

IN THE HIGH COURT OF DELHI AT NEW DELHI
ORIGINAL WRIT JURISDICTION
WRIT PETITION (CIVIL)_____ /2017

IN THE MATTER OF:

Madhu Sahni & Others

... PETITIONERS

VERSUS

Jawaharlal Nehru University & Another

... RESPONDENTS

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Filed By:

Srivastava Naved Parashar Partners
Advocates for Petitioner
E -19 Lower Ground Floor
Jangpura Extension
New Delhi – 110014
Ph. No 9958317219

New Delhi, 19th September 2017

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NOTICE OF MOTION

To,

The Standing Counsel
Jawaharlal Nehru University
High Court of Delhi,
New Delhi

Sir,

The above writ petition is being filed in the Hon'ble High Court of Delhi today. The same is likely to come up for hearing on or about 21st September 2017. Kindly take notice of the same.

Srivastava Naved Parashar Partners
Advocates for Petitioner
E -19, Lower Ground Floor,
Jangpura Extension,
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Ph. No 9958317219

New Delhi
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NOTICE OF MOTION

To,

The Standing Counsel,
University Grants Commission
High Court of Delhi,
New Delhi

Sir,

The above writ petition is being filed in the Hon'ble High Court of Delhi today. The same is likely to come up for hearing on or about 21st September 2017. Kindly take notice of the same.

Srivastava Naved Parashar Partners
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URGENT APPLICATION

To

The Registrar,

High Court of Delhi,

Sher Shah Road

New Delhi

Sir,

Please treat the accompanying petition as an urgent under Delhi High Court rules and orders. The ground of urgency is mentioned in the grounds of the Petition.

Please list the Petition on 21st September or any date prior to it.

New Delhi
19th Sept 2017

Srivastava Naved Parashar Partners
Advocates for Petitioner
E -19, Lower Ground Floor
Jangpura Extension
New Delhi –110014
Ph. No 9958317219

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MEMO OF PARTIES

1. Madhu Sahni

Aged 57 years

D/o Santosh Sahni

R/o 27 Uttarakhand , JNU

New Delhi 110067

2. Rituraj Sharma

Aged 27 years

D/o Satish Kumar

R/o 157, Shipra Hostel, JNU

New Delhi 110067

3. Ritika Kar

Aged 28 years

D/o S S Kar

R/o 68, Shipra Hostel, JNU

New Delhi 110067

4. Sonal Goyal

Aged 29 years,

R/o 53, Shipra Hostel, JNU

New Delhi 110067

5. Hemant Adlakha

Aged 57 years

S/o Late W C Adlakha

R/o 568 3rd floor, Bloc C, Multi Story Houses

Paschimabad, JNU CAMPUS

New Delhi, 110067

6. Rajat Dutta

Aged about 61 years

S/o Mr. Amulya Narayan Dutta

R/o 119 Uttarakhand, JNU

New Delhi, 110067

..Petitioners

VERSUS

1. Jawaharlal Nehru University

Through its Registrar

New Mehrauli Road, Munirka

New Delhi, Delhi 110067

2. University Grants Commission (UGC)

Bahadur Shah Zafar Marg

New Delhi 110 002

..Respondents

Filed By:

Srivastava Naved Parashar Partners

Advocates for Petitioner

E -19, Lower Ground Floor,

Jangpura Extension,

New Delhi –110014

Ph. No 9958317219

New Delhi

19th Sept 2017

SYNOPSIS

The Petitioners herein are approaching this Hon'ble Court under Article 226 of the Constitution seeking a writ of mandamus directing the Respondent No. 01 University to quash the Office Order No. 248/2017 read with its Corrigendum Office Order No. 251/2017 dated 18.09.2017. The Petitioners are teachers and students at the Respondent No. 01 JNU University aggrieved by the aforesaid order.

Petitioners submit that it would appear that a meeting of the Executive Council Committee of Jawaharlal Nehru University was held on 18.09.2017, wherein the Respondent No. 01 University issued the aforesaid office order stating that the Executive Council meeting held on the same day:

- (i) Adopted the UGC (Prevention Prohibition & Redressal of Sexual Harassment of Women Employees & Students in Higher Educational Institutions) Regulations 2015 (notified on May 02nd 2016); and
- (ii) Approved the formation of an Internal Complaints Committee with immediate effect, which shall be replacing the existing Gender Sensitization Committee Against Sexual Harassment (or hereinafter referred to as "GSCASH").

This has led to subsequently, an extreme urgency in the matter considering that there are approximately 25 inquiries pending at various pre consideration stages which require an appropriate

closure. The Petitioners are concerned as all the records of GSCASH commencing from the year 1999 to the present date including all the record and proceedings of the 25 pending inquiries are sensitive, the Petitioners are concerned that they ought not to be tampered or altered or destroyed or modified with the replacement of GSCASH. The inquiries are in many cases against faculty members and higher ranking officials.

The Petitioners submit that the Respondent No. 01 JNU has its own revised Rules and Procedure of The Gender Sensitization Committee against Sexual Harassment (GSCASH) which incorporated the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

The Petitioners have elaborated in the Grounds in the present Writ Petition the reasons for filing the present writ petition which prima facie indicate that there is a procedure prescribed by law in Clause X (4) of the Rules & Procedure for GSCASH (above) which mandates that any amendment to the existing procedure shall be effected by the decision of the said meeting of the GSCASH called on for the aforesaid purpose at which the reasons for the purpose amendment are to be discussed and that no such meeting has been convened in the present facts and circumstances, the procedure itself has been completely ignored.

Moreover, it is submitted on behalf of the Petitioners that University Grant Commission (UGC) Act, 1956 does not apply to

the situation at hand for the reason that it is no part of the mandate of the University Grants Commission (UGC) to deal with matters of discipline within Jawaharlal Nehru University (JNU), which is governed by its own statute, rules and regulations on the issues of discipline and in particular “sexual harassment” on the campus. The relevant provisions are quoted in the Grounds in the petition.

It is re-iterated that the present petition is filed urgently to ensure that the records of GSCASH commencing from the year 1999 to the present date including all the record and proceedings of the 25 pending inquiries which are sensitive are protected pending the challenge to the Order, with a good prima facie case in favour of the Petitioners that there already existed Regulations and a system in place which has been in operation over 18 years. The Petitioners pray that GSCASH be declared to have full force and effect so that the committee can function and complete the pending enquiries and entertain complaints and that the operation of the office order dated 18.9.2017 be stayed

It is in the light of these facts and circumstances that have constrained the Petitioners to approach this Hon’ble Court to seek relief.

Dates & Events

Dates	Events
03.03.1956	The University Grants Commission Act 1956 came into place to make provision for the co-ordination and determination of standards in Universities and for that purpose, to establish a University Grant commission (UGC).
22.12.1966	The Jawaharlal Nehru University Act 1966 came into place to establish and incorporate a University in Delhi.
13.08.1997	<p>Judgment in the case of Vishakha v. State of Rajasthan (1997) 6 SCC 241 was pronounced, which held that women have rights to gender equality, to work with dignity and to a working environment safe and protected from sexual harassment or abuse.</p> <p>That, the guidelines prescribed by the Supreme Court for protection and enforcement of these rights of women at workplace must be strictly observed in all working places.</p>
22.04.2013	The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (SHW Act) came into place, with an objective to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.
18.09.2015	The Executive Council of Jawaharlal Nehru University (JNU) passed Resolution 5.1, approving the revised Rules and Procedure of The Gender Sensitization Committee Against Sexual Harassment (GSCASH) which incorporated the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
02.05.2016	University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher

	Educational Institutions) Regulations, 2015 notified in the official gazette by the University Grant Commission, which describe the responsibilities of the higher educational institutions, grievance redressal mechanism, process for making complaint and conduct inquiry, interim redressal, punishment and compensation, consequence of compliance, etc.
18.09.2017	It appears that a meeting of the Executive Council Committee was held on 18.09.2017, the Respondent No. 01 University issued an Officer Order No. 248 of 2017 stating that the Executive Council meeting held on 18.09.2017 adopted the UGC Regulations 2015 notified on May 02nd 2016 and approved the formation of an Internal Complaints Committee with immediate effect, which shall be replacing the existing GSCASH.
19.09.2017	Hence, the present petition.

Filed By:

Srivastava Naved Parashar Partners
Advocates for Petitioner
E -19, Lower Ground Floor,
Jangpura Extension,
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19th Sept 2017

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**WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA SEEKING A WRIT IN THE
NATURE OF MANDAMUS OR OTHER TO DIRECT THE
RESPONDENT NO. 01 TO QUASH THE OFFICE ORDER NO.
248 AND CORRIGENDUM ORDER NO. 251 DATED 18.09.2017**

To,

The Hon'ble Chief Justice

And Her Companion Justices

of the Hon'ble High Court of Delhi

Petitioner respectfully submits as follows:

1. That, the Petitioners herein are approaching this Hon'ble Court under Article 226 of the Constitution seeking a writ of mandamus directing the Respondent No. 01 to quash and set aside the Office Order No. 248/2017 dated 18.09.2017 read with its Corrigendum Office Order No. 251/2017 dated 18.09.2017.

2. That, Petitioner No. 01 is Madhu Sahni, a Ph.D German Literature from the Jawaharlal Nehru University. She has been teaching at the Jawaharlal Nehru University since 1984, as a teacher of German Literature and Language. Her research interests are language pedagogy and gender studies, and is the author of *Zum Geschichtsverständnis Heinrich Manns in seiner essayistischen Arbeit 1905 -1955*, published by the German publisher, Peter Lang in 2000, as well as several other articles. She is a professor of repute who has supervised a number of M.A., M.Phil. & PhD dissertations.

Petitioner No. 01 has been associated with the GSCASH since its very inception, in her capacity as a leading member of the Gender Studies Forum. She was a member of GSCASH in the year 2000-01 and was its Chairperson in the year 2001-02. She was involved in the formulation of the GSCASH Rules and Procedures between the years 1999 and 2001, and served on several inquiry committees. Since then, she has remained active in addressing issues of sexual harassment and gender justice on the JNU campus, conducted sensitization workshops for students on the request of GSCASH, and has also been a member of an advisory committee to assist Jamia Milia University regarding setting up a similar body. In 2013, in the wake of an incident of a grievous attack on a woman student by her classmate and his suicide thereafter, she served on the ten member committee convened by the then Rector Sudha Pai in order to set in place measures to address the

underlying factors that fuel such tragedies. In 2014, she was the coordinator of the University's Diversity Committee, and conducted workshops and other programs for students on issues ranging from gender, caste, disability to legal literacy. As one of the faculty members who was part of the original group of women faculty who first conceived of GSCASH, negotiated for it and later has the satisfaction of seeing it grow, Madhu Sahni is most aggrieved that an institution which has brought relief to so many women has been wound up without due deliberation. The composition of GSCASH and the electoral mode of selection was thoroughly discussed in the university community and was chosen because it ensured both public scrutiny for sensitivity and commitment to gender equality, public accountability and a freedom from pressure from senior levels of the administration. Popularly elected women faculty have had the greatest contribution to the health of the institution, not only by the labour they put into formulating rules, conducting inquiries, but also in ensuring that substantive justice is done to complainants.

3. The Petitioner No. 02 is Rituraj Sharma, who has done her MA in Sociology from JNU, followed by M.Phil with first division. She served as member of student faculty committee in her department. Her topic related to "playschools in Delhi". Presently pursuing her Ph.D. on "Children's play". Petitioner No. 03 is Ritika Kar, who has done her M.A. in Sociology and finished her M.Phil. with a grade point of 6.37 from the Centre of Social Medicine and Community Health at the

School of Social Sciences, JNU. Her area of research is medical tourism and commodification of female bodily parts like eggs and its economic, socio-cultural implications. She is presently pursuing her Ph.D. in the same department.

Petitioners 2 and 3 submit that when the provision of elected representation for teachers and staff (GSCASH) is removed and is replaced with teacher and staff representatives who are only nominated by the administration there arises serious concerns about the enquiry process and justice being subjected to administrative interference. This is a serious concern in a university space when people in positions of higher power and influence are involved. Petitioners as students submit that such a nominated body will not inspire confidence to file a complaint and in fact will act as a deterrent for victims to file complaints. University has a hierarchical command structure. So a committee meant for enquiring into complaints of sexual harassment can ensure justice if it is autonomous and free from the commands of the higher authorities. GSCASH, through its orientation and sensitization programs was a major support system. More importantly, our GSCASH had an autonomous and elected composition, where representatives from all sections of the university, like teachers, students and karmacharis were elected. This ensured non-interference from administration and fairness in dispensing justice.

4. That, Petitioner No. 04 is currently a PhD student at the Centre for Political Studies, JNU, after having completed her MA and M. Phil in

Political Studies from CPS/JNU. During her course of study, she had been an elected student representative in Gender Sensitization Committee against Sexual Harassment (GSCASH) for the year 2014-15. She had been involved in the sensitization programs ranging from orientation programs at different levels of schools, hostels for students and among security guards, staff and officers in JNU. These programs involved using different mediums, from dramas to talks to film-screenings etc to engage the students with issues of sexual violence. She has pursued various enquiries on complaints of sexual harassment of various constituencies of JNU. She also had the opportunity to be part of the committee in GSCASH to review and revise the rules and procedures of GSCASH making it in tandem with SHW Act 2013 and the Saksham Guidelines. These rules were later approved by the GSCASH as a committee and also by the JNU Executive council and the JNU Court.

5. That, Petitioner No. 5, Hemant Kumar Adlakha (1960), is a PhD in Chinese Studies from the School of International Studies, Jawaharlal Nehru University. He has been teaching since 1986 (1986-1989, a part-time lecturer at the CCSEAS, JNU; 1989-1990, a Lecturer at the Cheena Bhavan, Santiniketan, Viswabharti, West Bengal; 1990~assistant professor & associate professor, CCSEAS, JNU). His research interests include internal political dynamics in China, Chinese Literature and Culture and India-China relations. One of his PhD students successfully completed her thesis on the Gender Discrimination at Work-place in the

Peoples Republic of China and is currently a faculty at the CCSEAS, JNU. His writings on China have appeared in the national/international publications, including in the Encyclopedia of Race & Racism, Washington (2014); Tulika Books, New Delhi and in the leading online journal on diplomacy, The Diplomat (Washington; March 2017). He has been a Honorary Fellow, Institute of Chinese Studies (ICS), Delhi. He is member of the Boards of several institutions and universities (Mumbai University, Mumbai; Jamia Milia Islamia, New Delhi; Doon University, Dehra Dun; a member of the UGC-NET Workshop etc.). He is currently a member of the International Editorial Committee of the Society for the Study of Lu Xun, Seoul, South Korea. Hemant has been associated with the GSCASH since its very inception and has been actively associated with the Gender Studies Forum activities. He was a member of the first GSCASH as a member-representative of the JNUTA executive committee. He has been involved in the formulation of the GSCASH Rules and Procedures during 1999-2001, and served on a few inquiry committees during his tenure as GSCASH member. He has served as the GSCASH Inquiry Committee in at least two proceedings against two members of the faculty/staff in gender harassment cases in the past. He has also been associated in several gender harassment settlement proceedings both inside and outside of the university.

6. That, Petitioner No. 06, Rajat Datta (1956) is professor at the Centre for Historical Studies (CHS), Jawaharlal Nehru University, New Delhi. He is historian of medieval and early modern history, and the areas of his

research, publication and teaching are: (i) economic history of medieval and early modern India; (ii) the 18th century in India; (iii) problems of the transition to the early-colonial in India; (iv) the British Empire in India, ca.1750 to 1830 ; (v) ecology, subsistence, and crises in early modern India; (vi) comparative trajectories of early modern economic development in an Asian perspective; and (vii) the nature of globalization in the early modern world with special reference to India in the world economy. Apart from the various articles published in journals or edited collections, Professor Datta is the author of *Society, Economy and the Market. Commercialization in Rural Bengal*, New Delhi 2000, and has edited *Rethinking a Millennium. Perspectives on Indian History from the Eighth to the Eighteenth Century*, New Delhi, 2008. His monograph *Market, Subsistence and Transition in Early Modern India. Perspectives from Eighteenth Century Bengal*, New Delhi, Primus (forthcoming) Professor Datta was educated in St. Stephen's College, JNU and Kings College London, from where he received his Ph.D in history. He has been a Commonwealth Scholar to the UK, a Smuts Visiting Fellow to Cambridge University, and British Academy Visiting Fellow to the UK. He is an editor of *The Medieval History Journal*, published by SAGE simultaneously from New Delhi, London and New York, and is on the editorial board of the *Worlds of the East India Company* series of monographs published by the Boydell and Brewer, from Suffolk (UK) and Rochester (NY, USA). In addition to his academics, he has all had the responsibilities of various administrative posts in JNU. He was chairperson of the CHS from 2013

to 2015. Prior to that he has functioned as a warden of a hostel for eleven years, chairperson of JNU's security advisory committee for four years, and of the anti-ragging committee for two years. He has also served as a member of JNU's Academic Council for four years from 2013 to 2017.

Petitioner No. 06 as an academic, teacher, mentor, and as a person who interacts closely with the JNU community, Rajat Datta has been acutely conscious of the need to establish a gender sensitive campus, and to prevent all sorts of harassment, including sexual harassment for which proactive, inclusive, transparent, and democratic structures are vital. He firmly believes that the GSCASH has functioned exactly in these ways. The most important feature of this institution was its democratic and inclusive character, where all sections of the University community were represented through a system of open elections. As chairperson of his Centre he has had to on occasion refer issues of sexual harassment to the GSCASH, and found its deliberations and processes rigorous, painstaking, and fair. The most important feature of the GSCASH was that it was set up after prolonged discussions with all sections of the university community, and was piloted through all the academic institutions of the university, before it was given its structural framework. The functional autonomy that it had been given gave it the wherewithal to operate independently of extraneous controls or interventions. This made it effective, and it was also seen as effective

by students, teachers and other constituents of the University community.

The Petitioners 1 to 6 who are both students and teachers are aggrieved as the existing mechanism which has been successfully functional and a model for other Universities since nearly 18 years has been now dissolved when the Regulations existed in line with the Special Act and domain of the University.

7. That, the Jawaharlal Nehru University has been constituted under the Jawaharlal Nehru University Act 1966. The Petitioner craves leave to refer to and rely upon the said Act when produced in a separate compilation.
8. That the University Grants Commission Act was enacted in the year 1956. The Petitioner craves leave to refer to and rely upon the said Act when produced in a separate compilation.
9. That, the University Grants Commission Act, 1956 through Section 12 provides for the scope of the functions of the Commission: Section 12 is quoted as under:

“12. *Functions of the Commission.*—

It shall be the general duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in

Universities, and for the purpose of performing its functions under this Act, the Commission may—

- (a) inquire into the financial needs of Universities;”*
- (b) allocate and disburse, out of the Fund of the Commission, grants to Universities established or incorporated by or under a Central Act for the maintenance and development of such Universities or for any other general or specified purpose;*
- (c) allocate and disburse, out of the Fund of the Commission, such grants to other Universities as it may deem 1 [necessary or appropriate for the development of such Universities or for the maintenance, or development, or both, of any specified activities of such Universities] or for any other general or specified purpose:*

Provided that in making any grant to any such University, the Commission shall give due consideration to the development of the University concerned, its financial needs, the standard attained by it and the national purposes which it may serve;

- (cc) allocate and disburse out of the Fund of the Commission, such grants to institutions deemed to be Universities in pursuance of a declaration made by the Central Government under section 3, as it may deem necessary, for one or more of the following purposes, namely:— (i) for maintenance in special cases, (ii) for development, (iii) for any other general or specified purpose;]*

(ccc) establish, in accordance with the regulations made under this Act, institutions for providing common facilities, services and programs for a group of universities or for the universities in general and maintain such institutions or provide for their maintenance by allocating and disbursing out of the Fund of the Commission such grants as the Commission may deem necessary;]

- (d) recommend to any University the measures necessary for the improvement of University education and advise the University upon the action to be taken for the purpose of implementing such recommendation;*

(e) advise the Central Government or any State Government on the allocation of any grants to Universities for any general or specified purpose out of the Consolidated Fund of India or the Consolidated Fund of the State, as the case may be;

(f) *advise any authority, if such advise is asked for, on the establishment of a new University or on proposals connected with the expansion of the activities of any University;*

(g) *advise the Central Government or any State Government or University on any question which may be referred to the Commission by the Central Government or the State Government or the University, as the case may be;*

(h) *collect information on all such matters relating to University education in India and other countries as it thinks fit and make the same available to any University;*

(i) *require a University to furnish it with such information as may be needed relating to the financial position of the University or the studies in the various branches of learning undertaken in that University, together with all the rules and regulations relating to the standards of teaching and examination in that University respecting each of such branches of learning;*

(j) *perform such other functions as may be prescribed or as may be deemed necessary by the Commission for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of the above functions.*

10. That, from the aforesaid it is clear that the UGC has no power to determine the content of what constitutes 'misconduct' or the rule and regulations governing misconduct including the regulations relating to the conduct of an inquiry for the purposes of such misconduct.

11. That, on 13.08.1977, the Hon'ble Supreme Court delivered its judgment Vishakha v State of Rajasthan reported in 1977 (6) SCC 241. Pursuant to the said decision the Respondent No. 1 University issued a Policy in the year 1999 governing matter of sexual harassment.

12. Thereafter, it appears that in the year 2001 Executive Committee of the Respondent University framed its regulations for dealing with the issue of sexual harassment at work place.

13. It is submitted from the year 1999 till date Respondent University submitted its constituted Sensitization Committee against sexual harassment which has always been an elected body with the following constituencies: (1) Students (2) Employees (3) Officers (4) Faculty. The present number of members of the said elected body hereinafter referred to as GSCASH is 23.

14. It must be also added here that following the guidelines on the prevention and deterrence of sexual harassment in the workplace laid down by the Supreme Court of India in its 13 August 1997 judgment on the Writ Petition (Criminal) Vishaka v. State of Rajasthan, the Vice-chancellor of JNU appointed a Working Group on Sexual Harassment headed by Professor Karuna Chanana on 5 September 1997. The Executive Council of JNU accepted the Report of the Working Group on 6 May 1998. The JNU Policy against Sexual Harassment was announced in a circular dated 25 February 1999, and the Gender Sensitisation Committee Against Sexual Harassment (GSCASH) was set up vide a Jawaharlal Nehru University notification dated 16 April 1999. The Rules and Procedures of the GSCASH were approved in principle by the JNU Executive Council (Resolution 6.7) on 28 September 2001.

15. That, on 22.04.2013 the Parliament enacted The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (SHW Act). This Special Act came into place, with an objective to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto. It is submitted that the said Act has no application to students whatsoever or to faculty, employees and officers as Respondent No 1 has its own rules and regulations in the matter of Sexual Harassment which came into force more than a decade before the passing of the Act .Attention is invited to the fact that the Sexual Harassment at the Workplace Act 2013 contains no provision for imposing penalties on students.

16. That, on 18.09.2015, the Executive Council of Jawaharlal Nehru University (JNU) passed Resolution 5.1, approving the revised Rules and Procedure of The Gender Sensitization Committee Against Sexual Harassment (GSCASH) which incorporated the provisions of the aforementioned Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. A copy of the Rules & Procedure for Gender Sensitization Committee against Sexual Harassment (GSCASH) dated 18.09.2015 is annexed herewith and marked as **Annexure P-1**

17. That, on 02.05.2016, University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015 notified in the official gazette by the University Grant Commission, which describe the responsibilities of the higher educational institutions, grievance redressal mechanism, process for making complaint and conduct inquiry, interim redressal, punishment and compensation, consequence of compliance, etc.

18. A true copy of the University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015 dated 02.05.2016 is enclosed as **Annexure P 2**

19. That, on 12.09.2017 the Registrar of the Jawaharlal Nehru University issued an order suspending the election for the members of GSCASH. The above said letter is as follows:

“Sexual Harassment of Women at Workplace (prevention, prohibition and Redressal) Act, 2013 and the University Grants Commission (prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015, as notified by MHRD on 2nd May, 2016, provide for constitution of an Internal Complaints Committee (ICC) replacing the existing mechanism of GSCASH. The UGC Regulations, 2015 are mandatory for all Higher Educational institutions (HEIs).

In this connection, the University has decided to constitute the Internal Complaints Committee after discussion on this issue in the last Executive Council Meeting. The matter for adoption of the Govt. of India Act, 2013, UGC Regulations 2015 notified by Ministry of Human Resource Development in May 2016 will be taken up in the Executive Council meeting to be held on 18.09.2017.

In view of the above, all components of the University, the teachers, students and staff, are hereby informed that any election to GSCASH hereinafter called as ICC, should be kept on hold till further notice.”

The Said office order is marked and annexed **Annexure P-3.**

20. It appears that a meeting of the Executive Council Committee was held on 18.09.2017, the Respondent University issued an Officer Order No. 248 of 2017 stating that the Executive Council meeting held on 18.09.2017 adopted the UGC Regulations 2015 notified on May 02nd 2016 and approved the formation of an Internal Complaints Committee with immediate effect, which shall be replacing the existing GSCASH. Simultaneously a Corrigendum Office Order No. 251/17 was issued on 18.09.2017 changing the nomenclature of ‘Chairperson’ to Presiding Officer of the Internal Complaints Committee (ICC). A copy of the Office Order No. 248/17 dated 18.09.2017 is annexed hereto and marked as **Annexure: P- 4 Colly (i).** A copy of the Corrigendum Office Order No. 251/17 dated 18.09.2017 is annexed hereto and marked as **Annexure:P-4 Colly (ii).**

21. It appears that w.e.f. 18.09.2017, the premises of GSCASH has been locked and members have not been in access. It is in these circumstances that the present Petition is being filed on an urgent basis with leave to amend or alter the contents of the Petition.

22. This Writ Petition is maintainable under Article 226 of the Constitution of India as Respondent No. 01 is located within the jurisdiction of this Hon'ble Court.

23. No other Petition seeking the same or similar relief has been filed by the Petitioner in this Hon'ble Court or any other Court in India.

GROUND

Petitioner is seeking relief from this Hon'ble Court on the following, amongst other grounds:

A. That, Because having regard to the functions of the University Grants Commission Act 1956, the Respondent No. 2 has no jurisdiction to impose and/or amend the applicability of regulations in the matter of misconduct and in particular with regard to 'sexual harassment' on the Respondent No.1 University.

B. Because the Respondent No. 1 University has its own regulations relating to the issue of sexual harassment as a form of 'misconduct' which had been in full force of effect of law governing practice and

procedure in the matter of conducting an inquiry in relation to misconduct.

- C. Because the power of dealing with disciplinary matters contain in the Jawaharlal Nehru University Act of 1966 read with statutes in Schedule-I Clause 18 and Clause 5(10) is with the Respondent No 1 University alone and not with the Respondent No 2

Clause 18, First Schedule, JNU Act, holds that,

“The authorities of the University may make Regulations consistent with this Act, the Statutes and the Ordinances for the conduct of their own business and that of the committees appointed by them and not provided for by this Act, the Statutes or the Ordinances in the manner prescribed by the Statutes.”

The Act inter alia empowers the Executive Council to:

“regulate and enforce discipline among the members of the teaching, administrative and ministerial staff of the University in accordance...”

which are approved by the Court, which is the highest decision making body in the University.

The University also have undoubted disciplinary jurisdiction over its students. Clause 5 (10), First Schedule of the Jawaharlal Nehru University Act 1966 (53 of 1966).

“The University shall have the power to regulate and enforce discipline among students and employees of the University and to take such disciplinary measures in this regard as may be deemed necessary.”

The said provisions categorically exclude all powers of University Grants Commission in the matter of discipline.

D. Because Clause 2 (i) of the UGC Regulations annexed hereto and marked as Annexure: P-2. states as under that :

“2(i) Internal Complaints Committee (ICC) should be constituted by an Higher Educational Institution (HEI) under sub-regulation (1) of regulation (4) of the said Regulation. Any existing body already functioning with the same objective (like Gender Sensitization Committee Against Sexual Harassment – GSCASH) should be re-constituted as the ICC.

Provided that in the latter case the HEI shall ensure that the Constitution of such a Body is required for ICC under these regulations.

Provided further that such a body shall be bound by the provisions of these regulations.”

Clause 2(i) reproduced above itself contemplates that the regulations do not apply on their own force to the Jawaharlal Nehru University in as much as regulations of University Grants Commission of 2015 are required to be “modified” contemplating their continued existence.

E Because in any event having regard to the expression uses of University Grants Commission Regulations of 2(i), the said regulation can only be recommendatory when it comes to Respondent No. 1, Jawaharlal University.

F. Because the proviso 2 (i) of the University Grants Commission Regulations 2015 to the extent that it uses the expression “shall” ensure that the constitution of the body is required for committee under this requires is ultra vires University Grants Commission Act, is null and void. Because the second proviso to the extent that it uses expression “shall” be bound by these requires is ultra vires of the regulations of the University Grants Commission Act for the reasons above-mentioned.

G. Because Regulation 3 of the University Grants Commission requires along with regulation 3 (1) (a) of the said University Grants Commission Regulations 2015 also contemplates that the existing regulations are to be modified to bring them in keeping with the “spirit “of the definition in its policy and regulation on prevention and prohibition of sexual harassment against students meaning thereby that the existing policy regulation and regulations continued have full force and effect.

H. Because Clause 3 (a) reads as follows: *“Wherever required, appropriately subsume the spirit of the above definitions in its policy and regulations on prevention and prohibition of sexual harassment against the employees and the students, and modify its ordinances and rules in consonance with the requirements of the Regulations.”*

Thereby making it clear the existing rules and regulations will continue to remain in full force and effect.

- I.* Because clause 2(i) must be read harmoniously with clause 3(1)(a) and when so read the expression “ shall “ cannot be read to be mandatory.
- J.* Because the existing regulations of 2015 of the Respondent No 1 are not only in line with the “ spirit “ of the Sexual Harassment at the Workplace Act and the Regulations of the UGC of 2015, but go a step further they constitute a complaints committee which is representative in nature thereby inspiring confidence in the outcome of its proceedings and is more gender just.
- K.* Because the existing Regulations of the Respondent no 1 are gender neutral giving relief to any “person “ of the University and students whereas the UGC regulations apply only to women denying protection to several persons who were otherwise covered by the protection of the Regulations.
- L.* Because the Regulations of the Respondent no 1 are far more detailed in terms of procedure for the conduct of an enquiry, protection is given against victimization, pending a complaint and the victim is protected during the enquiry being not confronted by the respondent.

M. Because the Regulation of the Respondent no 1 contain a mandatory provision for a restraining no contact order against the Respondent as soon as the complaint is received thereby making for a fair enquiry and for witness protection whereas the UGC Regulations do not make it mandatory to issue a no contact order in every case hold.

N. Because there is no presumption in law, that nomination to a committee is a better method of constituting a committee as compared to election, on the contract, it is elections which yield the best candidate for the ICC.

O. Because experience of the last 16 years has shown that the elected GSCASH has functioned well and succeeded in building a culture of no tolerance of sexual harassment in the Respondent No 1 university.

P. Because the constitution of GSCASH was commented by the Verma Committee as being the most appropriate for a multi member constituency such as a University and recommended for adoption and the UGC Regulations themselves say that the Verma Committee must be kept in mind while framing Regulations.

Q. Because there is a procedure prescribed by law in Clause X (4) of the existing regulations of the Respondent No. 1, Jawaharlal University

which mandates with any amendment to the existing procedure shall be effected by the decision of the said meeting of the GSCASH called on for the aforesaid purpose at which the reasons for the purpose amendment are to be discussed and that no such procedure as prescribed and mandated by law has taken place.

“Clause X (4) Amendment to the Rules & Procedures of GSCASH

- i. Amendments to the Rules and Procedures of GSCASH shall have effect only if they are in consonance with the letter and spirit of the Supreme Court Judgement, the Report of the Working Group on Sexual Harassment headed by Karuna Chanana, the Policy, and the Rules and Procedures based on the guidelines laid down by the Hon’ble Supreme Court of India, in its ruling on the Writ Petition (Criminal) Vishaka vs. State of Rajasthan (reported as 1997 (6) SCC 241) on 13 August 1997, on the prevention and deterrence of Sexual Harassment at the Workplace, SAKSHAM guideline by UGC, Justice J.S. Verma Committee Report and Work Place Act.*
- ii. Amendments shall be effected by a decision taken in a Special Meeting of GSCASH called for the purpose.*
- iii. The proposed amendment (s), together with the objectives and reasons thereof, shall be recorded in writing and circulated by the proposer of the amendment (s) at least fifteen working days prior to the Special Meeting called for the purpose.*
- iv. An amendment motion shall be adopted by two-thirds of the members present and voting. In the event of a tie on an amendment motion, it shall be put to vote one more time. If a tie recurs, the amendment motion shall be reconsidered by another Special Meeting to be called after at least fifteen working days. In the event of a tie occurring for the third time, the decision of the Chairperson shall be final.*
- v. GSCASH amended rules should be placed before the Executive Council prior to adoption.”*

R Because the said existing Regulation X (4) further contemplates that the said amendment will be placed before the Executive Council have adoption which has not been done and because the procedure

prescribed by law for the amendment of the existing regulations is a mandatory pre-condition for any amendment, alteration or modification of the existing regulations and failure to comply with the said regulations will render any decision taken pursuant thereby null and void.

S. Because for the aforesaid reasons Office Order dated 18.09.2017 read with the Corrigendum is null and void and has no effect and that in any event modification does not contemplate amendment of the existing regulations and their replacement by regulations framed by the University Grants Commission. Jawaharlal University is an autonomous University with absolute powers to determine its own regulations in the matter of discipline and that not cannot decided by any other body or the authority as the power is to be amended.

T. Because it is established law that any decision making body cannot be influenced or conducted to by any other authority as to the decision and is bound to take into consideration only relevant factors excluding irrelevant factors. (Jayrajbhai Jayantibhai Patel v. Anilbhai Nathubhai Patel & Ors. (2006) 8 SCC 200, Chairman, All India Railway Recruitment Board & Anr. v. K. Shyam Kumar & Ors. (2010) 6 SCC 614, Manuelsons Hotels Pvt. Ltd. v. State of Kerala & Ors. (2016) 6 SCC 766, Indian Express Newspaper (Bombay) P. Ltd. v. Union of India (1985) 1 SCC 645, etc.)

U. Because in deciding whether to alter the existing mechanism relevant criteria would be and the said criteria have not been taken into consideration.

(a) Whether an equivalent body should exist in Jawaharlal Nehru University?

(b) Whether the equivalent Governments Settlement machinery is better suited to the need of institution, that it has representation from all effected constituencies

(c) That the existing mechanism has a body which inspires confidence by virtue of its representative character, the representatives being elected rather than nominated from effected constituencies.

(d) Whether a decision making body who is intention for the last 18 years has functioned satisfactorily, that there is no need to change?

(e) At best one of the factors is get to be in mind that the University Grants Commission has framed regulations which need to be looked into.

(f) That in framing regulations of that is has to be kept in mind with the spirit of the Vishakha judgment, and the report of the Verma Committee.

(g) That the Verma Committee in fact recommended the adoption
Jawaharlal University regulations as amount regulations.

PRAYER:

In the light of the abovementioned Facts and Grounds, the Petitioner
respectfully prays that this Hon'ble Court may be pleased to:

- a. Issue a writ of mandamus directing quashing of the Office Order No.
248/2017 read with its Corrigendum Office Order No. 251/2017 dated
18.09.2017; (Annexure P/4 Colly);
- b. Declare that the University Grants Commission (Prevention, Prohibition
and Redressal of Sexual Harassment of Women Employees and
Students in Higher Educational Institutions) Regulations, 2015
(Annexure P/2) is *ultra vires* the University Grants Commission Act,
1956;
- c. Pass an order quashing the order dated 12.09.2017 putting the election
on hold for the constitution of GSCASH (Annexure P/3);
- d. Pass any other Order that this Hon'ble Court may deem fit and proper.

Settled by Indira Jaising

Senior Advocate

New Delhi
19th Sept 2017

Filed By:
Srivastava Naved Parashar Partners
Advocates for Petitioner
E -19, Lower Ground Floor,
Jangpura Extension,
New Delhi –110014
Ph. No - 9958317219