
(2011) 07 DEL CK 0135
In the Delhi High Court
Case No : Writ Petition (C) 8208 of 2010

Meenakshi

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 05-07-2011

Acts Referred:

Citation : (2011) 07 DEL CK 0135

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Jay Shree Satpute, for the Appellant; Maninder Acharya and Yashish Chandra for R-1, Jayant Bhushan and Manish Bishnoi, for R-2 and Amit Khemka, for R-3 and R-4, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The Petitioner, a student, earlier of MA in Hindi at the School of Open Learning of the Respondent University and thereafter of M. Phil in the Department of Hindi of the University, on 9th September, 2008 submitted a written complaint of sexual harassment against Respondent No. 2 Prof. Ajay Tiwari, Respondent No. 3 Prof. Ramesh Gautam & Respondent No. 4 Prof. Sudhish Pachauri, all of the Department of Hindi of the University of Delhi. The present writ petition, as per the amended petition dated 18th December, 2010, is filed seeking directions with respect to the said complaint of the Petitioner.

2. Notice of the petition was issued and the pleadings have been completed.

3. Ordinance XV(D) of the University deals with sexual harassment and inter alia provides the procedure to be followed with respect to the complaints. The complaint of the Petitioner was dealt with by the Apex Complaints Committee (ACC) of the University (impleaded as Respondent No. 5) as provided in the said Ordinance. The ACC as per the said Ordinance comprises of -

i. The Director, Women's Studies and Development Centre (who is the Member Secretary of the ACC);

- ii. One woman from the Proctorial team to be nominated by the Vice-Chancellor;
 - iii. Two teacher representatives to be elected/nominated from the pool of teacher representatives of all College Complaints Committees and University Units Complaints Committees;
 - iv. Two non-teaching representatives to be elected/nominated from the pool of non-teacher representatives of all College Complaints Committees, University Units Complaints Committee and Central Pool Complaints Committees;
 - v. Three student representatives to be elected from the pool of student representatives on all College Complaints Committees and University Units Complaints Committees;
 - vi. One woman teacher of the University with known contribution to women's issues to be co-opted by the Committee;
 - vii. Two persons to be nominated by the Vice Chancellor from a panel prepared by the Committee;
 - viii. One person with known contribution to gender issues to be nominated by the Vice Chancellor;
 - ix. The Chairperson (woman) to be nominated by the Vice Chancellor;
4. The inquiry procedure prescribed requires the ACC to establish a prima facie case of sexual harassment and if does not find reasons for pursuing a complaint, to record in the minutes the reasons for the same and to make the same available to the complainant.
5. The Respondent No. 5 ACC on the complaint of the Petitioner did not find a prima facie case of sexual harassment to have been made out against the Respondents No. 3 & 4; however a prima facie case of sexual harassment was found against the Respondent No. 2 and the complaint against Respondent No. 2 was proceeded with.
6. All appearing counsels have informed that the Respondent No. 2 has been found to have indulged in sexual harassment of the Petitioner and has been meted out punishment by the Disciplinary Authority of the University; the counsel for the Petitioner states that though the Petitioner is dissatisfied with the punishment meted out to the Respondent No. 2 but will take separate remedies therefor. All counsels agree that the present writ petition in so far as claiming reliefs qua Respondent No. 2 is concerned has thus become infructuous and no further orders are required.
7. The counsel for the Petitioner has qua Respondents No. 3&4 claimed only the following reliefs:
- c) For an order directing the Apex Complaints Committee to reopen the inquiry to the limited extent of the cross examination of Prof. Ramesh Gautam and Prof. Sudhish Pachauri by the Petitioner.

8. The counsel for the Respondents No. 3&4 has contended that the ACC did not find any prima facie case of sexual harassment to have been made out against the Respondents No. 3&4 and the Petitioner has neither challenged the said decision of the ACC nor sought any relief of setting aside thereof. He thus contends that the decision of the ACC not to further pursue the complaint in so far as against Respondents No. 3&4, has attained finality and the relief aforesaid claimed qua Respondents No. 3&4 is meaningless and of no avail.

9. The counsel for the Respondent University has during the course of hearing shown to this Court the report of the ACC on the complaint of the Petitioner against Respondents No. 2 to 4. She has contended that no error can be found in the reasons given by the ACC for not pursuing the complaint against the Respondents No. 3&4. It is further contended that the Petitioner as complainant, till the stage of the ACC finding a prima facie case of sexual harassment and/or of taking a decision whether to pursue the complaint or not, has no right of cross examination of the persons against whom the complaint is made, as claimed in the prayer aforesaid in the writ petition qua the Respondents No. 3&4.

10. Per contra, the counsel for the Petitioner has contended that the ACC before taking a prima facie view whether the case of sexual harassment is made out or not and whether to pursue the complaint or not, having recorded the statement of the Respondents No. 3 & 4, the Petitioner has a right of cross examination.

11. At this stage, the complaint of the Petitioner against each of the Respondents No. 2 to 4 may be noticed. The complaint of the Petitioner was:

a) that it was the Respondent No. 2 who was harassing and making overtures to the Petitioner;

b) that it was the Respondent No. 2 who told the Petitioner that the Respondents No. 3 & 4 were his friends and he could influence her result through the Respondents No. 3&4 also if she did not succumb to his overtures/propositions;

c) that upon the Petitioner approaching the Respondent No. 3 he also told her that it was in her own interest to do whatever Respondent No. 2 was telling her to do and that Respondents No. 2 to 4 work together and that either the Petitioner should listen to them or leave the University;

d) that when the Petitioner did not listen, her name did not figure in the first list of admittees to the M. Phil course inspite of her having secured second position in MA (Hindi) at the School of Open Learning ; that the Petitioner nevertheless secured admission to M. Phil owing to one of the admittees not taking admission;

e) that upon the Petitioner threatening Respondent No. 2 with the complaint to Respondent No. 3, the Respondent No. 2 told the Petitioner that Respondent No. 3 was a close friend of the Respondent No. 2 and thus the complaint of the Petitioner would bear no fruit;

f) that the Petitioner had seen Respondents No. 2&3 indulging in friendly

conversations;

g) that Respondent No. 2 while threatening the Petitioner, used to refer to Respondents No. 3&4 as his friends;

h) that during the admission to M. Phil Respondent No. 2 along with the Respondents No. 3&4 did not allow the Petitioner's topic of research to be decided and repeatedly asked the Petitioner to change the topic.

12. The Respondent No. 4 upon being issued notice by the ACC replied that the M. Phil Entrance Examination is conducted by a Committee and he was not in that Committee during the year when the Petitioner had applied and/or was admitted; that the answer scripts are given random fictitious numbers by the Examination Branch of the University and evaluation of the answer scripts is done by 9-10 teachers collectively; that Respondent No. 2 had never approached him directly or indirectly for influencing the admission, either positively or negatively, of the Petitioner to the M. Phil course; that the Petitioner was admitted in the M. Phil course in the second list strictly on the basis of merit after some seats remained vacant from the first list; that in the paper taught by him in M. Phil Part-I, the Petitioner had secured good marks; that the Petitioner had never approached him with a complaint against Respondent No. 2; that repeated revision of topics of choice submitted by the students for research was quite usual as most M. Phil students are advised to modify the topics submitted by them keeping in view the viability of the topics and extent of existing studies in that area.

13. The ACC in its report has also recorded that it perused the records pertaining to the M. Phil admissions and approval of M. Phil dissertation topics and from the said records found that the Petitioner had not been subjected to any harassment or victimization by Respondent No. 4. It is further recorded that Respondent No. 2 had also denied having approached the Respondent No. 4 concerning the Petitioner.

14. The Respondent No. 3 upon being noticed by the ACC replied that he did not even recognize the Petitioner by face and denied having met her alone or having made any statements to the Petitioner as attributed by the Petitioner to him; that his relationship with Respondent No. 2 was formal and not personal; that it is a general practice in the Department that the students of M. Phil Part II are advised by faculty members to modify their topics to make them viable and research worthy.

15. The ACC has again recorded having perused the records of M. Phil admissions and having not found any indication of the Respondent No. 3 being implicated in any way.

16. The ACC thus held no prima facie case of sexual harassment to have been made out against the Respondents No. 3 & 4 and thus decided not to pursue any inquiry against the Respondents No. 3 & 4.

17. The counsel for the Petitioner has not been able to point out any ground for judicial review of the aforesaid findings of ACC qua the Respondents No. 3&4. The sole argument is of the Petitioner having not been permitted to cross examine the Respondents No. 3 & 4.

18. The procedure to be followed on a complaint prescribed in Ordinance XV (D) (supra) requires the ACC to, if finds a prima facie case of sexual harassment to be established, set up an Inquiry Committee. This Court in Prof. Bidyug Chakraborty v. Delhi University 2009 VI AD (Del) 1 with reference to the procedure to be followed by the said Inquiry Committee has held that the accused in the complaint has a right of cross examination of the witnesses. The Apex Court in appeal against the judgment of this Court has modified to a certain extent the procedure for such cross examination.

19. In the facts of the present case, I am unable to find any error in the procedure followed by the ACC in taking a decision as to the prima facie case and whether to pursue the complaints or not. I also, in the facts of the case, do not find that the Petitioner in the face of her allegations against the Respondents No. 3&4 and the nature of the response of the Respondents No. 3&4 thereto, was required to be given an opportunity for cross examining the Respondents No. 3 & 4.

20. Ordinance XV (D) having provided two stages in the procedure to be followed on the complaint; the procedure to be followed in the second stage cannot be necessarily directed to be followed in the first stage also. The ACC in the facts of the present case, to form a prima facie opinion whether a case of sexual harassment was made out or not and/or whether the complaints should be pursued or not, except for noticing the Respondents No. 3&4, did not examine any other witnesses. The nature of their response was also not such on which it can be said that the Petitioner, if had been given a right of cross examination, could have made the ACC reach a different conclusion. The counsel for the Petitioner has also not been able to urge as to what could have been elicited by cross examination of the Respondents No. 3&4. Rather, when the procedure for M. Phil admission and the role of the Respondents No. 3 & 4 therein was enquired from the counsel for the Petitioner, she sought time to examine the matter further. Merely because the Respondent No. 2 claimed Respondents No. 3 & 4 to be his close friends and willing to act to the prejudice of the Petitioner at his behest, cannot make out a prima facie case against the Respondents No. 3 & 4. It cannot after all be lost sight of that initiation even of an inquiry into a complaint of sexual harassment against a faculty member of the University has serious repercussions/consequences. It is for this reason only that Ordinance XV (D) has provided for the complaints to be enquired into in two stages and a full-fledged inquiry in the second stage has been provided only after forming a prima facie opinion and the ACC has been vested with a power to decide which complaints to pursue and which to drop. The ACC as aforesaid comprises of a number of prominent persons and significantly it is not the case of the Petitioner

that any of the members of the ACC who took the decision not to pursue the complaint against the Respondents No. 3&4 were motivated in any manner or were biased in favour of the Respondents No. 3&4 and against the Petitioner, to take such decision. This Court in exercise of power of judicial review would in such circumstances not interfere with the decision of a High Powered Body constituted to take such decision.

21. The counsel for the Petitioner has next referred to another prayer in the petition seeking a direction to the ACC to conduct an inquiry against the students against whom allegations of sexual harassment have been leveled by the Petitioner. Upon the counsel for the Petitioner being asked to show the pleadings qua the said prayer, she has drawn attention to para 12 (j) of the amended petition where it has been stated that one of the supporters of the Respondents No. 2 to 4 had included the incident of making of the complaint of the sexual harassment by the Petitioner against the Respondents No. 2 to 4 in his Blog and deliberately making the Petitioner's identity known to the public.

22. It was enquired from the counsel for the Petitioner whether the Petitioner is aware of the identity of the person who had so disclosed the identity of the Petitioner in the Blog. The counsel for the Petitioner replies in the negative.

23. The ACC cannot be expected to enquire as to the identity of the said person. The said relief as such against the ACC is not maintainable. The remedy of the Petitioner is to approach the Police or other appropriate authorities to investigate the identity of such person.

24. Accordingly, the petition:

- 1) in so far as claiming the reliefs qua Respondent No. 2 is concerned, is disposed of as infructuous with liberty to the Petitioner to prefer appropriate remedies against the decision of the Disciplinary Authority;
- 2) in so far as claiming the reliefs qua Respondents No. 3 & 4, is dismissed;
- 3) in so far as seeking direction to the University/ACC to investigate against the students who had disclosed the identity of the Petitioner in the Blog, is also dismissed with liberty to the Petitioner to approach the Police/appropriate authority in that regard.

No order as to costs.