* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 17th JULY, 2025

IN THE MATTER OF:

\+ **W.P.(C) 586/2021 & CM APPL. 42639/2024**

DR AMIT KUMAR .....Petitioner

Through: Mr. Puneet Jain, Senior Advocate with Mr. Om Sudhir Vidyarthi, Mr. Mann Arora, Mr. Harsh Vardhan Sharma, Mr. Neeraj Kumar, Mr. Vishwendra Verma and Ms. Shivali, Advocates.

versus

UNIVERSITY OF DELHI .....Respondent

Through: Ms. Seema Dolo, Advocate for R-1.
Ms. Beenashaw N. Soni and Ms. Mansi Jain, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present writ petition under Article 226 of the Constitution of India has been filed by the Petitioner challenging the Letter dated 18.12.2020 as well as Letter dated 23.12.2020. By way of the former communication, the order of the Vice Chancellor/Respondent No. 2 College approving the Compulsory Retirement of the Petitioner was communicated by the Joint Registrar (Colleges) to the Principal of Respondent No.2 i.e., Bharati College whereas by way of the latter communication, the said order was intimated by Respondent No. 2 College to the Petitioner. Thus, the services of the Petitioner stood compulsorily retired with effect from 18.12.2020 by way of the Impugned Orders.

2. Shorn of the unnecessary details, facts leading to the filing of the present Writ Petition reveal that the Petitioner herein was appointed as an Assistant Professor in the Department of Political Science in the Respondent No.2 College which is affiliated with the Delhi University i.e., Respondent No.1 herein. Material on record discloses that four complaints were received against the Petitioner herein alleging sexual harassment. Of these, three complaints were from the students of Respondent No.2 College whereas the fourth complaint was received from an alumnus of Respondent No.2 who was a former student of the Petitioner. The first two complaints were received on 12.02.2018 whereas the other two complaints were received on 15.02.2018 and 24.02.2018. These complaints pertained to the sexual innuendoes/advances of the Petitioner by way of Facebook Messenger chats and WhatsApp chats sent by the Petitioner to the complainants. Material on record further discloses that the precipitative factor that led to the filing of these complaints was a video of the confrontation between some of the complainants/students of the Respondent No. 2 College and the Petitioner which became public on 05.02.2018. The same led to an agitation amongst the students and they demanded an inquiry into the allegations against the Petitioner. Pursuant to the repeated requests, the Proctor of Respondent No. 1 University *vide* a Communication dated 07.02.2018 requested Respondent No.2 College to initiate an inquiry/action against the Petitioner to investigate the allegations. It was in the backdrop of the aforesaid facts that the four complaints were forwarded to the Internal Complaints Committee ("**ICC**") to conduct inquiry under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("**POSH Act**") and UGC (Prevention, Prohibition and redressal of sexual harassment of women

employees and students in higher educational institutions) Regulations, 2015 ("**UGC Regulations**").

3. In strict compliance of Section 16 of the POSH Act, the ICC has concealed the identity of the complainants and referred to them as Complainant No.1, Complainant No.2, Complainant No.3 and Complainant No. 4 and the same nomenclature will be followed hereinafter. For the sake of brevity and convenience, it is noted that the two complaints dated 12.02.2018 were filed by Complainant No. 2 and 4, whereas the Complaint dated 15.02.2018 was filed by Complainant No. 3 and Complaint dated 24.02.2018 was filed by Complainant No 1.

4. Perusal of the complaints filed by the complainants reveal the following events:-

i. **21.02.2017:- Exchange of messages between the Petitioner and Complainant No. 4**:- In her complaint dated 12.02.2018, the Complainant No. 4 states that she was a student of the Petitioner and that since the beginning of February, 2017, the Petitioner had been sending objectionable messages to her via WhatsApp messages. Being aggrieved by such misbehaviour, the Complainant No. 4 had blocked the phone number of the Petitioner, hoping the matter would end there. However, a few days later, she found out that the Petitioner had behaved in the similar manner with another student. Since the Complainant No. 4 was a sport students, she reported the said incident to her seniors. It was also stated that the recording of the alleged video of confrontation was done in order to maintain record of proof against

the Petitioner. The Complainant No. 4 had also annexed the screenshot of her conversation with the Petitioner.

ii. **22.02.2017:- Exchange of messages between the Respondent and Complainant No. 3**; In her Complaint dated 15.02.2018, the Complainant No. 3 has alleged that she was a student of the Petitioner and the Petitioner would send objectionable sexual innuendos to her *via* WhatsApp messages and coerce her into responding to those messages. She further states that she reported this incident to her seniors in boxing as well as the class students and all of them therefore decided to confront the Petitioner. As a proof, the Complainant No. 3 annexed the screenshot of her conversation on WhatsApp with the Petitioner.

iii. **06.04.2017:- WhatsApp chats along with the Tele-conversation between the Petitioner and Complainant No. 2 which was followed by a confrontation between the Petitioner, few of the Complainants and other students:-** In her complaint dated 12.02.2018, Complainant No. 2 alleged that the incident was of April, 2017, when two of her friends (juniors) told her about the obscene and objectionable messages received by them from the Petitioner such as "hug me, kiss me," messages and messages where the Petitioner would ask the student to meet him privately in the study room. Having been informed of such obscene behaviour of the Petitioner, the Complainant No. 2 took the number of the Petitioner to talk to him but later on, it was her friend who talked to the Petitioner over phone. It is alleged that the Petitioner again spoke in an obscene manner

which would make any person uncomfortable. Complainant No. 2's friend asked the Petitioner to meet her the next day and spoke to him in front of her friends. It is alleged that once the Petitioner was confronted, he became scared, accepted his mistake and asked for forgiveness for his behaviour. Complainant No. 2 and her friends, sympathetically, decided to forgive the Petitioner. However, after a period of seven months, somehow, the video of the said confrontation became public after which all of them, being the Complainant No. 2 and her friends started receiving threats and facing hurdles.

iv. **17.12.2017:- Exchange of messages between the Petitioner and Complainant No.1:-** In her complaint dated 24.02.2018, Complainant No.1 alleged that she was a former student of the Petitioner. The Petitioner sent her several obscene and objectionable messages on Facebook Messenger in December, 2017. As a proof, the Complainant No. 1 had annexed the screenshots of the Facebook chats with the Petitioner.

v. **05.02.2018:- Video of the confrontation between the Petitioner and complainants became public:-** It is pertinent to mention that the ICC also received an anonymous letter from a student of Shyam Lal College which is affiliated to the Respondent No. 1 University, stating that the Petitioner was a teacher in Shyam Lal College and had indulged in similar obscene behaviour with his students. This letter contained screenshots of Facebook conversations as evidence, depicting messages of sexual undertone sent by the Petitioner to the complainant/student. However, since the complainant who wrote the

said letter did not file any formal complaint in person, the matter was not inquired into by the ICC.

5. Before delving further, it is being clarified that this Court has perused the content of these messages and the transcript of the tele-conversation which were submitted by the complainants as evidence. Given the obscene and profane nature of these messages, the same are not being reproduced. However, the ICC Report dated 28.08.2018 contains all the messages and the transcript of the tele-conversation between the Petitioner and the Complainants.

6. During the pendency of the inquiry, the ICC, on 12.02.2018, made an interim recommendation to the Executive Authority stating considering the sensitivity of the issue and in order to ensure a free and fair inquiry, the physical presence of the Petitioner in the campus Respondent No.2 College is not advisable. Thereafter, the Petitioner was restrained from entering the campus of the Respondent No. 2 College and the Petitioner was asked to go on leave.

7. Upon the receipt of the four complaints, the Petitioner filed his individual reply to each them and categorically denied the allegations made against him therein. It was stated that the students/complainants have misunderstood the intentions of the Petitioner and there was a conspiracy against him by the students and the Department of Political Science of the Respondent No. 2 College.

8. Qua Complaint No.2, it was the case of the Petitioner that it was, in fact, student/complainant who misbehaved with him and that the

student/complainant alone was responsible for leaking the video of confrontation. The Petitioner claimed that the conduct of the student/complainant made him uncomfortable and hurt the dignity of the Petitioner as a professor of a reputed institution.

9. Qua Complaint No.3, the Petitioner contended that it was the student/complainant who had initiated conversation on WhatsApp, while he was not even aware of the name of the student/complainant. Similar was the response of the Petitioner qua Complaint No.4.

10. Qua the Complaint No.1 who was an alumnus of the Respondent No.2 College, it was stated that the Complainant does not come within the definition of an 'aggrieved woman' as stipulated under Section 2(a) of the POSH Act, as she was a former student of the college.

11. Material on record further indicates that the ICC consisted of 10 members and an Enquiry Committee was constituted by the ICC *vide* Office Order bearing no. BC/ICC/2018/1482 dated 13.02.2018. The said Enquiry Committee consisted of 5 of the ICC members, including the student representative, faculty representative and the external member, to facilitate recording of evidence. The Presiding Member was made the *ex-officio* member of the Enquiry Committee. It has also transpired that on account of the resignation of one Ms. Safia Said, being the external member of the ICC, on 23.03.2018, one Karan Balraj Mehta was appointed in her place on 27.03.2018.

12. As a preliminary issue, the ICC dealt with the issue of delay in filing of the complaints by Complainant No. 1 to 3, which came to be condoned

during its meeting on 03.04.2018, and the same was duly recorded in the minutes of meeting of the even date. Thereafter, *vide* Letter dated 05.04.2018, the Enquiry Committee informed the Petitioner that a *prima facie* case of sexual harassment has been made out against the him and thus, enquiry proceedings have been instituted under the POSH Act and UGC Regulations. The Letter further enumerated the following four charges framed against the Petitioner, while also annexing thereto the documentary evidence submitted by the complainants:-

i. On 17.12.2017, the Petitioner indulged in an unwelcome verbal conduct of sexual nature and made sexually coloured remarks to an alumnus of the Respondent No. 2 College and his former student, being the Complainant No. 1, which falls under the definition of ‘sexual harassment’ as stipulated under Section 2(k)(i)(a) and Section 2(k)(i)(c) of the UGC Regulations, 2015.

ii. On 06.04.2017, the Petitioner indulged in an unwelcome verbal conduct of sexual nature and made sexually coloured remarks in a tele-conversation with two students of Bharati College being the Complainant No. 2 and one of her friends and that the same falls under the definition of ‘sexual harassment’ as stipulated under Section 2(k)(i)(a) and Section 2(k)(i)(c) of the UGC Regulations.

iii. On 23.02.2017, the Petitioner indulged in an unwelcome verbal conduct of sexual nature and made sexually coloured remarks to the Complainant No. 3 which falls under the definition of ‘sexual harassment’ as stipulated under Section 2(k)(i)(a) and Section 2(k)(i)(c) of the UGC Regulations.

iv. On 22.02.2017, the Petitioner indulged in an unwelcome verbal conduct of sexual nature and used sexually suggestive language with his student, being the Complainant No. 4, which falls under the definition of 'sexual harassment' as stipulated under Section 2(k)(i)(a) and Section 2(k)(i)(c) of the UGC Regulations.

13. Thereafter, the statements of various witnesses were recorded by the Enquiry Committee. The complainants and their witnesses were examined in camera by the Enquiry Committee, in the absence of the Petitioner, in order to protect their identity. For the purpose of cross examination of the complainants, the Petitioner was asked to submit a questionnaire in accordance with the Standard Operating Procedure of the ICC. This questionnaire would then be forwarded to the complainants and their witnesses and, thereafter, their answers/replies would be recorded by the ICC. Material on record reveals that the ICC examined seven complainant witnesses, out of which names of four witnesses were provided by Complainant No. 3 and the remaining were either called by the Enquiry Committee or the witness themselves approached the Enquiry Committee in the capacity of a neutral witness. However, out of the four names of witnesses given by the Petitioner, only two were examined as the other two did not appear before the Enquiry Committee, despite repeated reminders to the Petitioner to ensure their appearance.

14. Alleging that the proceedings have not been conducted in accordance with the principle of natural justice, the Petitioner approached this Court by filing a writ petition being W.P.(C) 5486/2018, seeking setting aside of the constitution of the Enquiry Committee by the ICC. The said writ petition

was disposed of by the Order dated 21.05.2018 passed by this Court, by directing that the evidence of the Petitioner will be recorded by the ICC *en banc* and not by the Enquiry Committee, which was earlier constituted for recording the evidence. It is pertinent to note that the said direction was passed only after the counsel for the Petitioner had unwaveringly agreed that the Petitioner will not press his objection that since the evidence of the complainant was recorded by the Enquiry Committee, it could not be examined by the ICC. This Court *vide* the Order dated 21.05.2018, had also requested the ICC to consider the request of the Petitioner for engaging a Defence Assistant ("**DA**") who is not instructed in law, to participate in the inquiry proceedings subject to the objections of the Complainants, if any. It is to be noted that while the said permission for engaging a DA was granted, the ICC Report reveals that the said opportunity was used by the Petitioner as a façade to seek frequent adjournments and cause delay in the conclusion of the proceedings.

15. This Court has perused the entire material on record and following facts are apparent:-

I. The Petitioner was directed by the ICC to appear for the cross examination on 28.05.2018. It was further informed that the ICC has fixed the date of 29.05.2018 as the last and final opportunity for the cross examination of his witnesses. It was also informed that the ICC has fixed 30.05.2018 as the date for final hearing. However, *vide* an email dated 26.05.2018, the DA of the Petitioner, namely Mr. Surjit Singh, sought an extension of one week for the aforesaid purpose. An extension was also sought by the Petitioner by way of a separate email.

II. The ICC partly allowed the request for the extension and directed the DA and the Petitioner to be present on 29.05.2018. Yet again, a request for extension was prayed for by the Petitioner's DA. This time, the DA's requested was denied by the ICC and it was reiterated that the proceedings will take place on 29.05.2018 itself. Resultantly, the Petitioner raised his objections during the proceedings held on 29.05.2018 before the ICC and sent a reminder regarding it vide email dated 30.05.2018. The objections of the Petitioner were as under:-

a. In terms of the Order dated 21.05.2018 passed by this Court, all actions of the Enquiry Committee, except that of recording the evidence of the Complainants are null and void;

b. The ICC's action of designating a sub-committee, that is, the Enquiry Committee is illegal;

c. The UGC Regulations, in particular, Regulation 4, in respect of the constitution of the ICC, are contrary to the POSH Act. The reason is that while the POSH Act does not permit inclusion of students, the ICC so formed included 3 undergraduate students. It was averred that simply because the Respondent No. 2 College did not have a post graduate or research scholars, the mandatory provision cannot be changed to allow the inclusion of undergraduate students;

d. The Petitioner also raised objection regarding the external member appointed after Ms. Safia Said had tendered her resignation, averring that her replacement could only be

permitted by this Court and without having sought such permission, the induction of Mr. Karan Balraj Mehta as the external member was in the teeth of the Order dated 21.05.2018;

e. The ICC could not have entertained the first three complaints of Complainant No. 2 to 4, as they were not within the limitation period as prescribed under Regulation 7 of the UGC Regulations. Insofar as the fourth complaint by Complainant No.1 is concerned, the same could not have been entertained as she was a former student of the college and that the UGC Regulations do not apply to ex-students/alumni;

f. None of the complaints relate to sexual harassment at workplace and therefore, are beyond the scope of the POSH Act. Thus, the same may be rejected.

III. *Vide* letter dated 06.06.2018, ICC responded to the objections raised by the Petitioner as under:-

a. Pursuant to the order passed by the High Court, the ICC directed the Petitioner on 26.05.2018 for cross examination, despite which he did not appear and requested for a week's time to file another case. ICC acceded to the Petitioner's request and directed him to appear on 28.05.2018 along with his DA. However, this time, the Petitioner's DA sought for an extension, which was not acceded to in the interests of expediency and since no just cause for extension was stated by the DA. As such, the ICC again met on 29.05.2018, but instead of

cooperating in the conduct of cross examination, the Petitioner and his DA merely raised objections which were sent *vide* an email dated 30.05.2018.

b. With regard to the constitution of the ICC and the issue of students representative being included in it, it was stated that it is a matter of record that the students of the college are studying undergraduate courses and hence, the students representatives were amongst undergraduate courses and hence the student representatives were appointed to the ICC through a student election held on 09.02.2018 as per UGC regulations.

c. Notwithstanding the non-cooperation and non-appearance on 12.05.2018, 19.05.2018 and 29.05.2018, the Petitioner was granted one final opportunity to appear before the ICC and answer the cross questionnaire and lead the remaining defence evidence on 23.06.2018.

IV. The Petitioner filed a writ petition bearing W.P. (C) No. 6633/2018 before the this Court, challenging the ICC's Letter dated 06.06.2018, rejecting the objections of the Petitioner. However, the writ petition came to be dismissed *vide* order dated 12.07.2018 passed by this Court.

V. Thereafter, the Petitioner *vide* a letter dated 16.07.2018 requested the ICC to permit him to inspect the original documents relating to the four complaints. The Petitioner's request was denied by the ICC, stating that the same will be considered after the enquiry has been concluded, though, all the relevant evidence and speaking orders of the ICC had already been provided to the Petitioner. It is pertinent to mention here that *vide* email dated 19.07.2018,

ICC permitted the Petitioner to submit additional details, if any, in continuation of his examination in chief. It was further stated that since the Petitioner has repeatedly refused to tender himself for cross examination, any additional statement will be permitted upon an express undertaking that the Petitioner will ensure his presence for cross examination without further refusals. On 20.07.2018, it was communicated to the Petitioner that the cross-examination/additional statement, if any, would be considered on 24.07.2018.

VI. Thereafter, on the scheduled date i.e., 24.07.2018, the ICC met *en banc*, however yet again, the Petitioner failed to appear for his cross examination which had been pending since 12.05.2018. As a result of the prolonged delays caused by the Petitioner, the ICC *vide* its order dated 24.07.2018 resolved to close the right of the Petitioner to lead defence evidence. The parties were thereafter directed to be present for personal hearing on 26.07.2018, on which date, all the Complainants appeared for their personal hearing except Complainant No.1, who had sought an exemption. The Petitioner also appeared with his DA for personal hearing.

VII. *Vide* a Letter dated 26.07.2018, the Petitioner filed its written submissions before the ICC, broadly submitting as follows:-

a. The ICC does not have the jurisdiction to the entertain the complaints of Complainant No. 2 to 4 as the same were filed beyond limitation;

b. The Complainant No. 1 was an ex-student/alumnus of the Respondent No. 2 College and therefore, her complaint was outside the scope of remedies available under the POSH Act and UGC Regulations;

c. The ICC has committed a fraud by fabricating the minutes of meeting dated 03.04.2018 wherein it had condoned the delay in filing of the complaints;

d. The enquiry was initiated by the Enquiry Committee was without any jurisdiction as its constitution was not as per the express provision of the POSH Act.

e. The ICC was not legally constituted.

f. The Petitioner has been denied the right of self defence.

g. The Petitioner's request for inspection of the ICC file relating to the four complaints and to obtain the certified copies of the documents were unreasonably denied.

h. Accordingly, the order dated 24.07.2018 must be recalled by the ICC and the Petitioner may be permitted to inspect the file of ICC and be provided with certified copy of the documents relating to the four complaints.

VIII. Given the conduct of the Petitioner, the ICC resolved to conclude its proceeding on 27.07.2018 and submitted its report on 28.08.2018. Thus, while Section 11(4) of the Act stipulates that the inquiry by the ICC is to be completed within a period of 90 days, i.e., by 25.04.2018, the same could only be concluded on 27.07.2018. Material on record reveals that the evidence of the complainants and their witnesses stood concluded on 02.05.2018 and the delay thereafter has solely occurred owing to the conduct of the Petitioner.

16. It is pertinent to note that the Petitioner had filed an LPA No. 399 of 2018 before this Court against the Order dated 12.07.2018, which also came to be dismissed *vide* order dated 06.08.2018. This Court had specifically noted that objections regarding the limitation issue of the complaints was given up by the counsel for the Petitioner. It was, however, clarified by this Court that it would be open for the Petitioner to raise his plea of limitation before the disciplinary/appellate authority and that the same shall be considered before passing of any final order.

17. Having recalled the facts leading up to the conclusion of the proceedings against the Petitioner, it is apposite at this juncture to note the relevant findings contained in the ICC Report dated 28.08.2018.

a. Since a preliminary objection on the question of limitation was raised by the Petitioner, findings of the ICC in the Report dated 28.08.2018 were as follows:-

"

BACKGROUND FACTS

21st February, 2017- Exchange of messages between Respondent and Complainant 4

22nd February, 2017-Exchange of messages between Respondent and Complainant 3

6th April, 2017-Teleconversation between Respondent and Complainant 2

7th April, 2017- Confrontation between Respondent and Complainants and their friends

17th December, 2017- Exchange of messages between Respondent and Complainant

15th February, 2018- Video of Confrontation between Respondent and Complainants goes viral
12th February, 2018- Complaints filed by Complainant 2 and 4
15th February, 2018-Complaint filed by Complainant 3
24th February, 2018-Complaint filed by Complainant 1

1. The three Complainants identified the public release of the video as one of the peak points in their experience of continued harassment, in their initial complaints and even in their examination in chief. In their efforts to stop the sexual harassment in February, 2017, two of the complainants had taken a few steps, such as ignoring the messages of A the Respondent, blocking the Respondent on their phones and finally in April, 2017 when they jointly confronted the Respondent. While the girls had derived strength from their unity, and took the step of speaking to the Respondent in April, Individually each of the girls has referred to the unease and tension that they were undergoing at that point and continue to face.

2. Indeed, it was this persistent unease which led them to share the matter with their senior sometime in March 2017. The fact that the complainants were part of the same institution as the Respondent, have to face him every day, could have been in a situation where the Respondent would be teaching them again one day, weighed in on their minds. The fear of retaliation was reasonable, because the complainants felt that if rules did not prevent the Respondent from harassing them in

the first place, what was there to stop him from retaliation. ***None of the complainants was aware of any redressal mechanism such as the Internal Complaints Committee and therefore did not know who to approach and report****.*

3. ***The complainants come from rural backgrounds. Complainant 4 belongs to SC category, Complainant 2 belongs to OBC category and Complainant No.3 was a minor at the time of the first Incident and therefore because of their family backgrounds and social conditioning, they were prevented from coming forward to complaint earlier, against a professor. Complainant No. 4 also stated that she was terrified that her family would get to know of the incident, which would result in the almost certain stopping of her education (and that of her younger sister's)!***

4. ***The release of the video in February 2018 seemed to the complainants like the pinnacle of this continuous harassment. To them the publication of the video was not a separate act, it was a direct consequence of and emanated from the first act of sexual harassment that took place in February, April 2017, and impacted the 3 complainants individually****. The release of the video resulted in the public identification of the complainants as women who had been harassed by the Respondent and which resulted in their being stigmatized. This itself was a source of harassment. More specifically, it resulted in the outing of their identity to friends and colleagues of the Respondent.* ***The Committee also considered the fact that the complainants had mentioned that they had received threats and had been pressurized by students and some teachers to keep quiet on 2nd February, 2018, which upon inquiry has been found to be true.***

Names of these teachers are part of the ICC record. They have been examined by the ICC, and it has been established that their conduct led to the creation of a hostile working environment. ***Therefore this committee holds that the last incident of sexual harassment would continue till the video being released in February 2018 and the hostile work environment created as late as February 2018 and thereafter continuing, hence the complaints were not filed beyond the period of limitation.***

5. The complainants also mention that they had considered approaching College authorities in April 2017 itself, and had said so even during their confrontation with the Respondent. However, the Respondent had pleaded with them that they should not. The complainants therefore, did not do so at the time. The statements of the complainants and their witnesses reveal that the Respondent manipulated their sentiments. The Respondent has intensely questioned the complainants on this issue and their grounds remain unshakeable as can be seen in their cross examinations also. For example, the Respondent has posed the following question to Complainant 3

> *"Ques. 14 Did you tell any teacher or the Principal about the WhatsApp talk or the Incident of 7th April, 2017?*
>
> *Ans. We wanted to go to the Principal on 7th April, 2017 but Amit Kumar pleaded with folded hands and touched our feet (haath pair Jode), and gave the reference of his farsily, Ill mother and unmarried sisters, and thereby compelled us to not go."*

In Question no. 29, the Respondent again tried to raise this issue by asking "Ques. 29 Was there any talk

between you and Shri Amit Kumar after the incident of 7th April? If you had a problem, then why did you not come and say anything in College when the incident happened?

Ans. ***When this incident happened, we had come to College and shared it with our friends and had made them read the chats. Everyone found them objectionable. We had problem with his remarks that is why we tried to speak to him on 7th April. We wanted to go to the Principal, but Amit Kumar lied and emotionally blackmailed us and prevented us from complaining.****"*

This also corroborates with what is seen in the Video.

It can be surmised therefore that the Respondent prevented the three complainants from filing the complaint at the time of the first incidents. ***Even if the Respondent did not physically prevent the three complainants from complaining, he appealed to the emotions of the young girls, and ensured that they did not complain. The claim that the date of the initial incidents is beyond the period of limitation is disingenuous, when it is considered that the Respondent himself requested the three complainants to not complain, as can be seen from the video and harassment has continued since then****.*

6. The Committee also considered that after the Respondent requested the three complainants with folded hands to not report his behaviour and thereafter ***he gave internal assessment marks to Complainant No. 3 and 4 and the rest of the entire class, without conducting their presentation in order to silence them from coming forward****. It is a matter of record that by end of April 2017 the classes got dispersed and students went on preparatory leave. Thereafter the next academic year started by July 2017, by which time*

roughly 5 months had passed since the first incident. ***Considering the said predicament of the girls and their situation, various reasons as elaborated hereinabove, it is justified that their complaints not be considered to be beyond the period of limitation***.

7. Thus it has come on record that Complainant was informed of her rights of filing the complaint before the ICC only after 06.02.2018, when the ICC notice was put in college and thereafter Complainant No. 2, 3 and 4 Immediately filed their complaint. Due to the reason brought on record, the ICC considers the delay in filing of the complaints is not beyond the period of limitation as stipulated in Section 9(1) of the Act and the complainants have adequately explained the reasons for the said delay."

[Emphasis Supplied]

b. With regard to the POSH Act and UGC Regulations Act/regulation applying to Complainant No.1, who is an alumnus of the Respondent No. 2 College, the ICC examined the relevant provisions under the UGC Regulations, specifically the definitions under Section 2(a) of 'aggrieved woman' and Section 2(l) of an 'student', read with Section 7 which prescribes for the process of making a complaint of sexual harassment, to hold that the scope of ICC to entertain a complaint of sexual harassment is not limited to the students on the roll of the college.

c. ICC has also considered the Petitioner's objection of the sexual harassment as alleged, not having occurred in 'workplace', and held that since the Petitioner had shared his phone number with the students, all the interactions on various phone medium such as WhatsApp, would fall under the ambit of the definition of a

'workplace'. It was further held that in the case of Complainant No.1, it was the Petitioner himself who had sent the friend request on Facebook. As a result, the interaction on social media was therefore an extension of the work relationship between the Petitioner and Complainant No. 1 because the Petitioner was not a "personal friend" of the Complainant No. 1.

d. The ICC Report also notes that even though, the anonymous complaint received from the student of Shyam Lal College could not be enquired into, a bare perusal of the Facebook conversation between the Petitioner and the said student fits into the Petitioner's persistent conduct of unwelcome verbal conduct, similar to the one alleged in the four complaints before the ICC.

e. With regard to the charges against the Petitioner, the ICC analysed the following evidence which was submitted by the Complainants and Petitioner:-

> "*A. Evidence submitted by the Complainants*
>
> *1) Complainant 1 submitted screenshots of Facebook conversation with the Respondent, along with the complaint.*
>
> *2) Complainant 2 submitted an audio clip on 19th March 2018, of a phone conversation between her friend and the Respondent*
>
> *3) Complainant 3 submitted 1 screenshot of conversations between her and the Respondent, along with the complaint. A screenshot of conversation between her and the Respondent was submitted later.*

4) Complainant 4 submitted 1 screenshot of a conversation between her and the Respondent, along with the complaint.

B. Evidence submitted by the Respondent

1) The Respondent submitted a printout of text file of WhatsApp conversations between him and Complainants 2, 3, and 4, along with his Reply.

C. Other evidence examined by the ICC

1) Video of confrontation between Respondent and the complainants dated 7th April, 2017

2) Audio recording of 2nd February, 2018 between neutral witness and Ms. Looke Kumari, Assistant Professor, Dept. of Political Science, submitted on 23.04.2018.

3) College record of Complainants 1, 2, 3 and 4"

f. Based on the above evidence, the ICC analysed the case of Complainant No. 1. While holding that the charge of sexual harassment has been made out against the Petitioner, the ICC observed as follows:-

"*Respondent has not given any reply to the allegation that he asked the Complainant whether she remember him personally. He has also not replied to the allegation that when the Complainant did not answer, the Respondent insisted, for a reply. However during the cross examination he had put two questions in this regard, which are being reproduced herein below -*

".....Q19- Why have you stated in your statement that Mr. Amit Kumar was pressurizing you to reply, while there is no time gap visible in the chat?

C1 Ans. Mr. Amit Kumar was again and again asking the same question - do you remember? how much do you remember me? A bit or a lot? It means that he was forcing me to say that I should only remember him. If you see carefully there is a 22 minutes gap when I had stopped giving reply. You also said that what happened, are you busy? Hence you were actually forcing me to reply.

Q 20- Can anyone force anybody to message/chat on social sites/whatsapp or it is voluntary?

C1 Ans. If someone sends the same message repeatedly, then the other person would feel troubled and Mr. Amit Kumar was exactly doing the same. He was asking repeatedly: do you remember? How much do you remember? By asking these questions he was forcing me....."

The Respondent has Cross Examined Complaint 1 at length and the integrity of her statement has remained unshaken. In response of question no. 21 she reiterates her allegations and in reply of several questions she made it clear that there is no scope for misunderstanding regarding the Respondent's intentions while chatting.

Although the Respondent admitted having made the remark that "ab to badh hi rhe ho sab trh se" (Now growing from all ways"), but he took the plea that Complainant misunderstood him. However, his explanation does not inspire any confidence as being the teacher he was not supposed to ask any female student whether she remembers/misses him or not arid similarly being a teacher he had no business to pass the above remarks i.e."ab to badh hi rhe ho sab trh se". After careful perusal of all the statements and relevant

materials, ICC observes that the above remarks are not only inappropriate but unwelcome and are sexually coloured, which clearly amounts to sexual harassment."

g. The ICC next dealt with the complaint of Complainant No. 2, to hold that the allegation of the Complainant No. 2 against the Petitioner stands corroborated by Witness No. 7. The ICC also found a shadow of doubt on the Petitioner's witnesses as they showed unwillingness and non-cooperation during their cross examination. Both the Petitioner's witnesses were completely silent on the audio clip and the tele-conversation between the Complainant No. 2 and the Petitioner. The ICC also found that there is clear evidence to show that the Petitioner knew that he is talking to a college student and that it appears that the Complainant No. 2 was not prepared for the explicit turn which the conversation took and felt harassed. Thus, the ICC found the charge to be proven. It is important to note here that the ICC took cognizance of the extremely obscene language used in the conversation which is not being reproduced here.

h. In the case of Complainant No.3, the ICC found that the Petitioner does not dispute the screenshots that were produced by her as evidence. The ICC further took note of the fact that while the Complainant No.3 and her witness have been cross examined at length and their testimony remains unshaken, neither the Petitioner nor his witnesses are cross examined, given their own unwillingness. It also notes that the allegations are also corroborated by a neutral witness. The ICC rejected the contention of the Petitioner that the

remark, "*tumhara sab andar rehta hain*," was misunderstood, does not inspire confidence and clearly indicates sexual intent as the same is followed by a 'wink' emoji. Thus, the charge was found to be proven.

i. Insofar as the case of Complainant No. 4 is concerned, the ICC found that the Petitioner admitted to the remarks, "you are also very sweet… cute *bhi ho… sharma gaye tum to*," and that his explanation that the same was misunderstood by the Complainant No. 4, does not inspire any confidence. Hence, the charge was found to be proven.

j. The ICC also noted that even though the Petitioner claims his own grievance over the behaviour of the complainants, no complaint was filed by him in this regard.

18. It is again being clarified that this Court has perused the content of several other such messages and the transcript of the tele-conversation which were submitted by the complainants as evidence before the ICC. However, given the obscene and profane nature of these messages, the same are not being reproduced in their entirety. Be that as it may, the ICC Report dated 28.08.2018, which forms part of record of the present petition before this Court, contains all the messages and the transcript of the tele-conversation between the Petitioner and the Complainants.

19. Thus, the ICC found the four charges of sexual harassment proved against the Petitioner and therefore, being guilty of misconduct under the applicable service rules. In a unanimous decision, the ICC recommended compulsory retirement of the Petitioner, with a further recommendation that

the Petitioner shall pay a sum of Rs. 10,000/- to each of the complainants for their mental pain and suffering. The said recommendation was made to the Disciplinary Authority, which in the present case, is the Governing Body of the Respondent No.2 College.

20. Accordingly, a meeting of the Governing Body was convened on 19.09.2018 wherein it was directed that the ICC Report dated 28.08.2018 be handed over to the Vigilance Committee. The Governing Body also sought a representation from the Petitioner and that the same was filed on 26.09.2018 wherein he raised the following grounds:-

a. The Petitioner reagitated his contention of the ICC being improperly constituted, alleging that there is no provision for student representative or ad-hoc assistant professor under Section 4(2) of the POSH Act. The Petitioner objected to the appointment of Karan Balraj as the external member, as he was not affiliated to an NGO and nor was from any association committed to the cause of women. It was further contended that the UGC Regulations are in violation of the POSH Act, particularly in respect of the constitution of the ICC and that even otherwise, the constitution of the ICC was not in consonance with Regulation 4(b) of the UGC Regulations.

b. The Petitioner further alleged that the Enquiry Committee was illegally constituted. He objected to the framing of charges by the Enquiry Committee, which according to the Petitioner, was solely within the power of the Disciplinary Committee, while the role of the ICC was limited to that of an “Inquiry Authority” as per Section 11(1) of the POSH Act. It was further averred that the charges are beyond

what has been alleged in the four complaints and that the President of the ICC was not present during the proceedings of the Enquiry Committee. Thus, all the proceedings carried out by the Enquiry Committee are illegal. It was also contended that the order dated 21.05.2018, whereby this Court had directed the recording of the Petitioner's evidence by the ICC *en banc*, was not followed, and instead of recording his evidence, the ICC only permitted the cross examination of the Petitioner and his witnesses.

c. The Petitioner was also aggrieved with him not being permitted to enter the college premises during the conduct of the enquiry proceedings upon ICC's order, as well as during the evidence of his witnesses. He had also objected to the absence of the Presiding Officer during the examination in chief of the witness. He also raised objection regarding his own witness's request of the Petitioner not being present at the time of her examination. The Petitioner contended that it was not for the witness to decide whether the Petitioner could be present or not as his presence was is his legal right.

d. It was contended by the Petitioner that Complainant No.2 is not 'aggrieved women' in terms of Section 2(a) of the Act as in her complaint dated 12.02.2018, she has not made any allegation of sexual harassment against the Petitioner.

e. With regard to Complainant No. 4, the Petitioner again contended that her complaint does not make out a case of sexual harassment and that her complaint was fabricated and merely an outcome of the confrontation video being made viral. The Petitioner claimed that the

Complainant No. 4's case was in fact, an admission of guilt as she and her friends kept the Petitioner in illegal confinement.

f. The Petitioner also alleged that the Complainant No. 3 was is an accomplice of Complainant No. 4 and her complaint does not make out any case for sexual harassment.

g. The Petitioner also alleged that the ICC was under the threat of certain students of the Respondent No. 2 College to take some corrective action against the Petitioner and as such, failed to take a fair and an impartial stand to assess the complaints in an unbiased manner.

h. The Petitioner also stated that since the chats took place on social media, where neither the Petitioner nor the complainants were at a 'workplace' as defined under Section 2(o) of the POSH Act, no case of sexual harassment against him could have been made out. The Petitioner also denied sharing his phone number with his class or sending a friend request on Facebook to the Complainant No.1.

i. On the issue of limitation, the Petitioner asserted that the ICC perfunctorily condoned the delay in filing of the complaints in their minutes of meeting dated 03.04.2018, by somehow clubbing the four incidents and depicting a common chain of action between them. On this aspect, the Petitioner also regurgitated his allegation of the said minutes of meeting being fabricated by the ICC, and that his grievance in this regard was never considered before the filing of the ICC Report dated 28.08.2018, which is contrary to the order of this Court in W.P. (C) No. 5486 of 2018.

j. The Petitioner was also aggrieved by the denial of ICC to allow his request of inspecting the documents pertaining to the four complaints and that he was never even provided with their certified copies, despite of being assured of the same by the ICC.

k. The Petitioner further stated that not only was the complainants' evidence done in his absence, but he was never even provided with the names of the complainants' witnesses. He also stated that procedure of making the Petitioner conduct the complainants' through a written questionnaire was unjust.

l. Lastly, the Petitioner stated that though the inquiry ought to have been completed by 15.05.2018, it was concluded only on 26.07.2018, which was about two months of delay. Moreover, the ICC was required to give its finding within 10 days of the conclusion of the inquiry, thus there is a delay of 25 days. Since no stay order had been passed, the inquiry ought to have been concluded in 90 days.

21. *Vide* a letter dated 29.09.2018, the Petitioner was asked to appear on 06.10.2018 for personal hearing, on which day oral statements were made by the Petitioner before the Governing Body, which were duly recorded. These statements are also a part of the record before this Court.

22. Thereafter, a Show Cause Notice dated 10.10.2018 was issued by the Governing Body to the Petitioner under Regulation 8(6) of the UGC Regulations, which stated that the Governing Body has found the charges against the Petitioner to be fairly substantiated in the ICC Report dated 28.08.2018, thereby calling upon the Petitioner to show cause as to why the

punishment of compulsory retirement should not be imposed on him. In response, the Petitioner wrote a letter dated 19.10.2018 to the executive body of the college to not to accede to the recommendation of the Governing Body till the disposal of his appeal before the Vice Chancellor. Having considered the oral statement and submissions of the Petitioner, the Governing Body, in its meeting dated 29.10.2018, accepted the recommendations of the ICC made in the Report dated 28.08.2018 and resolved to compulsorily retire the Petitioner with immediate effect.

23. As per the mandate under Clause 7 of Annexure to Ordinance XII read with Clause 7(9) of Ordinance XVIII of the Respondent No. 1 University, the Respondent No. 2 College *vide* letter dated 29.10.2018 vide Letter No. BC/2018/1126 sought the approval of the Vice Chancellor of the Respondent No. 1 University for the recommendation of "Compulsory retirement". Consequently, the Vice Chancellor gave its approval *vide* the Impugned Letter dated 18.12.2020 and the same was communicated to the Petitioner *vide* the other Impugned Letter dated 23.12.2020, which led to the filing of the present writ petition.

24. By way of the present Writ Petition, the Petitioner has challenged the constitution and procedure of the ICC and Enquiry Committee, as well as the findings contained in the ICC Report dated 28.08.2018. The Petitioner's grievance before this Court is also that the Respondents, including the Governing Body, Vice Chancellor as well as the ICC, have failed to follow the principles of natural justice.

25. Mr. Puneet Jain, learned Senior Counsel appearing for the Petitioner has broadly raised the following contentions on the issue of the composition of the ICC:

a. It is stated that the Governing Body's Minutes of Meeting dated 09.06.2018 reveals that the ICC was formed by the Staff Council and not by the Governing Body of the College contrary to the mandate of Regulation 4 of the UGC Regulations.

b. It was further stated that instead of two faculty members as mandated by the UGC Regulations, the ICC comprised of three faculty members. An objection is also raised against the appointment of the two non-teaching members, by stating that there is nothing on record to show that these members were involved in the cause of women or having social work experience or any legal knowledge.

c. It is further stated that as per the UGC Regulations, the three students are required to be Undergraduate, Post Graduate/Masters and Research Scholar each, and the fact that all three students which were nominated from undergraduate course vitiated the entire composition of the ICC.

d. It is also stated that even the one member who is required to be from a non-government organization or association committed to the cause of women or a familiar with the issue relating to sexual harassment, lacked the said qualification.

26. On the aspect of the procedure followed by the ICC in the entire inquiry against the Petitioner, the learned Senior Counsel appearing for the

Petitioner has submitted that though the UGC Regulations do not expressly prescribe the manner in which the ICC must conduct the procedure, however, Rule 7(4) of the POSH Rules stipulates that the ICC must follow the principles of natural justice. It is stated that the following instances violated the principles of natural justice:-

a. The issue of limitation was decided by the ICC in its meeting dated 03.04.2018, which was prior to the commencement of the proceedings by issue of memorandum of charge. The learned Senior Counsel has relied upon the judgment passed by the Apex Court in Oryx Fisheries (P) Ltd. v. Union of India **(2010) 3 SCC 427**, to argue that since the issue of limitation was pre-decided by the ICC in the absence of the Petitioner, the issuance of notice and hearing afforded to the Petitioner was completely futile.

b. The ICC failed to comply with the Order dated 21.05.2018 passed by this Court in W.P. (C) No. 5486 of 2018, as the direction was for recording the Petitioner's evidence *en banc* by the ICC, however, the ICC only permitted cross examination of the Petitioner and his witnesses.

c. Despite the Order dated 21.05.2018 directing the ICC to permit the Petitioner with the facility of a Defence Assistant, the said prayer was denied twice by the ICC and only on the third instance, the ICC permitted the Petitioner to keep a Defence Assistant;

d. The ICC did not permit face-to-face cross question of the complainants and their witnesses by the Petitioner. It is stated that

the procedure to be followed by the Enquiry Committee was decided in his absence and that principles of fairness required the procedure be decided either with joint consent of parties or after the hearing the parties' respective objections, if any.

e. It is argued that the Petitioner ought to have been allowed to cross examine the complainants and their witnesses or in alternative, the deposition and the cross examination ought to have been in the presence of the Petitioner or his nominee. Rather, even the name and identity of the complainants and their witnesses were wrongfully concealed from the Petitioner and while the Petitioner was permitted to be present at the time of cross examination of his witnesses, the statement of his Witness No. 2 was recorded in his absence, for reasons best known to the ICC itself. It was thus argued that with all the information concealed, it is inconceivable as to how the Petitioner could prepare and submit a cogent defence on his behalf.

f. Learned Senior Counsel has argued that since the chargesheet was not issued by the disciplinary authority but by the convenor of the ICC, the same is vitiated as being violative of the mandate under Section 11(1) POSH Act. It is further stated that as per Section 11(1), the ICC is required to inquire into the complaint in accordance with the service rules applicable. Additionally, Para 6 of Annexure to Ordinance XII requires the Governing Body to inform the employee, stating in written, the grounds on which they propose to take action. In support of this contention, the learned

Senior Counsel has relied upon the judgments of the Apex Court in Union of India v. B.V. Gopinath **(2014) 1 SCC 351** and Coal India Ltd. v. Ananta Saha **(2011) 5 SCC 142** to submit that a chargesheet/charge memo which is not issued by the Disciplinary Authority is *non est* in the eyes of law. It is stated that the ICC's role is to only inquire the charges that have been framed and not to frame charges itself.

g. It has also been argued as per Section 9(1) of the POSH Act, the complaints of Complainant No. 2 to 4 were barred by limitation, since the period of limitation is three months from the date of incident. This period can be extended by not more than three months, as per the proviso to Section 9(1). It is submitted that since the statute circumscribes the power to condone in negative terms, the provision has to be strictly construed. For the said contention, the learned Senior Counsel has relied upon the judgments of the Apex Court in Nasiruddin v. Sita Ram Agarwal, **(2003) 2 SCC 577**, Union of India v. Popular Construction (**2001) 8 SCC 470** and P. Radha Bai vs. P. Ashok Kumar **(2019) 13 SCC 445**. Accordingly, the learned Senior Counsel for the Petitioner submits that the in the ICC Report dated 28.08.2018, limitation from the date of release of the confrontational video in February, 2018 has been considered to hold that the since the complainants were informed of their remedy to file a complaint only on 06.02.2018, when a notice was placed on a notice board of the Respondent No. 2 College, the period of limitation ought to be

condoned. It is stated that there is no charge of continuous harassment in the Memo of Charges dated 05.04.2018 and that in the absence of such a charge, the ICC's reasons to condone the delay in filing of the 3 complaints are patently illegal. It is argued that incident of public release of the confrontational video cannot be attributed to the Petitioner and hence, the same cannot be a ground to extend the statutory limitation in favour of the complainants.

h. It is argued that even though the complaint of Complainant No.1 is within the period of limitation, a bare reading of the Facebook conversation between her and the Petitioner would reveal that the same does not constitute an instance of sexual harassment. It stated that the Complainant No. 1 is not an aggrieved woman within the meaning of Section 2(a), 3 and 9 of the POSH Act and Regulation 2(a), (c) and (o) of the UGC Regulations, on account of her being an alumnus of the Respondent No. 2 College and the allegations made or the incident alleged has nothing to do with the 'workplace' as defined in the POSH Act and UGC Regulations. The learned Senior Counsel has argued that the conversation is between two individuals in private, during their private time, off-campus and initiated by the Complainant No. 1 herself. As the conversations were limited to the social media such as WhatsApp and Facebook Messenger, the same cannot be said to be a 'workplace'. It is submitted that the Regulation 2(o) of the UGC Regulations contains the words 'means' and 'includes', which

makes the provision exhaustive and that the requirement is strictly of a physical place in an educational institution.

i. It is stated that the WhatsApp conversation between the Petitioner and Complainant No. 2 does not constitute an instance of "sexual harassment" within the meaning of Section 2(n) of the POSH Act as the said phrases encompass only "unwelcome acts or behaviour". The Petitioner has also denied any audio conversation with the Complainant No. 2 or her friend. Even otherwise, since the conversation was commenced either by the Complainant No. 2 or her friend, the act of the Petitioner cannot constitute 'sexual harassment'.

j. With regard to conversations of the Petitioner with Complainant No.3 and 4, it has been stated that the same are in no way incriminatory and therefore, no case of sexual harassment is made out against the Petitioner.

27. It has, lastly, been argued that an appeal under Section 18 of the POSH Act is a statutory first appeal both on facts and law in respect of the recommendations of the ICC. On this aspect, the learned Senior Counsel for the Petitioner has submitted as follows:-

a. As distinguished from the general service rules where the Disciplinary Authority could itself hold an inquiry, the POSH Act has separated the functions of the ICC, by giving it solely the power of conducting an enquiry, from the Disciplinary Authority which has been conferred with the power of an appellate authority.

b. Under the Regulation 8(6) of the UGC Regulations, where an appeal is preferred against the findings of the ICC, it is incumbent on the appellate authority to issue a show cause notice of the findings of the ICC and then to decide the said appeal. The Regulation also requires the appellate authority to decide the appeal only after considering the reply or hearing the aggrieved person.

c. The decision of the Governing Body in terms of Regulation 8(4), (5) and (6) of the UGC Regulations is in the capacity of an appellate authority. It is also stated that it is only when the decision of the appellate authority becomes final, that the Governing Body must reconvene to act as a Disciplinary Authority and act in terms of Section 11 of the POSH Act. In support of this, the learned Senior Counsel has relied upon the judgment of the Apex Court in Dr. Vijaya Kumaran CPV v. Central University of Kerala & Ors. **(2020) 12 SCC 426**.

d. It is stated that the Governing Body erred in proceeding to endorse the recommendation of the ICC without deciding on the issues raised in the appeal preferred by the Petitioner and the Resolution dated 06.10.2010 does not comply with the requirement of a decision as an appellate authority, which ought to depict some application of mind. It is also submitted that the Resolution dated 06.10.2010 also does not comply with the directions passed by this Court *vide* its order dated 06.08.2018 in LPA No. 399 of 2018, as it is a non-speaking order. In support of this, the learned

Senior Counsel has relied upon the judgments of the Apex Court in Siemens Engg. Vs. Union of India **(1976) 2 SCC 981**, Chairman Disciplinary Authority v. Jagdish Sharan Vashney, **(2009) 4 SCC 240),** Roop Singh Negi v. Punjab National Bank, **(2009) 2 SCC 570, 581** and Allahabad Bank Vs Krishna Narayan Tiwari, **(2017) 2 SCC 308, 311-12**.

e. It is stated that the Petitioner had submitted a representation to the Vice Chancellor which was also not considered before approving the decision of the Governing Body, which renders the Impugned Letter dated 18.12.2020 a nullity.

28. *Per contra*, the Respondents, by way of their respective counter affidavits, have refuted the contentions raised by the Petitioner and vehemently supported the constitution of the ICC, Enquiry Committee, the procedures adopted them, the Impugned Letters and accordingly, sought for a dismissal of the present Writ Petition.

29. Learned Counsel for Respondent No.2 College has stated that the present Writ Petition is not maintainable as the Petitioner has failed to follow the procedure prescribed by law. It is further stated that in the entire Writ Petition, has taken grounds only to challenge the contents of ICC Report dated 28.08.2018, however, has failed to challenge the ICC Report dated 28.08.2018 before the appellate authority as mandated by under the UGC Regulations as well as the POSH Act. It is stated that this Court cannot sit as an appellate authority over the ICC Report dated 28.08.2018 as the same had to be challenged before appropriate authority as per law.

30. Learned Counsel for the Respondent No. 2 College has relied upon the Order dated 21.05.2018 passed by this Court in W.P. (C) No. 5486/2018 to state that the Petitioner had limited his grievance to only two issues, being the improper conduct of the inquiry by a sub-committee/Enquiry Committee of the ICC and the failure of the ICC to take any steps for exploring the possibility of conciliation in terms of Section 10 of the POSH Act. It is argued that the Petitioner had given up his objection for challenging the jurisdiction of ICC to entertain the complaints on the ground that they were barred by limitation, and that his prayer was only limited to his evidence being recorded by the ICC *en banc*. The Petitioner's plea for liberty to appoint a DA was also granted by this Court. In due compliance with the order of this Court, the ICC concluded the Petitioner's evidence and gave its findings. It is stated that the Petitioner now cannot allege that the ICC had been constituted illegally or that the ICC did not examine the evidence of the Petitioner, as the same is merely an afterthought. Learned Counsel for the Respondent No. 2 College has also highlighted the Order dated 21.05.2018 passed by this Court to show that the Petitioner his had duly given his consent that he would not press his objection qua the evidence of the complainants being recorded by a sub-committee/Enquiry Committee. Thus, it is stated that the Petitioner, by way of the present Writ Petition, has raised objections which have already been adjudicated by this Court.

31. It is further stated that subsequent to the disposal of W.P. (C) No. 5486/2018, the Petitioner had filed another writ petition bearing W.P. (C) No. 6633/2018, wherein he had raised the grievance that the fourth complaint cannot be construed as sexual harassment at 'work place'. It is

also stated that this Court *vide* its Order dated 12.07.2018 clarified that the said objection would be considered by the ICC before submitting its final report. However, being aggrieved by the Order dated 12.07.2018, the Petitioner preferred an appeal bearing LPA No. 399/2018, which however did not bear any fruits for the Petitioner and the Order dated 12.07.2018 was upheld by a Division Bench of this Court *vide* its Order dated 06.08.2018. It was, however, clarified by the Division bench that the ground of limitation and all other legal objections, in accordance with law, could be raised by the Petitioner before the Disciplinary Authority or the Appellate Authority and the same would be considered before passing of any final order.

32. Learned Counsel for Respondent No.2 College submitted that that the ICC Report dated 28.08.2018 was sent to the Petitioner by hand on 31.08.2018. The Petitioner was required to file an appeal within 30 days as per Regulation 8(5) of the UGC Regulations, however, the Petitioner failed to do so. The Petitioner has now attempted to bypass the statutory appeal mechanism by challenging the ICC Report dated 28.08.2018 under the garb of the present Writ Petition, which otherwise, has no other basis whatsoever.

33. Learned Counsel for Respondent No.2 College has stated the Petitioner has himself admitted at Paragraph No. 32 (i) of the present Writ Petition, that he did not challenge the ICC Report dated 28.08.2018 and only sent some representation dated 26.09.2018 to the Governing Body. Even otherwise, an oral hearing was duly afforded to the Petitioner by the Governing Body on 06.10.2018. It is stated that due observance of the principles of natural justice had been done by the Respondents at every stage of the enquiry against the Petitioner.

34. It is also stated that as per Regulation 8(4) UGC Regulations, the Executive Authority, i.e., the Governing Body of the Respondent No. 2 College had to act on the recommendations of ICC within a period of 30 days from the receipt of the ICC Report dated 28.08.2018, unless an appeal against the findings is filed within the prescribed period by either party. Accordingly, the Governing Body *vide* its letter dated 10.10.2018 issued a show cause notice to the Petitioner. Thus, it is stated that that Respondent No. 2 College has followed due procedure in conducting the enquiry against the Petitioner by observing the principles of natural justice.

35. Learned Counsel for Respondent No.2 College has also stated that as per the procedure prescribed by Regulation 8(5) UGC Regulations, an appeal against the findings or recommendations of the ICC has to be preferred by either party before the executive authority of the Higher Educational Institutional within a period of 30 days from the date of the recommendations, however, the Petitioner failed to do so.

36. It is further stated that an appeal under Section 18 of the POSH Act can be filed against the recommendations made by the ICC before the Court or the Tribunal within 90 days from date of recommendations in accordance with concerned service rules and in absence of such service rules, the appeal must be preferred to the Appellate Authority under Section 2 of the Industrial Employment (Standing Orders) Act, 1946. Having failed to adopt this procedure also, the Petitioner is now estopped from challenging the findings contained in the ICC Report dated 28.08.2018 in a writ proceedings before this Court.

37. Learned Counsel for Respondent No.2 College has relied upon the judgments of the High Court of Karnataka in B.K. Mohanty v. Hindustan Aeronautics Ltd., **2017 SCC OnLine Kar 7222** and the High Court of Karnataka in Smita Arora v. Chief Executive Officer and Ors., **2016 SCC OnLine Kar 9467** to contend that an aggrieved person has to make a representation against the findings of the Enquiry Committee instead of invoking the writ jurisdiction of the court. If the competent authority is of the opinion is that the findings contained in the final report are not sustainable or that the enquiry was not conducted in accordance with law, then it has the power to set aside the findings. However, if the competent authority accepts the findings of the final report, the aggrieved person has the right to prefer an appeal. Thus, the ICC Report dated 28.08.2018 was required to be challenged before the appropriate authority and not by way of a writ petition where in the court cannot as appellate authority over the report of the ICC.

38. It is further stated that the ICC Report dated 28.08.2018 is exhaustive and detailed, thoroughly dealing with all the facts, evidences and issues. As such without having challenged the same, the Petitioner is deemed to have waived of his right to now raise any objection qua the said Report. Reliance in this regard has been placed on the judgment of this Court in Gaurav Jain v. Hindustan Latex Family Planning Promotion Trust, **2015 SCC OnLine Del 6489**.

39. Further, while placing reliance on the judgment of the Bombay High Court in Vidya Akhave v. Union of India, **2016 SCC OnLine Bom 9288**, learned Counsel for the Respondent No. 2 College has stated that that the

writ does not sit as an appellate court over the findings and conclusion of departmental authorities, which in present case, is the ICC. It is stated that the Petitioner has admittedly not filed an appeal as per the provisions of the POSH Act against the recommendations contained in the ICC Report dated 28.08.2018. However, now, the Petitioner under the garb of the present petition has challenged the order of Respondent No. 1 University approving the recommendations of Governing Body, along with contents of ICC Report dated 28.08.2018 as well as the procedure adapted by the ICC.

40. Learned Counsel for the Respondent No.1 University has supported the arguments and submissions of the Respondent No.2 College.

41. Heard the counsels for the parties at length and carefully perused the entire material on record.

42. The present case is one where students have made complaints against their own teacher. In our Indian social ethos, students generally refrain from taking such step, as we are taught to hold teachers in a very high regard. As noted in the foregoing paragraphs, this Court has perused the contents of the WhatsApp and Facebook messages as well as other material, which according to this Court are so profane, that even this Court was not inclined to reproduce them in this Judgment. Teachers shape the career of young aspiring students for a better future. The act of sexual harassment done by these very teachers, who are considered as our guides and mentors, against young female students who have just attained majority, has a deleterious effect on the psyche of such students. It is often seen that female students are reluctant to report of such misconduct and many students even drop out of colleges as they face ridicule and humiliation. The purpose of the POSH Act *inter alia* is to provide and assure female students of a safe and secure

environment where they can study freely. No doubt, authorities must be careful that the POSH Act is not abused and innocents are not punished but at the same time, the essence of the legislation cannot be sacrificed at the altar of procedural irregularities.

43. With these principles in mind but before delving into the merits of the contentions raised by the Petitioner, it is important to note that what is being challenged before this Court is the constitution, procedure as well as the findings of the ICC. By and large, the Petitioner has vehemently put forth that the ICC has not followed the principles of natural justice in conducting the inquiry against the Petitioner. Therefore, this Court deems it appropriate to recall the scope of judicial review that is permitted in matters of this nature.

44. It is no longer res integra that in exercise of powers of judicial review, the Court does not sit as an appellate authority over the factual findings recorded in the departmental proceedings, as long as those findings are reasonably supported by evidence and have been arrived after a conduct of thorough proceedings that cannot be faulted on account of procedural illegalities or irregularities that may have vitiated the process by which the decision was arrived at. The Apex Court in State of Rajasthan v. Heem Singh, **(2021) 12 SCC 569**, the Apex Court has summed up the law as under:-

> *"**37**. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within*

the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy — deference to the position of the disciplinary authority as a fact-finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognised it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience

of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."

45. Therefore, while it is impermissible under law to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute its own views for those of the enquiring body, a duty is nevertheless cast on the Court to examine whether there is some evidence to support the allegations of misconduct and to guard against perversity. Keeping in view the foregoing principles, this Court deems it appropriate to examine the contentions of the parties in terms of the following issues:-

I. Whether the constitution of the ICC was in accordance with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and the Rules framed thereunder?

II. Whether the procedure adopted by the ICC satisfies the principles of natural justice as mandated under Rule 7 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013?

III. Whether the findings of the ICC merit any interference by this Hon'ble Court?

IV. Whether the appeal provided under Section 18 of the Act read with Section 11 of the rules, 2013 is independent of the appeal provided under Regulation 8(5) of the UGC regulations, 2015?

V. Whether the Petitioner failed to resort to its appellate remedy as stipulated under the Act and the Rules framed thereunder?

VI. Whether the Petitioner was afforded sufficient opportunity to present its case before the Governing Body of R/2?

VII. Whether there is substantial compliance of the direction passed by the HC vide order dated 06.08.2018 passed in LPA No. 399 of 2018 by the Governing Body of R/2?

VIII. Whether the order passed by the Governing Body meets the requirement of a 'speaking order' as envisaged under the principles of natural justice?

46. For the analysis of the Issue No. (I), this Court deems it appropriate to refer to Section 4 of the POSH Act, which mandates the constitution of an internal complaints committee in terms of its sub-section (2) which reads as under:-

> *"(2) The Internal Committees shall consist of the following members to be nominated by the employer, namely: —*
> *a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:*
> *Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section (1):*
> *Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;*
>
> *(b) not less than two Members from amongst*

employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

(c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment: Provided that at least one-half of the total Members so nominated shall be women."

47. Furthermore, the UGC has notified the UGC (Prevention, Prohibition and Redressal of sexual harassment of women employees and students in higher educational institutions) Regulations, 2015 which apply to all the higher educational institutions in India. The composition of the ICC is stipulated under Regulation 4 which reads as under:-

"***4. Grievance Redressal mechanism**:- (1) Every executive authority shall an internal complaints committee (ICC) with an inbuilt mechanism for gender sensitization against harassment. The ICC shall have the following composition:*

(a) A presiding officer who shall be a women faculty member employed at a senior level (not below a professor in case of a university, and not below an Associate Professor or Reader in case of a college) at the education institution, nominated by the Executive Authority;

Provided that in case a senior level women employee is not available, the presiding officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section 2(o);

Provided further that in case the other officer or administrative units of the workplace do not have a senior level women employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other

department or organization;

(b) Two faculty member and two non-teaching employees, preferably committed to the cause of women or who have had experience in social work or have legal knowledge, nominated by the Executive Authority;

(c) Three students, if the matter involves students, who shall be enrolled at the undergraduate, master's and research scholar levels respectively, elected through transparent democratic procedure;

(d) One member from among non-government organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, nominated by the executive authority.

2. At least one-half of the total members of the ICC shall be women.

3. Person in senior administrative position in the HEI, such as Vice-Chancellor, Pro Vice-Chancellors, Rectors, Registrar, Deans, Head of Departments, etc., shall not be members of ICCs in order to ensure autonomy of their functioning.

4. The terms of office of the members of the ICC shall not be for a period of three year. HEIs may also employ a system whereby one-third of the members of the ICC may change every year.

5. The member appointed from amongst the non-governmental organizations or association shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the Executive authority as may be prescribed.

6. Where the presiding officer or any member of the Internal Committee:

(a) contravenes the provisions of section 16 of the Act; or

(b) has been convicted for an offence or an

inquiry into an offence under any law for the time being force is pending against him; or
(c) he has been found guilty in any disciplinary proceeding or a disciplinary proceeding is pending against him; or
(d) has so abused his position as to render his continuance in officer prejudicial to the public interest.
Such presiding officer or member, as the case may be, shall be removed from the committee and the vacancy so created or any casual vacancy shall be filed by fresh nomination in accordance with the provisions of this section."

48. It is the contention of the Petitioner that the constitution of the Enquiry Committee and the appointment of its Convenor was in violation of the UGC Regulations. It is also averred the Convenor, who was neither of a senior level or an associate professor, rather a junior to the Petitioner, had conflict of interest in respect of the Petitioner's case.

49. At this juncture, it is imperative to note that Rule 7(7) of the POSH Rules stipulate that for conducting the inquiry, a minimum of three members of the ICC, including the Presiding Officer or the Chairperson, as the case may be, shall be present. Therefore, it is amply clear that for the purposes of conducting the enquiry, it is not mandatory for the entire ICC to be present.

50. In the present case, the ICC consisted of 10 members. *Vide* Office Order dated 13.02.2018 bearing no. BC/ICC/2018/1482, the ICC constituted the Enquiry Committee with 5 of its members including the student representative, faculty representative and the external member to facilitate recording of evidence. It also stipulated that the Presiding Member would be the *ex-officio* member of the said Enquiry Committee.

51. Having perused the record, the Court finds that there was no procedural violation in ICC constituting Enquiry Committee as the same meets criteria stipulated under Rule 7(7) of the POSH Rules. Insofar as contention of the Petitioner with regard to the Convenor being junior to the Petitioner is concerned, this Court is of the opinion that since the Enquiry Committee was constituted for the limited purpose of recording evidence of the parties, there was no possibility of their being any conflict of interest with the Petitioner. This Court also takes note that Regulation 4(3) of the UGC Regulations specifically provides that persons in senior administrative positions of the Higher Educational Institutions such as the Vice-Chancellor, Pro Vice Chancellors, Registrar, Deans, Heads of Departments etc. shall be not members of ICC, in order to ensure autonomy in their functioning. Thus, it is clear that the UGC Regulations mandate that the members of the ICC were not required to be senior to the Petitioner herein. Even otherwise, a Convenor is appointed only for the smooth functioning of a committee and therefore, the fact that the Convenor so appointed was junior to the Petitioner, is irrelevant.

52. On the question of nomination of the two faculty members, this Court finds that while Regulation 4(1)(b) stipulates that the ICC shall *inter alia*, comprise of two faculty members, the fact that instead of two, three members were nominated does not by itself vitiate the composition of the ICC, more so, in the absence of anything on record to reveal any prejudice caused to the Petitioner by the said composition.

53. Similarly, the Petitioner's contention that there is nothing on record to show that the faculty members or the non-teaching members were involved in the cause of women or having social work experience or legal knowledge

bears no merit since the UGC Regulations itself stipulate this criterion as a preference and not mandatory. In fact, the intention of Regulation 4 appears to be that the ICC represents and is inclusive of all interest groups in a Higher Educational Institution. It is to be noted that even the SAKSHAM Report of the UGC recommends that the ICCs must involve representation from all sections, particularly junior levels, of the workplaces and that such representation must not be directly nominated by the employer. Rather, transparency and a principled basis for membership of the ICC should be arrived at after involving all sections of the Higher Educational Institution community. Thus, this Court finds no anomaly in the constitution of the ICC.

54. The Petitioner is also aggrieved by the nomination of three undergraduate students to the ICC This Court finds that while the three student representatives from were from undergraduate courses, they were elected to the ICC by way of student elections held on 09.02.2018 – a fact which is borne out of the Letter dated 06.06.2018 bearing No. BC/ICC/2018/438. Insofar as the appointment of a new external member is concerned, it is seen that the former member had resigned on 23.03.2018. Thereafter, *vide* email dated 26.03.2018, the officiating Principal of Respondent No.2 College requested one Karan Balraj Mehta to join the ICC as its external member, who accepted the same *vide* email dated 26.03.2018. Accordingly, an Office Order dated 27.03.2018 bearing Ref. No. BC/ICC/2018/13 was issued by the Presiding Officer of the ICC notifying that Karan Balraj Mehta will, henceforth, be serving as an external member. The Court has perused the records mentioned above and finds no irregularity with the appointment of the external member.

55. Having observed as above, this Court finds no illegality whatsoever in the constitution of the ICC and therefore, the contention of the Petitioner in this regard stands rejected.

56. Before going into the merits of the Issue No. (II), this Court deems it appropriate to recall the observations of Diplock, J. in Regina v. Deputy Industrial Injuries Commissioner, Ex parte Moore, **[1965] 1 Q.B. 456,** which reads as under:-

> *"These technical rules of evidence, however, form no part of the rules of natural justice. The requirement that a person exercising quasi-judicial functions must base his decision on evidence means no more than it must be based upon material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future event the occurrence of which would be relevant. It means that he must not spin a coin or consult an astrologer, but that he must take into account any material which, as a matter of reason, has some probative value. If it is capable of having any probative value, the weight to be attached to it is a matter for the person to whom Parliament has entrusted the responsibility of deciding the issue. The supervisory jurisdiction of the High Court does not entitle it to usurp this responsibility and to substitute its own view for his."*

57. From the above observations, what becomes clear is that it is open to the Adjudicating Authority, in this case, the ICC, to accept, rely and evaluate any evidence having probative value and come to its own conclusion(s), keeping in mind to adopt a judicial approach and maintain objectivity, ensure exclusion of extraneous material and observance of the

rules of natural justice and fair play. Strict rules of evidence do apply in domestic enquiries. Further, there is no doubt that the ICC is the master of appreciating evidence in its own way without necessarily applying the technical rules of evidence. In short, the essence of the doctrine is that fair opportunity should be afforded to the delinquent at the enquiry and he should not be hit below the belt. Moreover, the jurisdiction of the High Court in such cases is, indeed, limited. The High Court should not exercise appellate powers and substitute its findings for the findings recorded by the disciplinary authority.

58. In view of the aforesaid principles, this Court finds no merit in the submission of the Petitioner that the issue of limitation was pre-decided by the ICC without hearing the Petitioner, which renders reasons contained in the Minutes of Meeting dated 03.04.2018 null and void. While it is true that the ICC had considered the issue of limitation during its meeting on 03.04.2018 in the absence of the Petitioner, this Court finds no irregularity, much less, any illegality in the reasons of the ICC for condoning the delay in filing of the complaints. It is evident from the record that the ICC, at the relevant time, had considered the issue of limitation only for the purposes of taking cognizance of the complaints filed by the Complainants. The same did not bar or in any way prejudice the Petitioner from raising the said issue in his objections which he, as a matter of fact, had repeatedly raised before the ICC, the Enquiry Committee as well as this Court.

59. In the ICC Report dated 28.08.2018, the ICC has considered the issue and observed as under:-

BACKGROUND FACTS
21st February, 2017- Exchange of messages

between Respondent and Complainant 4
22nd February, 2017-Exchange of messages between Respondent and Complainant 3
6th April, 2017-Teleconversation between Respondent and Complainant 2
7th April, 2017- Confrontation between Respondent and Complainants and their friends
17th December, 2017- Exchange of messages between Respondent and Complainant
15th February, 2018- Video of Confrontation between Respondent and Complainants goes viral
12th February, 2018- Complaints filed by Complainant 2 and 4
15th February, 2018-Complaint filed by Complainant 3
24th February, 2018-Complaint filed by Complainant 1

1. The three Complainants identified the public release of the video as one of the peak points in their experience of continued harassment, in their initial complaints and even in their examination in chief. In their efforts to stop the sexual harassment in February, 2017, two of the complainants had taken a few steps, such as ignoring the messages of A the Respondent, blocking the Respondent on their phones and finally in April, 2017 when they jointly confronted the Respondent. While the girls had derived strength from their unity, and took the step of speaking to the Respondent in April, Individually each of the girls has referred to the unease and tension that they were undergoing at that point and continue to face.

2. Indeed, it was this persistent unease which led them to share the matter with their senior sometime in March 2017. The fact that the complainants were part of the same institution as the Respondent, have to face him every day, could have been in a situation where the Respondent would be teaching them again one day, weighed in on their minds. The fear of retaliation was reasonable, because the complainants felt that if rules did not prevent the Respondent from harassing them in the first place, what was there to stop him from retaliation. None of the complainants was aware of any redressal mechanism such as the Internal Complaints Committee and therefore did not know who to approach and report.

3. The complainants come from rural backgrounds. Complainant 4 belongs to SC category, Complainant 2 belongs to OBC category and Complainant No.3 was a minor at the time of the first Incident and therefore because of their family backgrounds and social conditioning, they were prevented from coming forward to complaint earlier, against a professor. Complainant No. 4 also stated that she was terrified that her family would get to know of the incident, which would result in the almost certain stopping of her education (and that of her younger sister's)!

4. The release of the video in February 2018 seemed to the complainants like the pinnacle of this continuous harassment. To them the publication of the video was not a separate act, it was a direct consequence of and emanated from the first act of sexual harassment that took place in February, April 2017, and impacted the 3 complainants individually. The release of the video resulted in the public identification of the complainants as women who had been harassed by the Respondent

and which resulted in their being stigmatized. This itself was a source of harassment. More specifically, it resulted in the outing of their identity to friends and colleagues of the Respondent. The Committee also considered the fact that the complainants had mentioned that they had received threats and had been pressurized by students and some teachers to keep quiet on 2nd February, 2018, which upon inquiry has been found to be true. Names of these teachers are part of the ICC record. They have been examined by the ICC, and it has been established that their conduct led to the creation of a hostile working environment. Therefore this committee holds that the last incident of sexual harassment would continue till the video being released in February 2018 and the hostile work environment created as late as February 2018 and thereafter continuing, hence the complaints were not filed beyond the period of limitation.

5. The complainants also mention that they had considered approaching College authorities in April 2017 Itself, and had said so even during their confrontation with the Respondent. However, the Respondent had pleaded with them that they should not. The complainants therefore, did not do so at the time. The statements of the complainants and their witnesses reveal that the Respondent manipulated their sentiments. The Respondent has intensely questioned the complainants on this issue and their grounds remain unshakeable as can be seen in their cross examinations also. For example, the Respondent has posed the following question to Complainant 3

"Ques. 14 Did you tell any teacher or the Principal about the WhatsApp talk or the Incident of 7th April, 2017?

Ans. We wanted to go to the Principal on 7th April, 2017 but Amit Kumar pleaded with folded hands and touched our feet (haath pair Jode), and gave the reference of his farsily, Ill mother and unmarried sisters, and thereby compelled us to not go."

In Question no. 29, the Respondent again tried to raise this issue by asking "Ques. 29 Was there any talk between you and Shri Amit Kumar after the incident of 7th April? If you had a problem, then why did you not come and say anything in College when the incident happened?

Ans. When this incident happened, we had come to College and shared it with our friends and had made them read the chats. Everyone found them objectionable. We had problem with his remarks that is why we tried to speak to him on 7th April. We wanted to go to the Principal, but Amit Kumar lied and emotionally blackmailed us and prevented us from complaining."

This also corroborates with what is seen in the Video.

It can be surmised therefore that the Respondent prevented the three complainants from filing the complaint at the time of the first incidents. Even if the Respondent did not physically prevent the three complainants from complaining, he appealed to the emotions of the young girls, and ensured that they did not complain. The claim that the date of the initial incidents is beyond the period of limitation is disingenuous, when it is considered that the Respondent himself requested the three complainants to not complain, as can be seen from the video and harassment has continued since then.

6. The Committee also considered that after the Respondent requested the three complainants with

folded hands to not report his behaviour and thereafter he gave internal assessment marks to Complainant No. 3 and 4 and the rest of the entire class, without conducting their presentation in order to silence them from coming forward. It is a matter of record that by end of April 2017 the classes got dispersed and students went on preparatory leave. Thereafter the next academic year started by July 2017, by which time roughly 5 months had passed since the first incident. Considering the said predicament of the girls and their situation, Various reasons as elaborated hereinabove, it is justified that their complaints not be considered to be beyond the period of limitation.

7. Thus it has come on record that Complainant was informed of her rights of filing the complaint before the ICC only after 06.02.2018, when the ICC notice was put in college and thereafter Complainant No. 2, 3 and 4 immediately filed their complaint. Due to the reason brought on record, the ICC considers the delay in filing of the complaints is not beyond the period of limitation as stipulated in Section 9(1) of the Act and the complainants have adequately explained the reasons for the said delay."

60. This Court finds it difficult to find infirmity in the above extracted reasoning of the ICC to condone the delay in filing of the complaints. The POSH Act and UGC Regulations were enacted to provide protection against sexual harassment of women at workplace and Higher Educational Institutions and for the effective prevention and redressal complaints of sexual harassment. There would have been some substance in the arguments of the Petitioner, had it been a case of a single incident which was reported beyond the period of limitation. However, in the present case, it is clear that these incidents did not stop even after the confrontation of the Petitioner by

the students of Respondent No. 2 College and therefore, given the objective of the Act, these incidents cannot be seen in isolation. It is to be borne in mind that the Complainants were young students and it is only when the confrontational video became public that they found adequate support from their colleagues and were able to institute these complaints. This Court has also noted that the Petitioner has not brought forth a single instance to demonstrate that the delay in filing of the complaints has resulted in affecting his ability to defend himself in any manner.

61. Deprecating the rising trend of invalidation of enquiry proceedings into sexual misconduct on account of hyper technical interpretations of the applicable service rules, the Apex Court in Union of India v. Mudrika Singh, **(2022) 16 SCC 456,** has held that the existence of transformative legislation may not come to the aid of persons aggrieved of sexual harassment if the appellate mechanisms turn the process itself into a punishment. This Court is aware of the importance of upholding the spirit of the right to a redressal mechanism against sexual harassment, which is vested in all persons as a part of their right to life and right to dignity under Article 21 of the Constitution of India and it is important to be mindful of the power dynamics that are mired in sexual harassment at the workplace. There are several considerations and deterrents that a subordinate person aggrieved of sexual harassment has to face which they consider reporting sexual misconduct against their superior.

62. Thus, for the reasons stated above as well as the law laid down by the Apex Court, the submission of the Petitioner stands rejected as being devoid of merits.

63. This Court also finds no substance in the argument of the Petitioner that there is non-compliance of the direction of this Court which was passed *vide* Order dated 21.05.2018 in W.P.(C) No. 5486 of 2018. This Court has perused the said order and it, nowhere, finds that ICC was directed to re-record the evidence of the Petitioner, which was already recorded by the Enquiry Committee. The direction was prospective in nature. Even otherwise, as held in the preceding paragraphs, this Court finds no irregularity in the constitution of the Enquiry Committee. In fact, this Court finds that as directed, the ICC had duly considered the request of the Petitioner to engage a DA and the same had been permitted despite the objections of the Complainants *vide* communication dated 26.05.2018.

64. The Petitioner has also objected to not being permitted to cross examine the complainants and their witnesses face-to-face. Material on record reveals that the Petitioner was informed by the Enquiry Committee *vide* communication dated 05.04.2018, that owing to the sensitive nature of the case, if he wanted the Enquiry Committee to examine any witness on his behalf, a list of the same may be provided. Furthermore, the Petitioner was informed that the depositions of the complainants will be provided to him and if he wishes to cross examine the complainants, he will have an opportunity to submit a list of questions to the Enquiry Committee, which will cross examine the complainants on his behalf.

65. This Court finds that for the purposes of the inquiry, the ICC has relied upon the SAKSHAM Guidelines of the UGC. A Task Force had been constituted by the UGC in 2013 to review the arrangements, identify loopholes and inadequacies, to eventually formulate remedial measures to

address the concerns of all girls and women, as well as the youth who study and live in the country's numerous and diverse university campuses. The Task Force highlighted the need for changes in procedures to address serious issues like sexual harassment and create a more inclusive environment. The Report also emphasizes the importance of Higher Education Institutions reflecting on and addressing discrimination and harassment, especially sexual harassment, on campuses. As part of its recommendations, the Task Force suggested six principles which must be adopted as directive principles for the institution and functioning of sexual harassment policies. Of these, the Task Force found confidentiality to be one of the key guiding principles. It was of the opinion that a major impediment to the lodging of complaints of sexual harassment is the apprehension that the very act of a complaint will lead to adverse publicity for the complainant. Confidentiality with respect to the details of the complaint, the complainant's identity and the person(s) who she has charged must therefore be mandatorily guaranteed. But by itself, this is not enough, as confidentiality must extend both to the procedures employed in enquiries and the witnesses involved in them for the guarantee to be truly meaningful. Since sexual harassment is an exercise of power that is traumatic for the complainant(s), the enquiry process should not be one that either replicates such inequalities or causes further trauma to the complainant(s). The ICC proceedings should therefore, ensure that at no time during the receiving of complaints and recording procedure, should the respondent(s) and the complainant(s) be placed face-to-face, or be put in a situation where they may be face-to-face (for instance, they shall not be called before the ICC at the same time or be made to wait in the same place), in order to protect the complainant from facing further trauma and/or give

rise to any safety issues. The identity of witnesses should not be revealed to the respondent or any person acting on his behalf. Complainants and other witnesses should not be examined in the presence of the respondent.

66. While addressing a similar contention of the delinquent officer not being permitted to cross examine the complainant, the Apex Court in judgment of Union of India v. Dilip Paul, **(2023) SCC Online SC 423,** recalled its earlier judgment in Sakshi v. Union of India, **(2004) 5 SCC 518** and held as under:-

> *"73. This Court in Sakshi v. Union of India, (2004) 5 SCC 518 had observed that quite often in sensitive matters particularly those involving crime against women the victims either due to fear or embarrassment were not able to openly disclose the entire incident. Often the victims during their testimony were put embarrassing questions by accused with the sole purpose of confusing or suppressing out of shame. To remedy this, directions were issued by this Court that for cross-examination of victims, the question would be given to the presiding officer who in turn would ask them in clear language which is not embarrassing. The relevant observations are reproduced below:—*
>
> > *"32. The mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witnesses or can put them in a state of shock. In such a situation he or she may not be able to give full details of the incident which may result in miscarriage of justice. Therefore, a screen or some such arrangement can be made where the victim or witnesses do not have to undergo the trauma of seeing the body or the face of the accused. Often the questions put in cross-examination are purposely designed to embarrass or confuse the victims of rape and child abuse.*

> *The object is that out of the feeling of shame or embarrassment, the victim may not speak out or give details of certain acts committed by the accused. It will, therefore, be better if the questions to be put by the accused in cross-examination are given in writing to the presiding officer of the court, who may put the same to the victim or witnesses in a language which is not embarrassing. There can hardly be any objection to the other suggestion given by the petitioner that whenever a child or victim of rape is required to give testimony, sufficient breaks should be given as and when required. The provisions of sub-section (2) of Section 327 CrPC should also apply in inquiry or trial of offences under Sections 354 and 377 IPC."*

67. It was further held by the Apex Court that the complaints committee, being an inquiry authority and in some sense equivalent to a presiding officer of the court as inferred from *Sakshi* (supra) judgment, must be allowed to put questions on its own if a proper, fair and thorough inquiry is to take place.

68. Applying the aforesaid principles and judgments to the facts of the present case, this Court finds it easily discernible that the procedure adopted by the ICC was neither unreasonable nor arbitrary, as the same finds its roots in the procedure curated over time though guidelines, regulations and laws laid down through judicial pronouncements. This Court also finds that the ICC as well as the Enquiry Committee throughout the course of the inquiry proceedings ensured that the Petitioner is in receipt of all the relevant documents for the purposes of preparing his defence. In fact, ICC Report dated 28.08.20218 reveals that initially, it had been decided that the

Petitioner will be permitted to be present at the time of examination-in-chief of his two witnesses. However, it is also recorded that on 03.05.2018, it was the Witness No. 2 of the Petitioner who had requested the ICC to record her statement in the absence of the Petitioner. The ICC also reported that even during the examination of Petitioner's Witness No. 1, the Petitioner tried to influence the statement of the witness by repeatedly prompting statements into her ear and making her say things which perhaps the witness herself did not know.

69. As a result, this Court does not find any merit in the contention of the Petitioner that the procedure adopted by the ICC violated the principles of natural justice.

70. On the Issue No. (III), this Court recalls the well-settled law that a Court is not expected to sit in appeal over the findings of an enquiry committee. However, to satisfy the conscience of this Court in case there is some evidence to support the misconduct of the ICC or the Enquiry Committee, this Court has perused the ICC Report dated 28.08.2018 in detail and at the very outset, finds on reason to interfere with the findings contained therein. As the ICC Report dated 28.08.2018 indicates, all the charges framed against the Petitioner stood corroborated by oral as well as the documentary evidence. The testimony of each of the complainants remained unimpeached and resultantly, this Court finds no reason to question the veracity of the ICC's analysis of the evidence and statements.

71. This Court deems it appropriate to analyse Issues No. (IV) & (V) conjunctively. It is argued by the learned Counsel for the Respondent No.2 College that the Petitioner has not availed the appellate remedy available to

him under the applicable legal provisions. As per the procedure prescribed under Regulation 8(5) of the UGC Regulations, an appeal against the findings or recommendations of the ICC may be filed by either party before the executive authority of the Higher Educational Institution within a period of 30 days from the date of such findings or recommendations. It is contended that the Petitioner herein has also failed to follow the procedure prescribed by the POSH Act which stipulates that an appeal under Section 18 can be filed against the recommendations made by the ICC before the Court or the Tribunal within 90 days from such recommendations, in accordance with service rules and in absence of service rules, before the Appellate Authority under Section 2 of the Industrial employment (Standing Orders) Act, 1946. It is, thus, argued that the Petitioner now cannot challenge the findings of the Enquiry Committee in writ proceedings before this Court as stipulated under the POSH Act.

72. Material on record reveals that upon the submission of the ICC Report dated 28.08.2018, a copy of the same was also forwarded to the Petitioner. The Executive Authority/Disciplinary Authority which is the Governing Body of Respondent No.2 College sought representation from the Petitioner on the recommendation by the ICC, subsequent to which the Petitioner filed a representation dated 26.09.2018. Thereafter, *vide* letter dated 29.09.2018, the Petitioner was asked to appear on 06.10.2018 for a personal hearing. On 06.10.2018, oral statements made by the Petitioner were duly recorded and after considering the ICC Report dated 28.08.2018 as well as the representation of the Petitioner, the Governing Body decided to endorse the ICC Report dated 28.08.2018. In terms of Regulation 8(6),

the Governing Body *vide* Letter dated 10.10.2018 issued a show cause notice to the Petitioner on the punishment of compulsory retirement proposed by the ICC. The Petitioner, *vide* his representation 19.10.2018, wrote a letter to the executive body of the Respondent No. 2 College to not to implement the recommendation of the Governing Body till the disposal of his appeal before the Vice Chancellor. It was only after receiving the representation of the Petitioner as well as affording him the opportunity of a personal hearing, that the Governing Body *vide* its resolution dated 29.10.2018 accepted the recommendations of the ICC and thus, resolved to compulsorily retire the Petitioner with immediate effect.

73. In view of the above, this Court finds merit in the argument of the learned Counsel of Respondent No.2 College, that the Petitioner failed to file an appeal before the appropriate authority. The Petitioner either ought to have filed an appeal under Section 18 of the POSH Act read with Rule 11 of the Rules, 2013 or before the executive authority of the Higher Educational Institution as per the procedure prescribed by Regulation 8(5) of the UGC Regulations. The Petitioner, instead chose to file a comprehensive representation before the Vice Chancellor only on 11.10.2018, even though the Petitioner was well aware that under Regulation 8(5) of the Regulation, 2015, an appeal lies to the executive authority of the Higher Educational Institution. It is worth mentioning that this Court could have seen this filing of an appeal before the Vice Chancellor as a bona fide mistake, had that plea been made by the Petitioner. However, a perusal of the representation dated 19.10.2018 shows that the Petitioner was, in fact, well aware of his statutory rights, which indicates that the Petitioner deliberately chose to ignore his

legal remedy of appeal as delaying tactic, in order to drag the proceedings before the Governing Body. It is clear from the facts of the present petition, that the Petitioner is not ignorant of provisions of the POSH Act, UGC Regulations and the legal remedies available to him. This is especially evident from the fact that the Petitioner has filed two writ petitions before this Court and an appeal before the Division Bench of this Court. Therefore, this Court finds it difficult to digest that the Petitioner was a novice in the matter of his legal rights and remedies.

74. This Court, therefore, finds that the Petitioner failed to file an appeal in terms of the relevant provisions under law.

75. This Court shall now deal with Issue No. (VI) enumerated above. This Court has already observed in the preceding paragraphs that the Petitioner failed to file an appropriate appeal before the Governing Body. Further, observation regarding the Governing Body having granted a personal hearing to the Petitioner has already been discussed. Observation regarding the Governing Body calling upon the Petitioner to show cause as to why the penalty as recommended in the ICC Report dated 28.08.2018 should not be imposed on him also has been discussed in the foregoing paragraphs. As such, it is abundantly clear that the Governing Body had acted in accordance with Regulation 8(4) of the UGC Regulations, under which it is required to act within thirty days from the receipt of the order. Therefore, this Court sees no difficulty in holding that the Petitioner was granted more than sufficient opportunities to present his case before the Governing Body of the Respondent No. 2 College.

76. Coming to Issue No. (VII) formulated above, this Court takes note the contention of the learned Senior Counsel for the Petitioner, that the decision taken by the Governing Body on 29.10.2018 to compulsorily retire the Petitioner, violates the directions contained in the order dated 06.08.2018 passed by a Division Bench of this Court in LPA No. 399/2018. For convenience, the said Order dated 06.08.2018 is reproduced hereinbelow in its entirety:-

> "*LPA 399/2018 and CM Nos. 29148/2018 (stay) and 30239/2018 (stay)*
>
> *1. The appellant is aggrieved by the order dated 12.07.2018 passed by a learned Single Judge of this Court.*
>
> *2. The necessary facts to be noticed for disposal of this appeal are that four complaints of sexual harassment were made against the appellant. Three complaints were made between the period February 2017 and April 2017 and another complaint was made in the month of February 2018. It is the stand of the counsel for the appellant that the first three complaints have been filed beyond the period of limitation and the fourth complaint is also per se bad in law as there is no allegation of sexual harassment at the work place. Reliance is placed on Section 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as „the Act"). We may note that the learned Single Judge has rejected the prayer made in the writ petition for the reasons as mentioned in paragraphs 7, 8, 9 and 10 of the order, which we reproduce below:-*
>
> > *"7. The plain reading of the order dated 21.05.2018, whereby the petitioner's writ petition – W.P. (C) 5486/2018 captioned "Amit Kumar v. Bharati College New Delhi*

and Ors." – was disposed of clearly indicates that the petitioner had limited his grievance to only two issues. First, the petitioner had urged that the inquiry could not be conducted by a subcommittee and was necessarily required to be heard by the ICC as constituted. Second, he had submitted that the ICC had not taken any steps for exploring the possibility of conciliation in terms of Section 10 of the Act.

8. It is thus apparent that the petitioner had given up his objections for challenging the jurisdiction of ICC to entertain the complaints on the ground that they were barred by limitation. On the contrary, the petitioner had insisted that the inquiry be conducted by the ICC en banc and not by a subcommittee. Mr Nandrajog who was appearing for respondent no.1 in the said proceedings had suggested that as the complainants' evidence had been concluded, the evidence of the petitioner could be recorded by the ICC. This suggestion found favour with the Court. Further, the learned counsel for the petitioner also concurred with the suggestion that the petitioner's evidence be recorded by the ICC and not by the sub-committee. He also did not press his objection that since the evidence of the complainants was recorded by a subcommittee, it could not be examined by the ICC. The relevant extract of the said order is set out below:-

> *"5. There are two principal grievances that the petitioner has raised: First, that the Internal Complaint Committee (in short 'ICC') has delegated its role to the*

Sub Committee, which is contrary to the provisions of the Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereafter referred to as 'Act'). Second, that no attempt was made to take recourse to Section 10 of the Act which provides for conciliation.

6. Mr. Nandrajog, learned senior counsel, who appears for respondent no.l and 2 says that the ICC had entrusted the task of recording evidence to the SubCommittee comprising of Members of the ICC and that this was done in line with the recommendations contained in the "Saksham Report" which has, broadly been adopted by the UGC, vide its impugned notification dated 07.05.2016.

6.1 Furthermore, learned senior counsel says that since the complainant's evidence has been concluded grievance, if any, of the petitioner with regard to a delegation by ICC of the aforesaid task to the Subcommittee, can be redressed by having his evidence being recorded by the ICC.

6.2 This suggestion is made by Mr. Nandrajog, learned senior counsel, is constructive as this would prevent revictimisation of the complainants.

6.3 Insofar as the grievance raised by the petitioner qua the failure on the part of respondents to trigger section 10 of the Act is concerned, Mr. Nandrajog,

says that this aspect was put to the complainants, who, in turn had declined to take recourse to conciliation.

6.4 However, Mr. Nandrajog, says that this aspect will be put to the complainants, once again, and if, they are so inclined parties the conciliation process could be triggered in accordance with provisions of the Act.

7. Mr. Verma, who, appears for the petitioner says that he is agreeable to the suggestion made by Mr. Nandrajog, Insofar as first aspect is concerned, which is, that the, petitioner's evidence would be recorded by the ICC and not by the SubCommittee. In words Mr. Verma says the petitioner would not press his objection that since the evidence of the complainant was recorded by a Sub-committee it cannot be examined by the ICC.

7.1 As regards the other aspect of the matter is concerned, Mr. Verma says that the petitioner would be satisfied if it is put to the complainants even at this stage that they had an option to take recourse to conciliation. Mr. Verma's only other request is that the decision of the complainants in this regard should be communicated to the petitioner.

7.2 Mr. Nandrajog states the decision of the complainants would be communicated to the Petitioner.

8. In addition to above, Mr. Verma says that the petitioner would like to engage the

services of a defence assistant, who is not instructed in law.

9. Mr. Nandrajog, says that if an application in that behalf is made to the ICC, this aspect of the matter will be considered and in all probability. Permission sought would be granted, subject, though, to objections, if any, of the complaints.

10. Having heard the learned counsel for the parties and perused the record, the writ petition is disposed of with the following directions:-

> *(i) The evidence of the petitioner will be recorded by the ICC en banc.*
>
> *(ii)The ICC will put to the complainants as to whether or not they want to take recourse to Section 10 of the Act.*
>
> *(iii)Upon the Petitioner making an application for engaging a Defence Assistant, who, is not instructed in law, the ICC will consider the same favorable, subject to objections, if any, of the complainants. In case complainants have any objection, ICC will pass a speaking order.*
>
> *(iii) The ICC will afford similar opportunity to the complainants as well."*

3. As far as the second grievance raised by the learned counsel for the appellant is concerned, that the fourth complaint cannot be construed as sexual harassment at a "work place", the learned Single Judge has clarified in para 11 of the impugned order that this objection would be

considered by the ICC while submitting its final report.

4. We have heard Mr Verma, learned counsel for the appellant and carefully examined the order dated 12.07.2018 passed by the learned Single Judge. The learned Single Judge has while taking note of the sequence of events noted that when W.P.(C) 5486/2018 was disposed of only two issues were raised. Objection regarding the complaints being barred by limitation was given up. We find no infirmity in the reasons of the learned Single Judge, however, we clarify that it would be open for the appellant to raise the plea of limitation before the inquiry officer. Ms Soni, learned counsel for the respondent, informs us that the inquiry stands concluded on 26.07.2018. We make it clear that the ground of limitation, if raised by the appellant herein before the disciplinary authority or the appellate authority, will be considered before passing any final order. It is also clarified that it would be open for the appellant to raise all legal objections, if entitled in accordance with law before the disciplinary authority or the appellate authority.

5. With these directions, the appeal along with all pending applications stands disposed of."

77. This Court shall now proceed to decide the issue as to whether the fact that the Governing Body has failed to comply with the directions of the Division Bench of this Court while considering the issue of limitation or not and whether the non-compliance of the said issue by the Governing Body would vitiate its decision of 29.10.2018.

78. The Apex Court through a number of judgments has held that in cases where any procedural impropriety or violation of the rule of *audi alteram partem* is alleged, the same is required to be tested on the anvil of the principle of "test of prejudice". In State Bank of Patiala v. S.K. Sharma, **(1996) 3 SCC 364,** the Apex Court has held that the test is to ascertain whether the violation of such procedure resulted in a prejudice being caused or in any manner, denied the defendant the opportunity of a fair hearing. The relevant observations of the Apex Court are reproduced below:-

> "*11. ... Does it mean that any and every violation of the regulations renders the enquiry and the punishment void or whether the principle underlying Section 99 CPC and Section 465 CrPC is applicable in the case of disciplinary proceedings as well. In our opinion, the test in such cases should be one of prejudice, as would be later explained in this judgment. But this statement is subject to a rider. The regulations may contain certain substantive provisions, e.g., who is the competent authority to impose a particular punishment on a particular employee/officer. Such provisions must be strictly complied with. But there may be any number of procedural provisions which stand on a different footing. We must hasten to add that even among procedural provisions, there may be some provisions which are of a fundamental nature in the case of which the theory of substantial compliance may not be applicable. For example, take a case where a rule expressly provides that the delinquent officer/employee shall be given an opportunity to produce evidence/material in support of his case after the close of evidence of the other side. If no such opportunity is given at all in spite of a request therefor, it will be difficult to say that the enquiry is not vitiated. But in respect of many procedural provisions, it would be possible to apply the theory of substantial*

compliance or the test of prejudice, as the case may be. ***The position can be stated in the following words : (1) Regulations which are of a substantive nature have to be complied with and in case of such provisions, the theory of substantial compliance would not be available. (2) Even among procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose case, the theory of substantial compliance may not be available. (3) In respect of procedural provisions other than of a fundamental nature, the theory of substantial compliance would be available. In such cases, complaint/objection on this score have to be judged on the touchstone of prejudice, as explained later in this judgment. In other words, the test is : all things taken together whether the delinquent officer/employee had or did not have a fair hearing. We may clarify that which provision falls in which of the aforesaid categories is a matter to be decided in each case having regard to the nature and character of the relevant provision.***

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28. ... In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries : a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such and violation of a facet of the said principle. In other words, ***distinction is between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate — take a case where the person is dismissed from service without hearing him altogether*** *(as in Ridge v. Baldwin [[1964] A.C. 40 : [1963] 2 All ER 66 : [1963] 2 WLR 935****]). It would be a case falling under the first category and the order of dismissal***

would be invalid — or void, if one chooses to use that expression *(Calvin v. Carr [[1980] A.C. 574 : [1979] 2 All ER 440 : [1979] 2 WLR 755, PC]).* ***But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report*** *(Managing Director, ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704])* ***or without affording him a due opportunity of cross-examining a witness*** *(K.L. Tripathi [(1984) 1 SCC 43 : 1984 SCC (L&S) 62])* ***it would be a case falling in the latter category — violation of a facet of the said rule of natural justice — in which case, the validity of the order has to be tested on the touchstone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct — in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry****. In our opinion, the approach and test adopted in B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid.*

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33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this : procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under — "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of

prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived

by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704]. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice — or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action — the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

> *(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.*
>
> *(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision."*
>
> [Emphasis Supplied]

79. In the case of State of U.P. v. Harendra Arora, **(2001) 6 SCC 392**, the Apex Court further expanded the applicability of the "Test of Prejudice" to even procedural provisions which are fundamental in nature, with the following relevant observations being reproduced below:—

> *"13. The matter may be examined from another viewpoint. There may be cases where there are infractions of statutory provisions, rules and regulations. Can it be said that every such infraction would make the consequent action void and/or invalid? The statute may contain certain substantive provisions, e.g., who is the competent authority to impose a particular punishment on a particular employee. Such provision must be strictly complied with as in these cases the theory of substantial compliance may not be available. For example, where a rule specifically provides that the delinquent officer shall be given an opportunity to produce evidence in support of his case after the close of the evidence of the other side and if no such opportunity is given, it would not be possible*

> *to say that the enquiry was not vitiated. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. Even amongst procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose case the theory of substantial compliance may not be available, but the question of prejudice may be material. In respect of procedural provisions other than of a fundamental nature, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touchstone of prejudice. The test would be, whether the delinquent officer had or did not have a fair hearing. ...*"

80. Another judgment of the Apex Court in Aureliano Fernandes Vs. State of Goa, **(2024) 1 SCC 632** is essential for being referred to, with it bearing certain factual similarities to the case before this Court. In this case, the Apex Court was inclined to reject the delinquent's contention of prejudice on the ground that all materials proposed to be used against him were duly furnished and that he had submitted his reply to the same as well. The relevant observations are reproduced below:—

> *"64.... but it is not in dispute that all the complaints received from time to time and the depositions of the complainants were disclosed to the appellant. He was, therefore, well aware of the nature of allegations levelled against him. Not only was the material proposed to be used against him during the inquiry furnished to him, he was also called upon to explain the said material by submitting his reply and furnishing a list of witnesses, which he did. Furthermore, on perusing the Report submitted by the Committee, it transpires that depositions of some of the complainants were recorded audio-visually by the*

> *Committee, wherever consent was given and the appellant was duly afforded an opportunity to cross-examine the said witnesses including the complainants. The charges levelled by all the complainants were of sexual harassment by the appellant with a narration of specific instances. Therefore, in the given facts and circumstances, non-framing of the Articles of Charge by the Committee cannot be treated as fatal. Nor can the appellant be heard to state that he was completely in the dark as to the nature of the allegations levelled against him and was not in a position to respond appropriately.*"

81. Insofar as the manner in which the court ought to exercise its powers of judicial review in matters of disciplinary proceedings, particularly those pertaining to complaints of sexual harassment, the Apex Court in Apparel Export Promotion Council v. A.K. Chopra, **(1999) 1 SCC 759**, observed that the courts should not get swayed by insignificant discrepancies or hyper-technicalities. The allegations of prejudice must be appreciated in the background of the entire case, and the courts must be very cautious before any sympathy or leniency is shown towards the delinquent.

82. Applying the test of prejudice and the other principles laid down by the Apex Court to the facts of the present case, this Court has already observed that the Petitioner was granted a fair hearing before the Governing Body and there was no error or violation of the principle of the *audi alteram partem*, which is the overarching and primary rule among the principles of natural justice. The Governing Body permitted the Petitioner to file a representation pleading his case, granted him a personal hearing, recorded the oral statement of the Petitioner and in pursuance of the show cause notice, again sought a reply from the Petitioner. Therefore, the Governing

Body/Disciplinary Authority cannot be faulted for a violation of any procedure which was fundamental in nature, having given numerous opportunities at each stage.

83. Therefore, this Court is of the opinion that the contention of Petitioner that Governing Body has erred in not following the judgment and order dated 06.08.2019 passed by the Division Bench of this Court, does not merit consideration, as the failure to do so is not sufficient to vitiate the its final decision dated 29.10.2018 to compulsorily retire the Petitioner. As observed above, the ICC in its Report dated 28.08.2018 had already rendered a comprehensive finding on the issue of limitation which this Court has already held to be reasonable and in line with the objects and purposes of the POSH Act and UGC Regulations.

84. This Court shall now deal with the Issue No. (VIII) enumerated above. The procedure to be adopted by the Executive Authority/Disciplinary Authority is stipulated under Regulation 8(6) of UGC Regulations, and the same reads as under:-

> *"8(6):- If the Executive Authority of the HEI decides not to act as per the recommendations of the ICC, then it shall record written reasons for the same to be conveyed to ICC and both the parties to the proceedings. If on the other hand it is decided to act as per the recommendations of the ICC, then a show cause notice, answerable within ten days, shall be served on the party against whom action is decided to be taken. The Executive Authority of the HEI shall proceed only after considering the reply or hearing the aggrieved person."*

85. It is apparent that the above-cited Regulation stipulates the provision of "written reasons," only in the event of the Executive Authority opposing the recommendations of the ICC and not when the Executive Authority follows or agrees with the recommendations of the ICC. In the latter event, the Executive Authority is required to then only issue a show cause notice, answerable within ten days, to the party against whom the action is decided to be taken. Thereafter, the Executive Authority of the Higher Educational Institution is required to proceed only after considering the reply or hearing the defendant. This shows that insofar as the UGC Regulations are concerned, no obligation is imposed on the Executive Authority to provide its written reasons, when agreeing with the recommendation(s) of the ICC, presumably, since the ICC is expected to render a comprehensive report on its findings and recommendation. In fact, even Rule 7(4) of the POSH Rules provides only for the ICC to conduct the inquiry in accordance with the principles of natural justice.

86. Therefore, the question that now arises before this Court is whether in the absence of any statutory provision requiring communication or specification of reasons, the Executive Authority was still duty bound to pass a speaking order?

87. In Union of India v. E.G. Nambudiri, **(1991) 3 SCC 38**, the Apex Court held as under:-

> "*6. ...The question then arises whether in considering and deciding the representation against adverse report, the authorities are duty bound to record reasons, or to communicate the same to the person concerned. Ordinarily, courts and tribunals,*

adjudicating rights of parties, are required to act judicially and to record reasons. Where an administrative authority is required to act judicially it is also under an obligation to record reasons. But every administrative authority is not under any legal obligation to record reasons for its decision, although, it is always desirable to record reasons to avoid any suspicion. Where a statute requires an authority though acting administratively to record reasons, it is mandatory for the authority to pass speaking orders and in the absence of reasons the order would be rendered illegal. ***But in the absence of any statutory or administrative requirement to record reasons, the order of the administrative authority is not rendered illegal for absence of reasons. If any challenge is made to the validity of an order on the ground of it being arbitrary or mala fide, it is always open to the authority concerned to place reasons before the court which may have persuaded it to pass the orders****. Such reasons must already exist on records as it is not permissible to the authority to support the order by reasons not contained in the records.* ***Reasons are not necessary to be communicated to the government servant. If the statutory rules require communication of reasons, the same must be communicated but in the absence of any such provision absence of communication of reasons do not affect the validity of the order.***

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8. The question is whether principles of natural justice require an administrative authority to record reasons. Generally, principles of natural justice require that opportunity of hearing should be given to the person against whom an administrative order is passed. The application of principles of natural justice, and its sweep depend upon the nature of the rights involved, having regard to the setting and context of the

statutory provisions. Where a vested right is adversely affected by an administrative order, or where civil consequences ensue, principles of natural justice apply even if the statutory provisions do not make any express provision for the same, and the person concerned must be afforded opportunity of hearing before the order is passed. But principles of natural justice do not require the administrative authority to record reasons for the decision as there is no general rule that reasons must be given for administrative decision. ***Order of an administrative authority which has no statutory or implied duty to state reasons or the grounds of its decision is not rendered illegal merely on account of absence of reasons. It has never been a principle of natural justice that reasons should be given for decisions.*** *See: Regina v. Gaming Board for Great Britain, ex p. Benaim and Khaida [(1970) 2 QB 417, 431 : (1970) 2 All ER 528] . Though the principles of natural justice do not require reasons for decision, there is necessity for giving reasons in view of the expanding law of judicial review to enable the citizens to discover the reasoning behind the decision. Right to reasons is an indispensable part of a sound system of judicial review. Under our Constitution an administrative decision is subject to judicial review if it affects the right of a citizen, it is therefore desirable that reasons should be stated."*

[Emphasis Supplied]

88. While adjudicating upon the issue of whether the principles of natural justice imposes a duty on administrative authorities to give reasons, the Apex Court in NHAI v. Madhukar Kumar, **(2022) 14 SCC 661,** held as under:-

"73. The Constitution does not contemplate any public authority, exercising power with caprice or without any rationale. But here again, ***in the absence of the***

duty to record reasons, the Court is not to be clothed with power to strike down administrative action for the mere reason that no reasons are to be found recorded. In certain situations, the reason for a particular decision, may be gleaned from the pleadings of the authority, when the matter is tested in a court. From the materials, including the file notings, which are made available, the court may conclude that there were reasons and the action was not illegal or arbitrary. From admitted facts, the court may conclude that there was sufficient justification, and the mere absence of reasons, would not be sufficient to invalidate the action of the public authority. Thus, reasons may, in certain situations, have to be recorded in the order. In other contexts, it would suffice that the reasons are to be found in the files. The court may, when there is no duty to record reasons, support an administrative decision, with reference to the pleadings aided by materials.*"***

[Emphasis Supplied]

89. It is discernible from the decisions of the Apex Court cited above including the judgment of the Apex Court in *State Bank of Patiala v. S.K. Sharma* (Supra), that any or every violation of a facet of natural justice, or of a rule incorporating such facet, would not render the order passed as null and void. It is also well-settled that in certain situations, the reason for a particular decision may also be determined from the material on record.

90. As already observed in the preceding paragraphs, this Court finds no irregularity, much less any illegality, in the procedure adopted by the Governing body/Executive Authority. By observing due process, upon the receipt of the ICC Report dated 28.08.2018, the Executive Authority *vide* resolution dated 19.09.2018, directed the Principal of Respondent No. 2

College to handover the ICC Report dated 28.08.2018 to the Vigilance Committee to study the report and to give a presentation to the Governing Body in its next meeting. The Executive Authority had also called for the representation from the Petitioner and granted him personal hearing on 06.10.2018. It is evident from the Resolution dated 06.10.2018 that the Petitioner was permitted to make oral arguments for about 90 minutes. After a due consideration of the oral arguments as well as the representation filed by the Petitioner, the Governing Body resolved to endorse the findings of the ICC Report dated 28.08.2018. Thereafter, a show cause notice dated 10.10.2018 was issued to the Petitioner calling upon him to show cause as to why the proposed punishment of compulsory punishment should not be imposed on him. The Petitioner filed his representation on 19.10.2018 and after considering the said representation/reply, the Executive Authority resolved to reiterate its earlier decision taken *vide* resolution dated 06.10.2018 to compulsory retire the Petitioner.

91. Even though, it is always desirable that a reasoned order is passed by an authority, it is apparent from the judicial pronouncements cited above that unless the impugned order suffers from an *ex facie* violation of the principles rule of natural justice, the order of an authority which has no statutory or implied duty to state reasons or the grounds of its decision, is not rendered illegal merely on account of absence of reasons. This Court finds that since the Executive Authority gave a fair hearing to the Petitioner, its failure to pass a speaking order does not pass the test of prejudice cited above.

92. At this juncture, it is important to note that as mandated under Clause 7 of the annexure to Ordinance XII, read with Clause 7(9) of Ordinance XVIII of the Respondent No. 1 University, the Respondent No. 2 College *vide* a letter dated 29.10.2018 sought the approval of the Vice Chancellor for the recommendation of the Petitioner's compulsory retirement and forwarded the file to the Vice Chancellor of the Respondent No.1 University for its approval. It is apparent from the material on record that the ICC Report dated 28.08.2018 was also sent along with this letter and therefore, seeking an approval from the Vice Chancellor was not a mere formality. It would be apposite to also refer to the letter dated 08.11.2018 sent by the Joint Registrar (Colleges), whereby the Principal of Respondent No.2 College was directed was send a factual report of the case, which direction was duly complied with *vide* letter dated 12.11.2018.

93. Thus, it is clear that even for the purposes for approval, the Respondent No.1 University, was in receipt of all the relevant material including a representation from the Petitioner, and there is no occasion for this Court to interfere with the same.

94. Since all the issues raised have been answered against the Petitioner, the present Writ Petition is dismissed.

95. Pending application(s), if any, are also disposed of.

96. No order as to costs.

SUBRAMONIUM PRASAD, J

JULY 17, 2025
Rahul/AP