

(2023) 06 CAL CK 0048

In the Calcutta High Court

Case No : MAT No. 1070 Of 2021, COT No. 44 Of 2021, IA No. CAN 1 Of 2021, 2, 3 Of 2022, 5 Of 2023

Soumen Sarkar

APPELLANT

Vs

Dr. Runa Roy & Ors.

RESPONDENT

Date of Decision : 27-06-2023

Acts Referred:

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 — Section 2(n), 4, 4(1)(b), 4(2)

Citation : (2023) 06 CAL CK 0048

Hon'ble Judges : Subrata Talukdar, J; Supratim Bhattacharya, J

Bench : Division Bench

Advocate : Subir Sanyal, Debjani Ray, Kasturi Tarafdar, Bikash Ranjan Bhattacharyya, Samim Ahammed, Arnab Sinha, Gulsanwara Pervin, Amartya Basu, Anil Kumar Gupta, Shankar Banerjee, Basabraaj Chakraborty, Satyaki Chaudhuri, Subham Banerjee

Final Decision : Disposed Of

Judgement

Subrata Talukdar, J

Under challenge in this appeal is the Judgement and Order of the Hon'ble Single Bench dated 16th of September, 2021 in the writ petition, being WPA 13267 of 2021.

The essential facts leading up to the judgement and order of the Hon'ble Single Bench dated 16th of September, 2021 (supra) are as follows:

The appellant in MAT 1070 of 2021 is a lady teacher in the Economics Department of the College-in-issue (also referred to as the said College), being Vidyasagar College. The respondent in MAT 1070 of 2021, who is the Cross-Objector (hereinafter referred to as the Cross-Objector) in COT 44 of 2021, has filed the cross-objection against the Order of the Hon'ble Single Bench dated 16th of September, 2021 and (supra) is also a teacher in the Economics

Department of the said College and senior to the appellant in MAT 1070 of 2021(hereinafter referred to as the Appellant).

The Cross Objector was the writ petitioner before the Hon'ble Single Bench. The Cross Objector was aggrieved by the initiation of proceedings against him under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short, the 2013 Act) on a complaint filed by the appellant. The Cross Objector /the writ petitioner was also aggrieved by the constitution of an Internal Complaints Committee (for short, ICC) by the said College to probe the said complaint.

By the Order impugned dated 16th of September, 2021 the Hon'ble Single Bench set aside the final report of the ICC as constituted by the said College and directed the Governing Body of the said College to reconstitute the ICC so as to ensure that the members of the Governing Body are not members of the ICC.

The Hon'ble Single Bench further directed that the writ petitioner/appellant be given a proper opportunity of hearing before the ICC and the ICC shall dispose of the complaint in accordance with law within a period directed by the Hon'ble Single Bench.

The ICC was also granted the opportunity to consider whether the complaint filed by the appellant could be dealt with under the provisions of the 2013 Act.

The appellant has submitted that the final report of the ICC was submitted before the Principal of the College-in-issue on the 21st of January 2019. However, the recommendations of the ICC were not executed by the said College as required under the provisions of the 2013 Act. A decision was taken by the Governing Body of the said College on the 1st of July, 2019 only to the effect that the Cross Objector, although being a member of the Governing Body of the said College, would not be invited to the meetings of the Governing Body till the proceedings connected to the complaint reached a conclusion. By further resolutions dated 12th of February, 2019 and 8th of July, 2019, the Governing Body restrained the Cross Objector from acting as an examiner until the proceedings arising out of the complaint stood resolved.

The appellant has argued that the 2013 Act provides for the consequences arising out of non-compliance of the ICC report. It is submitted that since the ICC report was admittedly not complied with inspite of advice received by the said College from the competent authorities to comply with the report, the said College ought to have been visited with the consequences flowing out of the non-implementation of the ICC report.

It is submitted that the ICC was constituted by the said College in terms of the provisions of the 2013 Act. Therefore, the Hon'ble Single Bench ought to have noticed that the constitution of the ICC being in fulfilment of the statutory provisions, the same ought to have been allowed to reach a logical conclusion particularly having regard to the fact that a long time had lapsed since the

appellant submitted the initial complaint against the Cross Objector on 10th of August, 2018.

The appellant takes the position that the Hon'ble Single Bench ought not to have redirected reconstitution of the ICC as well as the ICC to take cognizance whether such complaint falls within the definition of a complaint under the 2013 Act, since the original ICC set up by the said College enjoyed jurisdiction to decide the issue and had filed a final report on the 21st of January 2019 after due deliberation.

Reliance in support of the above arguments is placed by the appellant on the judicial authorities reported in (2004) 3 SCC 440, (1987) 2 SCC 179, (2012) 11 SCC 565, (2006) 12 SCC 28 and finally (1994) 3 SCC 357.

The appellant points out that constitution of the ICC by the said College was in conformity with the provisions of Section 4(2) of the 2013 Act. Therefore, the direction passed by the Hon'ble Single Bench to reconstitute the ICC by leaving out the members of the Governing Body of the said College ought not to have been passed.

Per contra, on behalf of the Cross Objector it has been submitted that the original complaint of the appellant does not disclose the ingredients of an offence as defined under Section 2(n) of the 2013 Act.

In such view of the matter the complaint cannot be probed by invoking the provisions of the 2013 Act.

The Cross Objector is also aggrieved by the constitution of the ICC by the said College and alleges bias on account of the fact that two members of the Governing Body of the said College have been made members of the ICC. It is submitted that since the ICC was constituted on the basis of a resolution taken by the Governing Body of the said College, presence of the members of the Governing Body in the ICC would show a pre-judged mind.

The University Grants Commission (UGC) is also represented and takes the stand that the University Grants Commission(Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015(for short, referred to as the 2015 Regulations) notified on the 5th of July 2016 would apply to the said College. It is pointed out that Clause-4 of the 2015 Regulations provides for a Grievance Redressal Mechanism and Clause 4(1) enjoins upon every Executive Authority to constitute an Internal Complaints Committee (ICC). It is submitted that therefore the said College is required to act in terms of the 2015 Regulations and in terms of the Judgement of the Hon'ble Apex Court reported in (2009) 4 SCC 590, the UGC Act is binding on all universities. It is submitted that following the provisions of the 2015 Regulations (supra), the UGC has from time to time issued letters to the said College to implement the ICC report dated 21st of January, 2019 (supra).

Having heard the parties and considering the materials placed, this Court is of

the view that the said College is required to constitute the ICC strictly in terms of the 2015 Regulations. Although it has been submitted on behalf of the said College that the ICC was constituted in terms of the 2013 Act, this Court has been informed that in terms of Regulation 4(1)(b) of the 2015 Regulations, two non-teaching employees as defined by Section 4(1)(b) (supra) were not available with the said College. However, notwithstanding the non-availability of the two non-teaching employees, the ICC was constituted as required by Section 4 of the 2013 Act.

This Court is of the view that the ICC requires to be exactly constituted in terms of the 2015 Regulations which are specific to the field of University and College education. This Court also notices that requirement in Regulation 4(1)(b) of the 2015 Regulations is of two non-teaching employees 'preferably' committed to the cause of women or, who have experience in social work or, have legal knowledge, to be nominated as members of ICC.

To the mind of this Court, the expression 'preferably' constitutes a desirable condition to be nominated as a member of ICC but, does not debar the said College from nominating employees who otherwise fulfil the essential criterion of being in the non-teaching category and hence are otherwise competent to be nominated to the ICC in terms of Regulation 4(1)(b) (supra).

In the light of the above discussion this Court directs the said College to reconstitute the ICC following the 2015 Regulations of the UGC.

This Court is of the further view that the ICC so reconstituted by the said College shall be competent to decide, as already directed by the Hon'ble Single Bench, whether the complaint filed by the complainant falls within the provisions of the 2013 Act.

Furthermore, this Court is not ad idem with the finding of the Hon'ble Single Bench that the inclusion of members of the Governing Body of the said College in the ICC is indicative of bias against the Writ Petitioner/the Cross-Objector here. This Court does not find from the materials produced that any conclusive evidence of bias against the writ petitioner by the members of the Governing Body who have been included in the ICC could be proved. In the above aspect of the matter, this Court is of the further view that the ends of justice shall suffice in the event the ICC is directed to be constituted by following the UGC Regulations, 2015.

The Order impugned of the Hon'ble Single Bench stands accordingly modified.

MAT 1070 of 2021 with IA No. CAN 1 of 2021 with COT 44 of 2021 with IA No. CAN 1 of 2021 With IA No. CAN 2 of 2022 With IA No. CAN 3 of 2022 With IA No. CAN 5 of 2023 stand accordingly disposed of.

Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree.