

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

W.P.A. No. 8018 of 2020

With

W.P.A. No. 11995 of 2021

Angshuman Kar

Vs.

The State of West Bengal & Ors.

For the writ petitioner	:-	Mr. Kallol Basu, Adv. Mr. Suman Banerjee, Adv. Mr. S. Sarkar, Adv.
For Burdwan University	:-	Mr. N. C. Bihani, Adv. Ms. Papiya Banerjee Bihani, Adv. Mr. Soumyajit Ghosh, Adv.
For the State	:-	Mr. Santanu Mitra, Adv. Mr. Sudip Sarkar, Adv.
For the Internal Complaints Committee	:-	Mr. Raghunath Chakraborty, Adv. Ms. Tanusree Das, Adv.
Hearing concluded on	:-	24.08.2021
Judgment on	:-	07.09.2021

Amrita Sinha, J.

The petitioner is a professor in the Department of English and Culture Studies in the University of Burdwan. He is in service of the University since 2002. By an order dated 9th September, 2020 the Registrar (Officiating) of the University notified that pursuant to the resolution of the Executive Council on 8th September,

2020 the petitioner is debarred from all examinations and academic activities of the University, with immediate effect.

The petitioner made an application before the University praying for recalling the order of debarment. The Registrar (Officiating) by a letter dated 26th September, 2020 intimated the petitioner that the Executive Council resolved that during the pendency of proceedings the Council is unable to withdraw the order debarring him from all examinations and academic activities of the University. Being aggrieved by the same the petitioner approached this Court by filing writ petition being WPA 8018 of 2020 inter alia praying for setting aside the order of debarment and an order of injunction restraining the authority from proceeding with the inquiry as reflected in the charge-sheet.

On 25th September, 2020 the petitioner was informed that the University proposed to hold an inquiry against him. The Article of Charges along with list of supporting documents was forwarded to him. The petitioner was directed to submit his representation in his defence.

The allegation against the petitioner is that he had sexually harassed a student of the English Department (MA) 2016-2018 over a period and thereafter intimidated her so that she did not lodge any complaint against him. The said act was unbecoming of a teacher and he seriously breached the trust which constitutes grave misconduct. Further allegation was that the audio conversation between the professor and the student went viral in different media including social media. The said heinous act has caused disrepute to the esteemed institution as well as to the teachers' community at large adversely affecting the sanctity of the educational institution.

The statement of imputation of charge in support of the Articles of Charge mentions that the University received mail from the Head, Department of English

and Culture Studies, University of Burdwan wherein allegation of sexual harassment was intimated and it was also communicated that the student sought help from two other professors of the English Department. It was alleged that the petitioner intimidated her to stop her from lodging any complaint against him. It was further alleged that the conversation between the petitioner, his wife and the student reveals that the petitioner threatened the student for causing detriment to her career.

The specific case of the petitioner is that as there was no formal complaint of sexual harassment against him in terms of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 hereinafter referred to as the 'said Act' and the corresponding Rules accordingly, issuance of charge-sheet was bad ab initio.

It is the further case of the petitioner that the University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Woman Employees and Students in Higher Educational Institutions) Regulations, 2015, hereinafter referred to as the 'Regulations, 2015', has laid down the procedure for inquiring into the allegation of sexual harassment. The University could not have bypassed the aforesaid provision and issued charge-sheet against him. According to the petitioner there was an element of malice /mala fide and the language of the charge-sheet reflected the closed mind-set of the authority. The petitioner allege bias, motivated and pre-determined mind-set of the authority.

Initially the Internal Complaint Committee (ICC) was not a party in the writ petition but subsequently pursuant to the leave granted by the Court, ICC has been impleaded as respondent.

During hearing of the said writ petition University submitted that steps were taken against the petitioner as per the recommendation of ICC. The petitioner

filed the second writ petition being WPA 11995 of 2021 challenging the recommendation made by ICC and prays for setting aside the same. Both the writ petitions have been tagged together and are being dealt with analogously and disposed of by a common judgment.

The petitioner draws attention of the Court to the report of the ICC dated 25th August, 2020 wherein it was mentioned that since there was no formal complaint of any allegation of sexual harassment by the student or by anyone on her behalf before ICC, so as per UGC guidelines, the members of ICC expressed their doubts whether ICC has any jurisdiction to proceed further with the matter. As the members of ICC failed to come to a definite conclusion as to whether to proceed on the basis of the email and audio clip received from the Bardhaman Viswavidyalaya Chhatra Samsad, email from Akhil Bharatiya Vidyarthi Parishad, BU and email from Head, Department of English and Culture Studies, the members of ICC emphasized on seeking legal opinion from a lawyer with regard to the future course of action in the matter. After receiving the advice from the advocate a threadbare discussion took place.

Legal advice was sought for and ICC reopened the case after receiving the legal advice on 14th August, 2020. The members of ICC repeatedly tried to contact the student but she denied meeting the members citing ill-health. The student expressed her desire not to lodge a formal complaint against any person by an email dated 17th August, 2020 written to the Presiding Officer, ICC. In the absence of a formal written complaint of the student, ICC expressed inability to proceed further in the matter. However, considering the available documents and the statements of the reported victim student, ICC recommended that University may take appropriate steps against the concerned professor after receiving legal advice.

Addendum to the report of ICC submitted on 25th August, 2020 mentions that the Presiding Officer, ICC received email from the University on 5th September,

2020 along with email, audio clip and the opinion of a different learned advocate. An emergent meeting of ICC was called on 6th September, 2020 and after discussion the members of ICC unanimously opined on reaffirming their earlier recommendation dated 25th August, 2020 not to proceed any further in the matter.

The petitioner contends that the University ought not to have reopened the case on the advice of the advocate in the absence of a complaint from the student. Reliance has been placed on the provisions of Section 9 and 11 the said Act.

It is the specific submission of the petitioner that the alleged student passed out from the University way back in the year 2018. The allegation of sexual harassment surfaced in the year 2020, that is, long after the period prescribed under the Act. Moreover, there has been no formal complaint pursuant to which the authority could have acted upon.

The said Act contemplates that the Internal Committee may proceed to make inquiry into the complaint in accordance with the provisions of the service rules, but in the absence of a complaint, ICC could not have proceeded in the matter.

The petitioner further submits that as the University proceeded against the petitioner on the basis of the recommendation of ICC, accordingly the said proceeding should also fail if the steps taken by ICC are found not to be in accordance with law. The charge-sheet will be redundant in case the Court is of the opinion that the ICC could not have proceeded in the matter in the absence of a formal complaint from the victim student.

The petitioner prays for setting aside the recommendation of ICC, the charge-sheet issued by the University and all subsequent steps taken pursuant to issuance of charge-sheet.

The petitioner relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of:

Medha Kotwal Lele & Ors. -vs- UOI & Ors. reported in **(2013) 1 SCC 297** paragraphs 37 and 41.

Dr. Vijayakumaran C. P. V. -vs- Central University of Kerala & Ors. reported in **2020 SCC Online SC 91** paragraph 12.

Anjan Bhattacharjee -vs- Registrar General, High Court & Ors. reported in **2018 SCC Online Cal 14714** paragraph 39.

Debdulal Maity -vs- National Insurance Co. Ltd. & Ors. reported in **2014 SCC Online Cal 17152**.

The learned advocate representing ICC opposes the prayer of the petitioner. It has been submitted that recommendation of ICC has been made relying on the telephonic conversation and the audio clips which are available with ICC. It has been submitted that though the victim student completed her course in 2018 but she intended to proceed with her higher education in the said University and accordingly ICC thought it fit to take steps against the petitioner. It has further been submitted that the petitioner intimidated the victim to such extent that she refrained from making the complaint out of fear and out of threat that her future academic prospect may be hampered. It has been submitted that the email and audio clips were enough evidence to proceed against the petitioner. Principle of zero tolerance of allegation of sexual harassment is followed by ICC.

The learned advocate for the University submits that according to Regulations, 2015 it is the responsibility of the Higher Educational Institution to bring those guilty of sexual harassment against its employees and students to book and initiate all proceedings as required by law and also put in place

mechanisms and redressal system like the ICC to curb and prevent sexual harassment on its campus.

According to Clause 3(1)(m) of Regulations, 2015 every Higher Educational Institution shall treat sexual harassment as a misconduct under service rules and initiate action for misconduct if the perpetrator is an employee.

It has further been submitted that the action of the petitioner falls under misconduct in accordance with the service rules of the employee. Regulations, 2015 mention that ICC shall, upon receipt of the complaint, send a copy of the same to the respondent within a period of seven days of such receipt. The inquiry is to be completed within a period of ninety days from the receipt of the complaint. The inquiry report, with recommendations, if any, has to be submitted within ten days from the completion of the inquiry. In the instant case, the University acted on the basis of the recommendation of ICC.

The University argued that on receipt of the recommendation of ICC there was no other option for the University but to initiate proceeding against the petitioner as the law mandates. It has been contended that as disciplinary proceeding has already been initiated, the petitioner has enough scope and opportunity to place his case before the disciplinary authority. It may happen that the disciplinary authority, upon being satisfied by the submission of the petitioner, drops the disciplinary proceeding. It has been contended that since the proceeding under the said Act and the Service Rules of the petitioner are independent of each other, accordingly, if the proceeding under the said Act fails the same cannot have an automatic effect on the disciplinary proceeding. The petitioner may however refer and rely upon the order passed by ICC and thereafter the disciplinary authority shall take an informed decision in the matter.

The University relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of ***Vishaka & Ors. -Vs- State of Rajasthan & Ors.*** reported in ***(1997) 6 SCC 241*** (paragraph 17) wherein it was held that where the conduct of the perpetrator amounts to misconduct in employment, appropriate disciplinary action should be initiated by the employer in accordance with the Rules. It has been submitted that as the incident occurred within the college campus the same has to be taken as a work place and dealt with in accordance with Regulations, 2015.

Respondents pray for dismissal of the writ petition.

I have heard and considered the submissions made on behalf of all the parties. It appears from the report of ICC that the proceeding under the said Act was sought to be initiated relying upon certain documents which happens to be email and audio clip from the Bardhaman Viswavidyalaya Chhatra Samsad, email from Akhil Bharatiya Vidyarthi Parishad, BU and email from Head, Department of English and Culture Studies.

There is no complaint from the student. The aforesaid documents i.e the email and audio clip were never re-checked or verified to test its genuineness. The student has made a written communication to the members of ICC that she does not want to make any formal or written complaint about the incident. She has also indicated in her email that her parents are also not willing to lodge a formal complaint in connection with the incident which allegedly took place.

ICC, in their meeting held on 25th August, 2020, took note of the statement of the student and expressed their doubts as to whether ICC could exercise jurisdiction to proceed in the matter in the absence of a complaint from the student. After threadbare discussion the members of ICC were of the opinion that in the absence of a formal complaint of the victim, ICC is unable to proceed further

in the matter. ICC however, indicated that considering all available documents and statements of the reported victim, it is recommended that the University may take steps considering the legal advice received by ICC.

It is thereafter that legal advice was sought for and on the basis of such advice given by the learned advocate, ICC called an emergent meeting on 5th September, 2020 to discuss the next course of action as ICC had already sent recommendation and suggestion to the University on 25th August, 2020. It was resolved that considering the documents carefully it was decided that the audio clip does not add any new relevant information and no conclusion can be drawn. ICC reiterated its earlier recommendation as submitted to the University on 25th August, 2020. On the basis of the aforesaid recommendation the University issued the charge-sheet against the petitioner.

Section 9 of the said Act lays down that the aggrieved woman may make, in writing, complaint of sexual harassment at workplace to the Internal Committee if so constituted or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents within a period of three months from the date of last incident. The time period may be extended, for reasons to be recorded in writing, for a further period of three months. If the aggrieved women in unable to make a complaint on account of her physical or mental incapacity, such other person as may be prescribed may make the complaint.

According to the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Rules, 2013 where the aggrieved women for any reason is unable to make a complaint, a complaint may be filed by any person who has knowledge of the incident, with her written consent.

On receipt of the complaint ICC may proceed to make inquiry into the same in accordance with the provisions of the Service Rules applicable to the respondent. All further actions in the matter may be initiated only after receipt of the complaint from the aggrieved person.

It appears from the said Act and the corresponding Rules that a complaint either from the aggrieved person or on behalf of the aggrieved person is a sine-qua-non for the purpose of initiating any proceeding under the said Act. The Act lays down the competence of the complainant and the time period within which a complaint has to be filed. The aggrieved person or anybody on her behalf, with her consent, is competent to file the complaint. The same implies that, any person apart from those mentioned above, is incompetent to file a complaint under the said Act. The same suggests that complaint, if any, filed by any person lacking competence, is illegal and void ab initio. The same cannot be treated as a valid complaint in the eye of law.

The time limit as prescribed in the said Act is also important. A complaint has to be lodged latest within a period of six months from the date of the last incident. The time limit is of prime importance so as to check stale allegation being levelled against persons with a view to harass them. At the same time, timely reporting also helps in taking prompt action against the perpetrator as the evidences may be readily available. The offender doesn't get much time to tamper evidence or intimidate witnesses.

In *Debdulal Maity (supra)* the Court was of the opinion that as the complaint was not filed within the prescribed period of limitation, ICC acted hastily in issuing the impugned notice.

In the instant case, admittedly there is no complaint from the aggrieved person. On the contrary, the alleged aggrieved person has categorically made her

mind clear that, neither she, nor her parents are eager to proceed with the matter. Incidentally, the alleged incident took place in the year 2018 or prior thereto, when the student was studying in the University. The student has passed out from the University in the year 2018, but for strange reasons, no complaint was lodged either by the student or any competent person on her behalf within the time as specified in the said Act and the corresponding Rules. After lapse of about two years the incident surfaced, that too, at the behest of some organization/ students' union. Neither the students' union nor any of its members have obtained consent from the concerned student prior to proceeding with the matter. The complainants do not have any personal knowledge of the alleged incident. It appears that, for reasons best known to them, the Union became extra vigilant and re-opened the case, when practically the alleged incident died a natural death. The same has caused disrepute to not only the petitioner but also to the University and the student concerned.

It appears from the report of ICC that they were prudent enough not to proceed in the matter in the absence of a complaint. ICC ought to have stopped there. ICC ought not to have recommended initiation of proceeding by the University. The University, in its turn, without application of mind, solely relying on the recommendation of ICC, initiated a disciplinary proceeding against the petitioner. The University ought to have been satisfied and /or convinced that there were enough materials to proceed against him. It is not known as to how and why the University proceeded against the petitioner even though ICC did not. It appears that the advice of the learned advocate and the recommendation of ICC may have prompted the University to initiate the proceeding. The University ought to have formed an independent opinion by checking the corresponding law as to whether it was permissible for initiating proceeding in such a situation.

Had the student been really aggrieved with the action of the petitioner then she ought to have taken steps in proper time to protest the same. On the contrary, it appears that there was no intention of the lady ever, to fight for her rights. Law provides enough scope and facility to an aggrieved woman to file a complaint either personally or through persons authorised by her. She sat tight over the matter for nearly two years and thereafter the alleged incident was brought to the forefront by third parties, who neither had personal knowledge of the incident nor were witnesses to the incident. Reliance was placed on audio clippings, veracity of which have not been tested. It may be that the lady was threatened or intimidated not to proceed further in the matter. It is possible that the student was not advised and guided properly. But where the lady herself puts forth in writing that neither she nor her parents intend to proceed with the matter, then the desire of the lady has to be respected.

The Hon'ble Supreme Court in Dr. Vijayakumaran (supra) held that upon receipt of complaints from girl student of the University about sexual harassment in University campus, it was obligatory on the administration to refer such complaints to the ICC within the stipulated time period as pre-predicated in Section 9 of the said Act. The same implies that the compliant of the lady and the time limit for filing such complaint both are equally important.

The allegations against the petitioner have criminal connotations. No complaint was ever lodged before the police by any person alleging the incident. Without being convinced and satisfied with the documents, the University ought not to have initiated any proceeding against the petitioner.

The submission of the University that the charge-sheet ought not to fail automatically in the event the recommendation of ICC fails, cannot be accepted by the Court. If the initial action of ICC cannot be supported, then obviously the

subsequent actions by the University are bound to fail. It is only on the basis of the recommendation of ICC that the University initiated disciplinary proceeding.

In fact, the University has relied upon the UGC Guidelines which mention that the Higher Educational Institution must mandatorily extend full support to see that the recommendations of ICC are implemented in a timely manner. The support which is to be extended in terms of the aforesaid provision of the UGC guideline is with regard to the institutional resources given for functioning of ICC and the office and building infrastructure as well as sufficient allocation of financial resources. The recommendation as indicated therein does not mean the recommendation for initiating disciplinary proceeding against a person even though the very basis for initiating such proceeding does not exist.

What cannot be done directly cannot be done indirectly, is settled law. ICC, in the given facts, could not take any step against the petitioner directly but recommended the University to take steps against him. The same is impermissible.

There is no evidence from the student that she intends to proceed with the matter. On the contrary, she prefers a quiet burial to the entire incident. There is no reason why the desire and intention of the lady student will not be taken into consideration while dealing with the matter.

As the very basis for initiating proceeding against the petitioner by the University fails, accordingly, any step taken by the University consequent to the recommendation of ICC must also fail.

Non-reporting of incidents of sexual harassment is a matter of concern. Gone are the days when women had little option but to suffer tight-lipped the act of sexual harassment. After the promulgation of the Act, the legislature has provided a very strong and effective weapon in the hands of women. Modern day women ought to make use of the Act as and when necessary. Several organisations

are actively supporting the cause and standing by the side of oppressed women so that they come forward to report incidents of sexual harassment. Till such acts are reported and the offenders brought to book, the purpose of the Act will remain unfulfilled. The object of such legislation will be frustrated and defeated. The offenders will get a free run. It is time that society starts taking women seriously and treat them with dignity, not out of fear of the law but out of respect. At the same time, they have to be aware that if there is any wrong step, law will not spare them.

In view of the discussions made herein above all steps taken by the University against the petitioner on the recommendation of ICC in connection with the incident under reference are liable to be set aside and accordingly set aside. It will however be open for the University to take steps against the petitioner, strictly in accordance with the service rules, without relying upon or referring to the recommendation of ICC, if permissible.

Both the writ petitions are disposed of.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties on compliance of usual legal formalities.

(Amrita Sinha, J.)