

(2018) 05 DEL CK 0411

In the Delhi High Court

Case No : W.P.(C) 4219 OF 2018 & CM APP No.16546-48 OF 2018

MS. PI AND ORS.

APPELLANT

Vs

JAWAHARLAL NEHRU UNIVERSITY AND ORS.

RESPONDENT

Date of Decision : 29-05-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 164
Jawaharlal Nehru University Act, 1966 — Section 30
Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal)
Rules, 2013 — Section 19(a), 19(g)

Citation : (2018) 05 DEL CK 0411

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Vrinda Grover, Ratna Appender, Soutik Banerjee, Ginny J. Rautray, Anushka Ashok, Vijay Hansaria, Amit Anand Tiwari, Mary Mitzy, Shashwat Singh, Harshal Gupta

Judgement

1. Pursuant to the order dated 2.5.2018, passed by me, Ms. Rautray, who appears for respondents No.1 to 3, has returned with instructions. Ms.

Rautray says that the Fact Finding Committee (FFC) has given its report. A copy of the report has been tendered in Court. Pertinently, copies of the

report have not been furnished either to the counsel for the petitioners i.e., Ms. Grover, or the counsel for the other respondents, which includes Mr.

Hansaria and Mr. Satyakam.

2. A perusal of the report would show that the FFC apart from, broadly, recording what transpired after complaints were lodged by the petitioners

with regard to alleged acts of sexual harassment committed by respondent No.4, no finding as such has been returned by it. The report which is dated

11.5.2018, contains Annexures, which, in a sense, is a collation of the material

which has been generated in the case. The material collated includes the correspondence exchanged between the members of respondent No.1/ Jawahal Lal University (JNU) administration; correspondence with the petitioners/complainants as also the FIRs lodged by the petitioners. 2.1 There are, in all, twenty two Annexures appended to the report.

3. It may be relevant to note that the FFC was constituted at the behest of JNU, Vice Chancellor (hereafter referred to as 'VC'). This fact was communicated to this Court by Ms. Rautray at the hearing held on 2.5.2018.

3.1 As a matter of fact, on that date, I had indicated to Ms. Rautray that since the FFC constituted by the VC consisted only of male members, it may help the process of inquiry if a lady professor is also brought on board. It is based on this suggestion that the FFC was broad based. Thus, apart from two male professors, the FFC evidently included one lady professor as well.

3.2 The Court was given to believe, at that stage, that apart from the steps already taken in the matter, the FFC would take the matter forward and deliberate on issues, which were not addressed till that date so that a safe working environment could be provided to the petitioners/complainants. It is in this context that I had, inter alia, noted the following in paragraphs 14, 15 and 15.1 of my order dated 2.5.2018. For the sake of convenience, the said parts of the order are extracted hereafter:

14. Since, Ms. Rautray has already indicated the various steps that the Vice-Chancellor has taken in the interest of a fair enquiry I intend to make them a part of my order to give certainty as to the manner in which the process shall move hereafter:

- i) Respondent no.4 will not be part of any Administrative Committee.
- ii) Respondent no.4 will not take charge as a warden of any hostel which has women inmates.
- iii) Respondent no.4 will not visit or use Laboratory No.409.
- iv) The Vice-Chancellor will find an alternative supervisor for petitioner no.1 and petitioner no.4. The needful will be done within the shortest possible time.
- v) JNU will consider the advisability of sending respondent no. 4 on leave. This decision can be taken by JNU after the Fact Finding Committee returns its findings in the matter.

15. It is made clear that the aforementioned directions have been issued, albeit, based on the stand taken by Mr. Rautray, to provide a safe working environment to the petitioners as serious allegations have been made against respondent no.4, which are yet to be tested before an appropriate forum.

15.1 In my view, it is also in the interest of respondent no.4 to reduce the chance of interaction with the complainants or potential witnesses.â??

4. It appears that the aspects noted in paragraphs 14(iii), (iv) & (v) remain unaddressed. As a matter of fact, as would be evident, upon perusal of the observations made in Paragraph 15.1 of the said order I had indicated to respondent No.4 that it would be in his best interest, if he were to take steps that would reduce the chances of his interaction with the petitioners/complainants or even potential witnesses.

5. Given the fact that the FFC has done precious little in respect of the matters adverted to above, I had put to Ms. Rautray as to why these aspects of the matters were not deliberated upon by the FFC.

5.1 Learned counsel informed me that under the subsisting service condition regime, which stands incorporated in Central Civil Services (Conduct) Rules, 1964 and Rule 14(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 it is only the Internal Complaints Committee (ICC), which deals with sexual harassment, that can inquire into misconduct, if any, committed by respondent No.4.

5.2 In other words, Ms. Rautray submitted that the FFC had no jurisdiction to deal with the aspects, which are alluded to hereinabove. Learned counsel went on to state that the ICC would want the petitioners/complainants to depose before it and that for this purpose attempts to establish contact with them, both telephonically as well as via emails have been made. Learned counsel stated that apart from the aforesaid modes of communication, summons/letters were also served on the petitioners/complainants.

5.3 A summary sheet of the dates and events of the steps taken in that behalf is placed before me.

5.4 Ms. Rautray, further submitted that if the petitioners/complainants depose before the ICC, then, the inquiry could move forward and steps, if any, qua respondent No.4, could be taken, based on the report generated in that behalf.

6. Mr. Hansaria, learned Senior Counsel, who, appears for respondent No.4, on the other hand, broadly, reiterated his stand, which he had taken on

2.5.2018. Learned Senior Counsel submitted that the allegations of the petitioners/complainants were motivated. In addition thereto, Mr. Hansaria

contended that respondent No.4 is a well respected professor and that because of ruckus caused by students (not the petitioners/complainants), his

family and children had been put to great stress. I was also informed that respondent no.4's wife is employed as an Assistant Professor in JNU.

Furthermore, learned Senior Counsel submitted that students, other than the petitioners/complainants, would require respondent no.4's academic

supervision and therefore, asking him to be removed from the campus would not be appropriate. The contention was that it would not only harm his

reputation, but would also affect both, his students as well as family members.

7. Ms. Grover, who, appears for the petitioners/complainants, on the other hand, reiterated her stand which was taken on the previous dates i.e., that

the petitioners/complainants had the autonomy to choose the course of action that they would want to take in a situation such as the one obtaining in

the present matter. According to her, complainants under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal)

Act, 2013 (hereafter referred to as '2013 Act') had the autonomy to choose not to take recourse to the ICC and, instead, trigger the criminal

process.

7.1 Learned counsel submitted that the reason such a decision had been taken was on account of the fact that the petitioners/complainants had very

little confidence in the ICC as presently constituted.

7.2 Ms. Grover also contended that notwithstanding the fact that the petitioners/complainants had taken recourse to the criminal process, JNU was

duty-bound under the 2013 Act to provide a safe working environment at workplace which would include safety from persons who would come in

contact at such workplace. In other words, according to Ms. Grover, JNU was obligated to provide a safe working environment to the

petitioners/complainants which would firewall them against any intrusion that may be caused by the presence of respondent No.4 on the campus.

7.3 Ms. Grover went on to say that, as a matter of fact, JNU is obligated to render every assistance to the petitioners/complainants, in their

prosecution of the pending criminal case. In support of her submission, learned counsel relied upon the provisions of Section 19(a) and 19(g) of the 2013 Act.

7.3 To buttress her submission, Ms. Grover also referred to Rule 8 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (hereafter referred to as "2013 Rules"). According to the learned counsel, the principle analogous thereto could be applied to the present case, notwithstanding the fact that the petitioners/complainants had not taken recourse to the ICC. Furthermore, Ms. Grover also adverted to Section 30 of the JNU Act, 1966. Based on this provision it was contended that the V.C. had the power to deal with such "misconduct" and, whenever found necessary, this power had been exercised in the past to suspend the delinquent. By way of example, reference was made to Annexure P-19.

7.4 Ms. Grover was at pains to emphasize that petitioner No.1 and 4 did not have access to Laboratory No.409. In this context, it was submitted that the relevant samples/strains were available in the very same Laboratory, which were, I was told, required to be accessed by petitioner No.1 and 4 for the purpose of their research work.

7.5 In this behalf, Ms. Grover took me through the additional affidavits filed in the matter by petitioner No.1 and 4, on 21.5.2018. Based on the Annexures appended to the additional affidavits, which included communications exchanged between petitioner No.1, the Dean and other faculty members, it was sought to be demonstrated that respondent No.4 continued to have access to Laboratory No.409. In this behalf, specific reference was made to e-mail dated 4.5.2018 sent by Mr. S.K. Goswami, Dean, School of Life Sciences to respondent No.4. Ms. Grover submitted that insofar as petitioner No.1 was concerned, she was required to submit her thesis by the 3rd week of July, 2018. It was, thus, stressed by the learned counsel that not only petitioner No.1, but also petitioner No.4, required new supervisors to be appointed as without the signatures of a supervisor, the Ph.D. thesis prepared by them cannot be submitted for due consideration by the relevant authority.

8. Having heard learned counsel for the parties and perused the record, according to me, clearly, despite the directions contained in the order dated

2.5.2018 that respondent No.4 will not use Laboratory No.409, there is material to show that he still has access to the said laboratory. As indicted

above, these directions were invited by JNU on 2.5.2018.

8.1 Therefore, the directions contained in paragraph 14(i) to (iii) are reiterated.

9. Insofar as the appointment of alternate supervisors as far as petitioner No.1 and 4 are concerned, I had directed that the VC would do the needful

in the shortest possible time. Ms. Rautrary informs me that though a search was conducted to find suitable supervisors, presently, the exercise

conducted has not reached fruition. She, however, did indicate that if petitioner No.1 and 4 could make any suggestions in this behalf, the same could

be considered by the V.C.

9.1 Accordingly, petitioner No.1 and 4 are given liberty to make suitable suggestions in that behalf to the V.C. The V.C. will consider the same and if

the persons suggested are found suitable he will appoint the concerned persons as supervisors qua petitioner No.1 and 4. It is made clear, though, that

this will not relieve JNU from its obligation to provide alternate supervisors to petitioner No.1 and 4. The needful will be done by the VC within 10

days from the receipt of a copy of this order.

10. This brings me to the other more peculiar issue as to whether respondent No.4 should be asked to remove himself from the campus till such time

the matter is inquired into by the concerned authority.

11. I have no hesitation in holding that in view of the provision of Section 19(a) of the 2013 Act, JNU is duty bound to provide a safe working

environment to the complainants/petitioners, even if they do not take recourse to the ICC route to seek redressal. The scheme of the 2013 Act clearly

gives autonomy to the complainants in this behalf; a fact which is evident even upon a bare perusal of Section 19(a) and 19(g) of the 2013 Act.

12. Having said so, it is clear that there is no finding, as yet, returned qua the complaints made against respondent No.4. Respondent No.4, it appears,

is also supervising other students other than the petitioners/complainants. Besides this, respondent No.4 says that the measures other than those which

have been already taken qua him would apart from anything else, impact his students, family and his reputation irreversibly.

12.1 That being said, I must indicate that in every infraction of law, there is always, unfortunately, some amount of collateral damage. The

administrative or quasi judicial or even judicial authority while ruling on such like matter need to bear in mind that the victim who is possibly vulnerable

and weak, also needs protection. It takes a lot for the victim to bare her life to public at large. Therefore, the delay in reporting and the contours of the

complaint lodged have to be looked at from that prism.

13. Therefore, having considered the matter from all possible angles, in my view, for the moment, the following additional directions; apart from those

which are contained in the order dated 2.5.2018, should suffice:

(i) To reiterate, something that I have already indicated in the order dated 2.5.2018, respondent No.4 will have no access to laboratory No.409.

(ii) The concerned authority in JNU will provide complete access to petitioner No.1 and 4 vis-a-vis Laboratory No.409 for the purposes of prosecuting

their research work. Separate keys for this purpose will be provided to both, petitioner No.1 and 4.

(iii) Furthermore, as indicated above, separate supervisors will be appointed qua petitioner No.1 and 4 to enable them to take their research work

forward. In this behalf, suggestions, if any, given by petitioner No.1 and 4 will be considered favourably by the V.C. This, however, will not absolve

the VC from appointing separate supervisors for petitioner No.1 & 4. The needful be done in the matter within 10 days of the receipt of a copy of this

order.

(iv) Respondent No.4 shall be given, if necessary, a separate laboratory to conduct his work. Respondent No.4 shall have no contact whatsoever with

the petitioners/complainants or any potential witnesses. In case of any infraction, the V.C. will consider removal of respondent no.4 from the campus.

(v) ICC as, presently, constituted will examine the material available on record, which is the FIRs and the complaints placed on record as also the

deposition of the other concerned persons and, thereafter, reach a prima facie finding as to whether respondent No.4's conduct is such that it

merits his immediate suspension and/or removal from the campus. The ICC so constituted will not insist on the petitioners/complainants deposing

before it for this purpose. The ICC will, in this behalf, if necessary, call upon the Investigating Officer (I.O.) appointed in the criminal case triggered

against respondent no.4 to show them the statement of the petitioners/complainants recorded under Section 164 of the Cr.P.C. The I.O. will render

necessary assistance in this behalf.

(vi) In case a prima facie case of misconduct is made out, the ICC shall make suitable recommendations to the V.C. Either way, a report will be

generated by ICC in this regard. A copy of the report will be placed before the Court. Copies will also be furnished to the petitioners/complainants.

(vii) Needful will be done by ICC within a period of three weeks from the date of receipt of a copy of this order.

6. Renotify the matter on 17.08.2018.