits that as per Regulation 4, the presiding officer of the Committee cannot be below the rank of Professor in case of a University, whereas the Committee is headed by an Associate Professor. He further contends that one member has to be from amongst the non-government organizations or an association committed to the cause of women, however, in the present case, there is none. He further contends that out

of the nine members, two members are contractual employees of the respondent-University.

Per contra, learned counsel representing the respondents has submitted that the Committee has been constituted in accordance with the Parliamentary Act which is the primary legislation. He, hence, submitted that the Parliamentary Act has to be given effect and the regulations framed have to be read in accordance with the provision of the Act.

It is not in dispute that the respondent-University does not have a female faculty member of the rank of Professor.

It is apparent that the Committee is headed by an Associate Professor of Law who is the senior most lady faculty member in the University. Then, there are six Assistant Professors who are members of the committee. Apart therefrom, Medical Officer as well as an Assistant Librarian are also members of the Internal Complaint Committee. Once, the provisions of Section 4 of the Act are carefully examined, it is apparent that the presiding officer of the committee has to be a woman employed at a senior level. Thereafter, clause b, requires that not less than two members should be amongst the employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge. In this case, most of the members are faculty members of Law and thus possess the required legal knowledge. Under Clause c, there are three possibilities. One member can be either from amongst the non-

governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment. Thus, it is not mandatory that one member has to be from a non-governmental organization or association. The stand of the respondent-University that since a female doctor has been associated who is well versed with the issues relating to sexual harassment, therefore, her inclusion in the committee is in accordance with the requirements of the Act.

Still further, it is not the case of the petitioner that the Internal Complaints Committee has not been constituted as per Section 4 of the Act. However, her stand is that the Committee is not in accordance with Regulation 4 of the UGC Regulations. It may be noted here that 'the Act' is a Parliamentary Act and as such, holds supremacy after the Constitution of India. The Regulations are framed in the exercise of the legislative powers conferred upon the executive body and are hence, referred as delegated/subordinate legislation. Therefore, these regulations cannot supersede the Parent/Parliamentary Act which is made by the Legislature itself. Learned senior counsel for the petitioner has submitted that the Act is a general legislation whereas the UGC's Regulations are specific legislation and therefore, have to prevail over the Act. This Court expresses its inability to accept the argument particularly when the Parliamentary Act is applicable across the board and is a special Act enacted to deal with the complaints of sexual harassment of women at workplace. The UGC's Regulations are

to be read in consonance with the Act. In case of any repugnancy, it is the Parliamentary Act which has to prevail. Still further, once a field is occupied by a Parliamentary Act, the Regulations, if any, framed by way of subordinate legislation, cannot supersede or over-write the provision of the Act. Further, Clause d of Regulations, itself provides that a person familiar with the issues relating to sexual harassment can be a member of the committee. Still further, once there is no women faculty member in the rank of Professor, then the constitution of the committee cannot be declared to be bad. It is an undisputed fact that the respondent-University is a small university and there is no women faculty member in the rank of Professor.

Next argument of learned counsel that two members of the committee are contractual employees. It may be noted that there is no prohibition in the Act or the Regulations to include contractual employees in the committee. Out of the two contractual employees, one is a Medical Officer and the other is an Assistant Librarian.

Further, the committee is quite broad based and the contractual employees are only two out of a total of nine members. It is also not in dispute that more than half of the total number of members of the committee are women.

Keeping in view the aforesaid facts, no ground to issue the writ as prayed for is made out.

Dismissed.

22.03.2021

ashok

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No

(ANIL KSHETARPAL)
JUDGE