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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 11th December, 2019

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W.P.(C) 9407/2019

ARTI DEVI

..... Petitioner

Through: Mr. Dibyanshu Pandey, Ms. Simran
Bhagat & Mr. Veeraragavan N.,
Advocates (M-9953810683)

versus

JAWAHARLAL NEHRU UNIVERSITY

..... Respondent

Through: Ms. Monica Arora, Standing Counsel,
JNU with Mr. Harsh Ahuja, Ms.
Anushkha Ashok along with Dr.
Pramod Kumar, Registrar (M-
9810246300)
Mr. Rahul Mehra, Standing Counsel
GNCTD with Mr. Chaitanya Gosain,
Advocates (M-9999981270)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J(oral)

1. The Petitioner had filed a complaint on 9th January, 2018 before the Internal Complaints Committee (*hereinafter 'ICC'*) of the JNU, constituted under the University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institution) Regulations, 2015. The ICC submitted its recommendations on 2nd August, 2018. One of the recommendations of the Committee was for re-consideration of the application of the Petitioner for registration in the Ph.D. program. The said recommendation reads as under:

"5. In case the complainant applies for registration to the Ph.D. Programme again it is recommended that the


Court Master
High Court of Delhi
New Delhi

W.P.(C) 9407/2019

Page 1 of 11

competent authority shall reconsider her application and under no circumstances her application should be rejected on the grounds of delay."

2. The Petitioner also simultaneously filed an appeal against the other recommendations of the ICC. Three further representations were made before the Vice-Chancellor. However, she was neither afforded a hearing nor was given re-registration into the Ph.D. program. Accordingly, a writ petition was filed seeking the following reliefs:

"It is most respectfully prayed that this Hon'ble Court may be pleased:

i. To issue a writ in the nature of mandamus directing the Respondent to form an Appeals Committee to consider the Appeal of the Petitioner in sexual harassment complaint no. FILE/ICC/11B/01-2018

ii. To issue a writ in the nature of mandamus directing the Respondent to decide the appeal within stipulated time of thirty days (30 days) as mandated by JNU ICC rules.

iii. To issue any order(s) or direction(s) as this Hon'ble Court deem just and proper under the facts and circumstances of the matter."

3. When the petition was listed for the first time i.e. on 30th August, 2019, an alleged office order dated 16th October, 2018 was handed over which, according to the ld. counsel for the JNU, disposed of the appeal filed by the Petitioner. A copy of the same was handed over to the ld. counsel for the Petitioner to seek instructions. Thereafter, on 12th September, 2019, it was noticed that the document dated 10th September, 2018, which was handed over by ld. counsel for the JNU, had a noting to the following effect:

"In view of above, the prayers of appellant cannot be


Court Master
High Court of Delhi
New Delhi

considered by appellate authority and the recommendations of the ICC are upheld."

Thus, there was ambiguity as to whether the appeal itself was disposed of or not. Further, insofar as the order dated 16th October, 2018 was concerned, the same was only dealing with Recommendation No.9 of the ICC. There was no clarity on behalf of the JNU as to the remaining recommendations and the hearing of the appeal, as also the representation for re-registration.

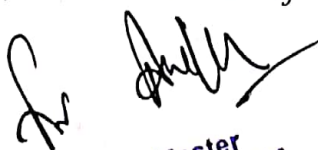
4. Some internal notes were relied upon by the JNU after reviewing the said documents. On 12th September, 2019, this Court had observed as under:

"8. A perusal of the above note in hand writing clearly shows that appeals against the recommendations of the ICC have been filed both by the Petitioner as also the Defendants in the proceedings before the ICC. The appeals were yet to be considered and no order was passed as on 10th September, 2018. Thus, the submission made before the Court that an order has been passed that no registration can be granted to the Petitioner appears to not be borne out from the documents handed over to the Court.

9. The various recommendations of the ICC need to be captured at this stage and are therefore set out herein below: -

"1. Defendant no. 1 should be censured in terms of the CCS (CCA) rules 1965 for creating uncertainty by not giving NOC to complainant as well as directing complainant to de-register against her will.

2. The defendant no.2 did not place the application of the complainant for change of supervisor before the faculty meeting again was a lapse on his part for which it is recommended that the defendant no.2 should



Court Master
High Court of Delhi
New Delhi

be censured in terms of the CCS (CCA) rules.

3. The ICC found that the defendant no.2 has not handed over several files related to the centre to the incoming chairperson it was held by the defendant no.2. the competent authority should take into consideration this procedural lapse on part of the defendant no.2 and the competent authority should setup an inquiry committee in this regard against defendant no.2. The competent authority should issue a general guidelines regarding handing over and taking over procedure between any outgoing and incoming chairperson/Deans.

4. A fine (In terms of 10(3) of the Rules and Procedures of the Internal Complaints Committee (ICC), JNU adopted from Under the University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015 and Gazette Notification of MHRD Dated 2nd May 2016 Under the Sexual Harassment of Women At Workplace (Prevention, Prohibition and Redressal) Act, 2013] Of Rs. 5000/- each should be imposed on the defendants no. 1 and 2 as their administrative lapses, which created confusion for the complainant and wasted her time. This amount shall be paid to the complainant.

5. In case the complainant applies for registration to the PhD program me again it is recommended that the competent authority shall reconsider her application and under


Court Master
High Court of Delhi
New Delhi

no circumstances her application should be rejected on the grounds of delay.

6. In the present circumstances it would be appropriate that the complainant shall be provided a new supervisor.

7. It is recommended to the competent that there should be a uniform deregistration procedure for all MPhil/PhD students in all schools/centres/special centres, which should be properly defined and guidelines should be circulated to all schools/centres/special centres for ready reference of students and faculties.

8. There should be a proper procedure which should be laid down by the Admission branch that faculty, who are on the long leave or deputed to any other assignment should not be made supervisor for MPhil/PhD students. The university may decide to make proper guidelines about the same. It has been also observed that defendant no.1 was on long leave but still the Centre for South Asian Studies, SIS was allotting him MPhil /PhD students. The presence of supervisors is necessary for the guidance of MPhil/PhD research student.

9. It was observed during the proceedings that the complainant herself was advertising about her complaint on her facebook and through other electronic media and informed the public at large. Hence, the complainant should be issued a warning to not to indulge in such act in future because this kind of act by any of the complainants, defendants and witnesses damages, the inquiry procedure and the effected parties. This kind of a public



Court Master
High Court of Delhi
New Delhi

propaganda also damages the images of the institution."

10. *A perusal of the above recommendations shows that JNU had to take various steps pursuant to the recommendations. It is not clear as to whether any steps at all were taken by JNU. Further, the status of the appeals filed by the Petitioner herein and the Defendants before the ICC, is also not clear. There are clearly no orders that have been passed by the Appellate Authority in respect of the appeals. Ld. counsel for the Petitioner submits that the Petitioner was not even heard in the appeal.*

11. *Under these circumstances, the following directions are issued at this stage: -*

1. A complete copy of the original record of the appeals shall be produced before the Court on the next date of hearing.

2. A specific affidavit shall be filed by the Registrar, JNU as to the status of the decision, if any, taken on the representation made by the Petitioner dated 6th August, 2018 seeking re-registration of candidature in the Ph.D course in terms of paragraph 5 of the ICC's recommendation.

3. The above-mentioned affidavit should also contain the clear stand of JNU as to whether the appeal was in fact filed before the Appellate Authority, if any of the parties were heard and if any orders have been passed in the same.

12. *The Registrar, JNU shall remain present in Court on the next date. Files relating to the complaint of the Petitioner, the recommendations thereunder and*


Court Master
High Court of Delhi
New Delhi

further processing of the said recommendations shall also be produced on the next date along with the files of the Appeals.

13. The affidavit shall be filed within a period of two weeks with an advance copy to the Petitioner. Rejoinder be filed before the next date of hearing."

5. Thus, on 12th September 2019, if the affidavit on behalf of JNU was not filed, the Registrar JNU was directed to be present. The matter was listed on 9th December 2019, when no affidavit was forthcoming and the representation of the Petitioner seeking re-registration as a PhD candidate was also not decided. The Registrar was also not present. Accordingly, the matter was listed today, on the request of Ld. Counsel for the JNU for appearance of the Registrar.

6. The Registrar, Jawaharlal Nehru University – Dr. Pramod Kumar is present in Court today. He submits that he was unable to comply with the previous orders of this Court as there has been a complete lock-down of the JNU administrative office for the last more than one month.

7. The order dated 12th September, 2019 was clear that an affidavit be filed by the Registrar, JNU within two weeks, during which period there was no lockdown of JNU's administrative office. Be that as it may, considering that JNU is a functioning university, such a lockdown of the university building cannot be permitted. Moreover, in the present case, the Petitioner has raised serious allegations in respect of two Professors and a decision is yet to be taken on the representation of the Petitioner's re-registration in the Ph.D. course. The Registrar informs the Court that since the administrative


Court Master
High Court of Delhi
New Delhi

block has been closed down completely, no decision could be taken on the said representation. On a query from the Court, he also states that the records of this case are not available with him.

8. The matter was initially passed over in the morning. After pass-over, Id. Standing Counsel of JNU, Ms. Monica Arora and Mr. Rahul Mehra, Id. Standing Counsel (Criminal) for the Government of NCT of Delhi have entered appearance. It is submitted by them that in W.P.(C) 1896/2017 titled *Jawaharlal Nehru University v. Commissioner of Police & Ors.*, vide order dated 9th August, 2017 the following directions were issued by a Ld. Single Judge of this Court:

"1. The petitioner has filed the present petition, inter alia, praying that respondent no.1 be directed to remove the protesting students inside and outside the Administrative Block so that the functioning of the university can be restored.

2. It is the petitioner's case that the protesting students have made it impossible for the administrative authorities to function as the Administrative Block has been repeatedly cordoned off by protestors.

3. Permitting the police authorities to enter the University Campus is not an action that should be readily resorted to and insofar as possible, the presence of police on the campus must be avoided. However, this cannot be done at the cost of maintaining order in the University.

4. It is important for the students to have an environment in which they can freely exchange their thoughts, give vent to their feelings and express themselves unreservedly, including entering their protest. The spirit of the students must be nurtured and not curtailed. However, it is also necessary to ensure that the functioning of the petitioner university does not come to a standstill. And, the university cannot be


Court Master
High Court of Delhi
New Delhi

W.P.(C) 9407/2019

Page 8 of 11

permitted to be reduced to a battle ground between the authorities and the students.

5. Considering the present situation, it is directed that no protest of any sort shall be undertaken by the students within 100 meters radius of the Administrative Block. The University authorities shall earmark an area where the students can congregate freely to protest.

6. Ms Monika Arora, learned counsel appearing for the petitioner has drawn the attention of this Court to a map of the university campus (Annexure P-5) which indicates that on the left-hand top of the site, there is an open area, which this Court is informed is known as Sabarmati Lawns. The said area would be open for the students to congregate without any unwarranted interference from the authorities. As long as the protest or congregation is peaceful, there will be no occasion for the authorities to invite the police authorities on the campus.

7. In order to ensure that the above directions are carried out, the petitioner is permitted to put CCTV cameras in the front of the Administrative Block, which shall have the clear view of the parking in front as well as Administrative Block. CCTVs may also be put on the main gates of the campus. However, at this stage, the petitioner would avoid putting CCTV cameras in other areas which may be considered by the students as an intrusion on their privacy and free movement as that may vitiate the environment of the University.

8. Needless to state that in the event, the aforesaid orders are not complied with, the petitioner would be at liberty to request the police authorities for assistance to maintain law and order in the campus. The police authorities shall act only on the evidence of obstruction to ingress/ egress to the Administrative Building, being provided by the Authorities, which may be in the form of CCTV footage.

9. No further orders are required to be passed in these

proceedings at this stage. The petition and the pending applications are, accordingly, disposed of with liberty to the parties to apply in the event any further orders are required."

The writ petition was disposed of by the order dated 9th August, 2017.

9. As per the above order, clearly, if any protest has to be undertaken, the same would have to be beyond the 100 meters radius of the administrative block in a manner so as to not hamper the functioning of the University. While the police ought not to be encouraged to enter a University campus, if the protest has taken the shape of a complete lock-down as is being expressed by the Registrar who is present in Court, the police has to ensure that law and order is maintained in the campus. Ingress and egress to the administrative block cannot be stopped in any manner whatsoever. Considering that the above order is in operation, all the stakeholders have to comply with the order dated 9th August 2017 and the authorities are obliged to enforce this order in letter and in spirit.

10. It is accordingly directed that the Vice Chancellor, Registrar and other administrative staff of the JNU, would be permitted to function from the administrative office. The police shall provide adequate protection to the VC, Registrar and all other staff, for entering the administrative block of the JNU building. The police authorities shall ensure that the 100 meters area is cordoned off, in whatever manner, so as to ensure that the administrative block is accessible to the staff and administration of JNU, so that non-agitating students are also not inconvenienced.

11. On the next date, the directions given in the previous orders of this Court shall be complied with and the affidavit shall be served upon the Ld. Counsel for the Petitioner two days before the next date of hearing. Failure

W.P.(C) 9407/2019


Court Master
High Court of Delhi
New Delhi

Page 10 of 11

to comply with the directions would entail serious consequences, especially in respect of the two Professors who are stated to have been deputed to other organisations/institutions.

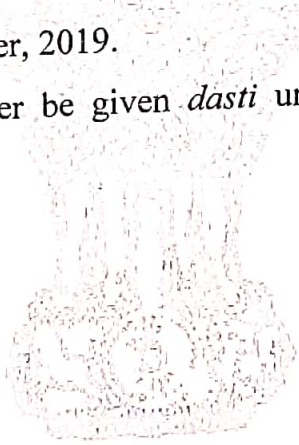
12. Mr. Rahul Mehra, Id. Standing Counsel for the Government of NCT of Delhi, submits that JNU's administration may engage with the students in order to sort out their grievances. There can be no question about the fact that the administration ought to engage with the students and if possible, such an engagement should take place today itself. Protection for the staff and administrative officials of JNU including the VC and Registrar shall be extended from tomorrow morning, i.e., 12th December, 2019.

13. List on 19th December, 2019.

14. A copy of this order be given *dasti* under signature of the Court Master.

DECEMBER 11, 2019

Rahul



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PRATHIBA M. SINGH
JUDGE


Court Master
High Court of Delhi
New Delhi