

2017 SCC OnLine Del 9935 : 2017 LLR 1014 : (2017) 155 FLR 610

In the High Court of Delhi at New Delhi
(BEFORE GITA MITTAL, A.C.J. AND ANU MALHOTRA, J.)

Ashok Kumar Singh Appellant

Mr. Nikhil Nayyar, Mr. Amit Gupta, Mr. Anant A. Pavgi, Ms. Mansi Kukreja and Ms. Smriti Shah, Advs.

Versus

University of Delhi & Ors. Respondents

Mr. Mohinder J.S. Rupal and Ms. Disha Malhotra, Advs. for R-1.

Mr. Rajiv B. Samaiyan, Adv. for R-2.

Ms. Vibha Mahajan, Adv. for R-3 to 5.

LPA 305/2017 and CM No. 15732/2017

Decided on August 18, 2017

The Judgment of the Court was delivered by

GITA MITTAL, A.C.J.:— The appellant before us has assailed the judgment dated 16th February, 2017 passed by the Id. Single Judge disposing of WP(C) No. 7371/2016. By this writ petition under Article 226 of the Constitution of India, the petitioner had impugned three reports, two dated 30th June, 2015 and the third dated 12th February, 2016 which had been submitted by the Internal Complaints Committee (ICC hereafter) of the respondent no. 2, that is, the Dyal Singh Evening College.

2. The ICC was constituted under *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* (referred to as "*the Act*" hereafter). The appellant had challenged the reports *inter alia* on the ground that the reports only give a *prima facie* conclusion of the complaint having substance without formally recording any definite conclusion or holding that the charge against the appellant stood proved. It was contended that these aspects were mandatorily required to be opined upon by the ICC under Section 13 (3) of the Act.

3. The appellant has further contended in the writ petition that in the inquiry committee proceedings which culminated in the two reports dated 30th June, 2015 and third report dated 12th February, 2016, the appellant was wrongfully denied opportunity to cross-examine the witnesses.

4. The other ground which was pressed before the Id. Single Judge was that in the inquiry proceedings conducted on the reports dated 30th

June, 2015 and 12th February, 2016 upon complaints of respondents no. 4 and 5, the petitioner was also not permitted to lead evidence in support of his defence. Primarily, it was contended that the inquiry reports were in gross violation of principles of natural justice as well as the essential requirements of law and therefore deserved to be set aside.

5. After a detailed consideration of the rival contentions, by the impugned judgment dated 16th February, 2017, the Id. Single Judge has concluded that all the three reports of the ICC, that is, the two reports dated 30th June, 2015 and the third report dated 12th February, 2016, falls short of all the essential and mandatory requirements of sub-section (3) of Section 13 of the enactment inasmuch as they failed to record a definite conclusion regarding the petitioner being guilty of commission of alleged acts. In other words, the ICC had failed to return any categorical finding that the charges against the appellant stood proved. For this reason, the Id. Single Judge held that the reports were in violation of sub section (3) of Section 13 of the Act, and set aside the reports.

6. We may note that this finding by the Id. Single Judge has not been assailed by the respondents and has attained finality.

7. We may note that the private respondents no. 3 to 5 had been served with advance notice as caveators were present and represented by Ms. Vibha Mahajan, Id. counsel. Respondents no. 3 to 5 were thus represented when the matter was first taken up and notice was issued to the respondent no. 2. Mr. Rajiv B. Samaiyan, learned counsel has put in appearance for the Dyal Singh Evening College respondent no. 2, before us. With the consent of all parties, the matter has been taken up for hearing.

8. All counsels have been heard.

9. The appeal has been necessitated inasmuch as after recording the above finding, the Id. Single Judge has remanded the matter for consideration and drawing up fresh conclusions by the ICC. The Id. Single Judge directed that so far as further proceedings before the ICC were concerned, the ICC was simply directed "*to give fresh inquiry reports on the complaints of respondents no. 3 to 5 of the writ petition*". However, the Id. Single Judge did not agree with the prayer of the appellant regarding not being granted sufficient opportunity either for cross-examination of the witnesses or grant of the opportunity to lead defence.

10. Denial of the opportunity to cross-examine the witnesses of the complainant as well as to lead defence and the above directions to the ICC has been assailed by the appellant before us on the ground that the substantive report is wholly vitiated if he is denied the said

opportunity. It is submitted that a meaningful right to cross-examine the witnesses of the complainant and to lead defence is an essential component of a fair inquiry which would be in consonance with the principles of natural justice. In support of the submission, Mr. Nikhil Nayyar, learned counsel for the appellant has drawn our attention to the pronouncement of this Division Bench reported at 2012 (130) DRJ 277 (DB) *B.N. Ray v. Ramjas College*

11. Having heard Id. counsels for the parties, reference can be made to Section 11 of *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* which provide for compliance with the provisions of natural justice. For expediency, the provision is extracted as below:

"Section 11. ...Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee."

12. We may also extract Rule 7 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 which reads as follows:

"Rule 7. Manner of Inquiry into Complaint—

(4) The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice."

13. The issue as to whether, in an inquiry under the said enactments, the respondent has a right to cross-examine the witnesses deposing before the ICC inquiring into a complaint of sexual harassment has been the subject of consideration in several cases (subject to modulation of the procedure of cross-examination).

14. In an order dated 12.01.2010 passed in SLP(C) No. 23060/2009, *Bidyut Chakraborty (Prof.) v. Delhi University*, the Supreme Court laid down the contours of hearing, cross examination and permissibility of defence to a respondent in a complaint of sexual harassment in the following terms:

"After hearing the learned counsel for the parties we are of the opinion that the respondents are entitled to a hearing and to cross-examine the witnesses produced by the University. We further direct that as this appears to be a case of sexual harassment the identity of the witnesses need not be revealed to the respondent or his counsel and for this purpose the respondent would be entitled to submit the questionnaire which will be put to the witnesses for their answers in writing. Mr. Rao states that the statements made by the witnesses without their names will be supplied to the

respondents within two weeks from today. The said documents will also be supplied to Ms. Binu Tamta, the Advocate-Commissioner who is being appointed by this court for the purpose of getting answers to the questions to be supplied by the respondents. Ms. Tamta will ensure the anonymity of the witnesses. Mr. Rao, further states that the respondents would be entitled to produce their entire defence evidence in addition to the aforesaid questionnaire and that all annexures which have not been supplied with the enquiry committee will also be handed over to the respondent without revealing the identity of the witnesses."

(Emphasis supplied)

15. This court has also had occasion to deal with this same issue, the judgment reported at 2012 (130) DRJ 277 (DB), *B.N. Ray v. Ramjas College*, wherein placing reliance on *Bidyut Chakraborty (Prof)*; it was observed thus:

"13. As regards cross examination of the witnesses, the learned Counsel for the respondents, stated that in view of the order passed by the Supreme Court in the case of Bidyug Chakraborty (Prof.) (supra), they have no objection to the witnesses answering the questions of the petitioner through a Local Commissioner, and for this purpose, the petitioner may submit a questionnaire as was directed to be done in the case of Bidyug Chakraborty (Prof.) (supra). They also stated that as was done in the case of Bidyug Chakraborty (Prof.) (supra), the Sub-Committee would allow the petitioner to produce defence witnesses and examine them himself, instead of their examination by the Committee subject, of course, to those witnesses being cross-examined by the Presenting Officer/Department representative.

We take note of the fact that in Bidyug Chakraborty (Prof.) (supra), the Supreme Court upheld the right of the delinquent to cross examine the witnesses produced by the University and the delinquent was asked to submit a questionnaire to be put to the witnesses, so that the identity of the witnesses was not revealed to him or to his Counsel. It was precisely for this reason that the learned Counsel for the University undertook to supply the statement of witnesses to Professor Bidyug Chakraborty without disclosing their names. The Local Commissioner was also directed to ensure the anonymity of the witnesses. However, in the case before us, the Committee/Sub-Committee has already disclosed the names of the witnesses to the petitioner and has thereby revealed their identity to him. No useful purpose will, therefore, be served by asking the petitioner to submit a questionnaire, to be answered by the witnesses in writing. Had the University not disclosed the identity of the witnesses to the

petitioner as was done in the case of Bidyug Chakraborty (Prof.) (supra), the University would have been perfectly justified in asking for adopting the same procedure, which it was directed to adopt in the case of Bidyug Chakraborty (Prof.) (supra). But, no useful purpose from adopting such a course of action would be served in a case where the identity of the witnesses has already been disclosed. However, even while in requiring the petitioner to submit a questionnaire containing questions to be answered by the witnesses, we have to ensure that there is no possibility of the witnesses getting influenced on account of the presence of the petitioner at the time of their cross-examination. In the case of Dr. Pushkar Saxena (supra), we had directed that the witnesses may be cross-examined through a female defence assistant, and that the petitioner would submit a questionnaire, giving the questions he wanted the witnesses to answer and the answers to the questions will be obtained by the Inquiry Committee. We also directed that the petitioner would not be present at that time, if such a course of action is adopted. In the case before us, we were informed, during the course of the arguments, that all the witnesses, who have yet to depose against the petitioner, are male witnesses. Hence, instead of a female defence assistant, they should be cross examined by a male defence assistant but the petitioner should not be present at the time of their cross-examination."

(Emphasis supplied)

16. Our attention is also drawn to a judgment of the Kerala High Court reported at (2016) 2 KLJ 434, *L.S. Sibu v. Air India Ltd.* wherein the court discussed the statutory provisions holding as follows:

"12. The power of the ICC is also very clear from the Section 15 itself. The Committee can also determine the compensation payable by the delinquent to the victim. Thus, it is very clear from Sections 11, 13 and 15, the report of the ICC is the determining factor to take follow up action by the employer in accordance with service rules or otherwise.

13. In the background of legal provisions as above, every Internal Committee constituted under the Act 14 of 2013 necessarily, has to follow the principles of natural justice in conducting their enquiry. The rules framed under the Act 14 of 2013 also would indicate that the Committee shall follow the principles of natural justice [See the Rule 7(4)]. It is also specifically noted that Section 18 provides an appellate remedy as against the recommendation. This also would show that the conclusive nature of the finding of the fact in the enquiry to be made by the ICC. Thus, it has to be summed up that the

enquiry conducted by the ICC as to the fact finding is final unless it is varied in appeal. It cannot be varied by the employer in a follow up action to be taken in terms of Section 13."

"17. The fundamental principles relating to the principles of natural justice is that when a prejudicial statements are made, the same shall not be used against any person without giving him an opportunity to correct and contradict. In sexual harassment complaint, sometimes the complainant may not have courage to depose all that has happened to her at the work place. There may be an atmosphere restraining free expression of victim's grievance before the Committee. The privacy and secrecy of such victims' also required to be protected. It is to be noted that verbal cross examination is not the sole criteria to controvert or contradict any statement given by the aggrieved before any authority."

(Emphasis supplied)

17. After so observing, with regard to a sexual harassment complaint, the court prescribed the following procedure:

"Primarily, in a sexual harassment complaint, the committee has to verify and analyse the capability of the aggrieved to depose before them fearlessly without any intimidation. If the Committee is of the view that the aggrieved is a feeble and cannot withstand any cross examination, the Committee can adopt such other measures to ensure that the witnesses statement is contradicted or corrected by the delinquent in other manner. The fair opportunity, therefore, has to be understood in the context of atmosphere of free expression of grievance. If the Committee is of the view that the witness or complainant can freely depose without any fear, certainly, the delinquent can be permitted to have verbal cross examination of such witnesses. In cases, where the Committee is of the view that the complainant is not in a position to express freely, the Committee can adopt such other method permitting the delinquent to contradict and correct either by providing statement to the delinquent and soliciting his objections to such statement."

(Emphasis by us)

18. These principles have to bind the present consideration.

19. Before us, further adjudication has become unnecessary because of the very fair stand adopted by learned counsels for the respondents as noted hereafter.

20. Section 11 of *The Sexual Harassment of Women at Workplace*

(Prevention, Prohibition and Redressal) Act, 2013 mandatorily requires that "*inquiry under sub section (1) shall be completed within a period of 90 days*". In the present case, more than two years have passed before the impugned reports came to be submitted by the ICC. 18. It has been contended by Ms. Vibha Mahajan, learned counsel for respondents no. 3 to 5 that, in order to obviate any delay in the consideration of the matter and for reasons of expediency, the respondents no. 3 to 5 would not have serious objection to the grant of fair and reasonable opportunity to the appellant to cross-examine their witnesses provided that the same was within a strict time stipulation by this court.

21. Learned counsels for respondents no. 1 and 2 also submit that they would not come in the way of grant of such opportunity.

22. In view of the submissions made on behalf of respondents no. 3 to 5, we had requested all learned counsel for the respondents to examine the possibility of us taking such view which while meeting the requirements of law, dealt with objections and apprehensions of all the parties. We appreciate the exercise which has been undertaken by the learned counsels for the parties in enabling us to pass this order which meets the above. This order would enable the proceedings before the ICC to be completed meaningfully and expeditiously at the earliest and would comport with the requirements of law.

23. We may also note hereby that Mr. Rajiv B. Samaiyan, learned counsel appearing for respondent no. 2 has handed over a copy of the order dated 9th May, 2017 which has been passed by Dr. D.K. Sharma, Principal of the Dyal Singh Evening College in supersession of the previous order dated 27th April, 2017 stating that the Chairman of the Governing Body of the College has constituted an Internal Complaining Committee afresh for a tenure of one year with effect from 27th April, 2017 in accordance with the requirements of the University Grants Commission Act. The following constitution of the ICC has been thereby notified:

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| (i) | Dr. Anju Sharma, - Presiding Officer
Associate Professor,
Deptt. of Political
Science, Kalindi
College & Dy. Dean,
Planning, DU |
| (ii) | Dr. Sushma Bareja - Member |
| (iii) | Dr. Sucheta - Member
Chaturvedi Associate
Professor, Department
of English, Laxmi Bai |

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| | College, DU |
| (iv) | Sh. S. Shekhar Singh - Member
(Secretary, Staff
Council) |
| (v) | Mr. Sanjiv Sharma - Member
(Non-Teaching) |
| (vi) | Mr. R.S. Meena (Non- - Member
Teaching) |
| (vii) | Ms. Nikita Parmar - Member
(Lawyer, Delhi High
Court) |

24. We may note that so far as inquiry proceedings before the ICC in the present case are concerned, inasmuch as they do not involve any complaint against the student, a student representative in the ICC is not necessary.

25. Therefore, so far as proceedings before the ICC are concerned, with the consent of all the parties and in consonance with the principles laid down by the Supreme Court in *Bidyut Chakraborty (Prof)*; this court in *Bidyut Chakraborty (Prof)* and Kerala High Court in *L.S. Sibin*, it is directed that ICC which is to proceed in terms of the judgment dated 16th February, 2017, shall proceed in the following manner:

- (i) The inquiry in the three complaints made by the respondents no. 3 to 5 shall begin within two weeks from today from the stage of cross-examination of the complainant's witnesses whose examination-in-chief has been tendered in writing to the previous ICC.
- (ii) The ICC shall intimate the appellant and the respondents no. 3 to 5 in writing as well as by e-mail of the date and time of its proceedings.
- (iii) The appellant would be allowed to cross-examine the witnesses of the complainant through a questionnaire which would be submitted to the ICC at the time when the witnesses are produced for their cross-examination.
- (iv) The witnesses would be called one by one by the ICC to answer the questionnaire which is put to them. Witnesses would answer questionnaire in the presence of the Committee. Every effort shall be made by the ICC to complete the testimony of a single witness the very day on which the recording of the witness cross-examination commences.
- (v) So far as witnesses who are common to several complaints are concerned, such common witness shall be cross-examined in one go when the witness appears before the ICC, in respect of all the

complaints in which he/she is a witness.

- (vi) The appellant and the complainant would not be present at the time when the cross-examination of the witnesses of the complainant is being recorded.
- (viii) The ICC shall endeavour to ensure that the witnesses who are being cross-examined, does not confabulate with the witnesses who are yet to be cross-examined.
- (ix) The ICC shall make every endeavour to supply a copy of the cross-examination of the complainants' witnesses to the appellant on the date on which the cross-examination at the earliest, in any case before cross-examination of the next witness.
- (x) After completion of the cross-examination of the complainants' witnesses, the appellant would be permitted to lead defence evidence. The appellant shall submit the examination-in-chief of the defence witnesses to the ICC in writing within one week of completion of the cross-examination of the complainant's witness. Copies of the statements of the appellant's witnesses would immediately be made available to respondents no. 3 to 5.
- (xi) The procedure set out above for cross-examination of the witnesses of the complainant would be followed in identical terms so far as cross-examination of the appellant's witnesses by the respondents no. 3 to 5.
- (xii) We need not to emphasise that the proceedings have to be expeditiously concluded. In the event any representation is made by the complainant under Section 12 of the enactment for any interim redressal, the same would be expeditiously decided by the ICC, preferably within one week of the representation.
- (xiii) After completion of the cross-examination of the witnesses of the appellant, parties shall be given a personal hearing by the ICC.
- (xiv) After consideration of recording of the inquiry and the submissions made by the parties, the ICC shall submit separate reports on each complaint along with their recommendations to the Competent Authority which is the Governing Body of the respondent no. 2 within 3 days of the conclusion of the submissions.
- (xv) For reasons of expediency, it is directed that the above procedure shall be strictly abided by the ICC.
- (xvi) We also deem it necessary to direct that in any case any vacancy in Constitution of the ICC occurs, the same shall be filled within one week from the date when it has arisen. It is made clear that in such eventuality, the inquiry shall resume from the stage on which the erstwhile member of the ICC had left the

Committee.

(xvii) It is directed that ICC shall complete the above exercise within a total period of three months from today.

(xviii) In view of the above, while maintaining the order of the Id. Single Judge so far as findings recorded in para 8 of the judgment dated 16th February, 2017 is concerned, we hereby set aside the directions made in paras 11 and 12 which shall stand substituted by the directions recorded in para 22 hereinabove.

26. We also make it clear that we have not hereby decided the legal issues raised by the writ petitioner which are left open for consideration in an appropriate case.

27. This appeal is disposed of in the above terms. The pending application also stands disposed of.

28. *Dasti.*

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