

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.22467 of 2022

DR. ATANU SAHA

-VERSUS-

JADAVPUR UNIVERSITY AND OTHERS

For the petitioner : Mr. Biswaroop Bhattacharya, Adv.,
Mr. Pratik Majumder, Adv.

For respondent nos.1 to 6 : Mr. Soumya Majumder, Adv.,
Ms. Sanjukta Dutta, Adv.

For the College : Mr. Anindya Bose, Adv.,
Mr. Dipendu Mandal, Adv.,
Mr. Mridul Biswas, Adv.

Hearing concluded on : 07.08.2023

Judgment on : 12.12.2023

Kausik Chanda, J.:-

The petitioner is an Assistant Professor at Jadavpur University in Linguistics.

2. A complaint, dated August 25, 2021, was formally lodged against the petitioner alleging sexual harassment at workplace by a student of the University.

3. An Internal Complaints Committee (hereinafter referred to as “the ICC”) was formed by the University to enquire into the allegations. The committee on March 10, 2022, submitted its report before the Vice-Chancellor of the University. The petitioner, on April 6, 2022, preferred an appeal before the Executive Council of the University under Rule 8(5) of the University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015 (hereinafter referred to as “UGC Regulations, 2015).

4. The Executive Council of the University by a resolution dated August 12, 2022, approved the findings of the ICC with the following recommendations:

“I. The Respondent should be barred from guiding any female scholars.

II. The Respondent should not be allowed to go on field trips with students.

III. The Respondent must undergo gender sensitization programmes of the University.

IV. The Respondent needs to undergo counseling from a professional and submit completion certificate to the University.

V. The Respondent must be informed that another complaint against the Respondent of the same nature and with sexual undertone, if received in future will be dealt stringently.

VI. A note of this report must be kept in his service book for future reference.

VII. Any other measures the University administration deems fit.”

5. In this writ petition, the petitioner has challenged the findings as well as the recommendation of the ICC dated March 10, 2022, and the resolution of the Executive Council dated August 12, 2022.

6. Mr. Biswaroop Bhattacharya, learned advocate appearing for the petitioner, has argued that the ICC lacked jurisdiction or authority to investigate the alleged sexual offence that took place outside the University Campus. Furthermore, he has argued that all incidents relating to the sexual harassment alleged to have taken place either at the residence of the complainant or the petitioner or in hotels. Such places do not come within the definition of “workplace.”

7. Mr. Bhattacharya has asserted that the consensual sexual relationship between the petitioner and the complainant cannot be termed as “sexual harassment” within the meaning of Section 2(n) of the Sexual

Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as “the Act of 2013”).

8. Mr. Bhattacharya has highlighted various infirmities in conducting the enquiry against the petitioner. It has been argued that the petitioner was served only with Part-I to Part-IV of the enquiry report of the ICC. The recommendations contained in Part-V of the report, the depositions of the complainant and the relied upon documents were not provided to the petitioner. The petitioner was denied the opportunity to cross-examine the complainant or the prosecution witnesses by the ICC. The depositions of the complainant and the witnesses were recorded in the absence of the petitioner. In support of his submission, Mr. Bhattacharya has relied upon the following judgments reported at **(2019) 3 CHN 33 (*Union of India v. Shibram Sarkar*)**, **(2019) SCC Online (Cal) 734 (*Debjani Sengupta v. Institute of Cost Accountants of India*)** and a judgment of the High Court at Delhi passed in **LPA 305/2017 & CM No.15732/2017 (*Ashok Kumar Singh v. University of Delhi*)**.

9. Mr. Bhattacharya has submitted that since the petitioner was not furnished with the copy of the recommendations of the ICC, he requested the Chairman of the committee to provide the same. The Committee, however, declined such a request by a letter dated March 28, 2022. Mr. Bhattacharya has argued that Regulation 8 (3) of the UGC Regulations, 2015 casts a duty upon the ICC to furnish a copy of the findings or

recommendations on both parties to the complaint. The Executive Council approved the recommendations of the ICC without affording any opportunity of hearing to the petitioner in violation of Regulation 8 (6) of the UGC Regulations, 2015.

10. The University, on the other hand, argued on the applicability of the UGC Regulations, 2015, in the present case. It has been argued that the Act of 2013 is a complete code insofar as the particular offence and procedural safeguard for enquiry made under it are concerned. The UGC Regulations, 2015 have laid down different processes of conducting enquiry by the ICC and a different Appellate Authority. It has been submitted that the role and duty of the University Grants Commission are circumscribed by Entry-66 of List-I in the Seventh Schedule of the Constitution of India and limited to “Co-ordination and determination of standards in institutions for higher education or research and scientific technical institutions.” The University has contended that the UGC has encroached into the occupied field of legislation framed in terms of ***Vishaka’s case*** reported at **(1997) 6 SCC 241**. The Act of 2013 is a special statute and the UGC cannot override the same by a subordinate legislation. Therefore, the Regulations framed by the UGC cannot apply in the case of “Sexual Harassment” under the Act of 2013.

11. I am of the view that the University itself resorted to the UGC Regulations, 2015, in conducting the enquiry and in hearing the appeal

against the recommendations of the ICC. Therefore, I am not inclined to allow the University to argue that the UGC Regulations, 2015 have no application in the present case. In fact, the petitioner also did not raise any objection with regard to the applicability of the UGC Regulations 2015 to his case.

12. The relevant part of the affidavit-in-opposition filed by the University is quoted below:

“It is stated that the petitioner never objected to the decision of the ICC and also of the University Authorities in not allowing him entry in the Campus during the subsistence of the enquiry conducted by the ICC. The petitioner obviously had a right to physically appear before the ICC, which he did not avail himself of. The petitioner during the entire carriage of enquiry proceeding by the ICC had not objected to the manner of conducting the same and had duly participated in the enquiry proceeding without any grievance or demur. All allegations made in the said petition with regard to the manner of conducting the enquiry of the ICC is therefore afterthought and without demonstrating any real prejudice suffered by the petitioner during the enquiry process. In fact, from the averments made in the said petition, it is clear that the petitioner has admitted to have relationship of undesirable nature with his student.

The petitioner was forwarded with a copy of the Report/ Findings of the ICC. It is stated that the writ petitioner has submitted an appeal against the recommendations of ICC, before an inappropriate authority. The Act of 2013 lays down a different course of action for an accused to be followed, in exploration of a right to prefer an appeal from the recommendations of the ICC. It is stated that the petitioner initially stayed away from the ICC enquiry proceeding. The petitioner's

representation clearly revealed that he was aware of the deposition of the witnesses and he himself was allowed to submit his deposition before the ICC. That apart, the petitioner had never objected to the proceeding of ICC and the manner of carriage of the ICC proceeding till such time he was served with the findings of the ICC. The conduct of the petitioner is therefore hit by the principle of estoppel. He is also guilty of approbation and reprobation.”

13. The University does not dispute the fact that the petitioner was not heard by the Executive Council of the University or the fact that the recommendation of the ICC was not served upon the petitioner. In my view, the aforesaid two lapses have vitiated the appeal proceeding against the petitioner. The Executive Council, before making the impugned recommendations against the petitioner, ought to have afforded an opportunity of hearing to the petitioner.

14. I, however, do not accept the contention of the petitioner that he was denied the opportunity to cross-examine the complainant or the witnesses. Nothing has been demonstrated before the Court to show that the petitioner ever made any prayer before the Enquiry Committee to allow him to cross-examine the complainant or the witnesses.

15. The relevant complaint suggests that some alleged incidents took place inside the University campus. I, therefore, also reject the contention of the petitioner that the ICC lacked no jurisdiction to enquire into the allegations against the petitioner.

16. In that view of the matter, the resolution of the Executive Council dated August 12, 2022, cannot be sustained and accordingly, the same is set aside.

17. The Executive Council of the University shall hear the petitioner, providing all relied upon documents, including the recommendation of the ICC and dispose of the appeal within a period of 60 days from the date of communication of this order.

18. Accordingly, W.P.A. No.22467 of 2022 is disposed of.

19. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)