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

\+ WP (C) 1288/2012

AJAY TIWARI ..... Petitioner

Through: Mr. Manish K. Bishnoi, Adv. with Ms. Tanvi Sapra, Adv.

versus

UNIVERSITY OF DELHI AND ORS ..... Respondents

Through: Ms. Beenashaw N. Soni, Adv. for R-1
Ms. Tanya Agarwal, Adv. for R-2

**CORAM:**
**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**JUDGMENT**

% **25.11.2019**

**1.** These proceedings emanate from a complaint, dated 9th September, 2008, submitted by Ms. 'M' (whose name is being withheld, for the sake of propriety), an M. Phil. Student in the Department of Hindi, University of Delhi, wherein she alleged that she had been sexually harassed by the petitioner who, at the time, was a Professor in the said Department. The complaint was referred to the Apex Complaints Committee (hereinafter referred to as "ACC"), under Ordinance XV-D of the Ordinances governing the University of Delhi (hereinafter referred to as "the University"). The ACC found the allegation of sexual harassment, against the petitioner, to be proved, and forwarded its findings, along with the recommendation that the petitioner be demoted with reduction of salary, and be debarred from

(i) holding any administrative position for the remainder of his service, (ii) membership of any selection committee in the University and (iii) appointment as research supervisor, in the Department of Hindi, in future, to the Executive Council (hereinafter referred to as "EC"), through the Vice-Chancellor. A copy of the findings and recommendations of the ACC were also furnished to the petitioner, who submitted his response, thereto, on 20th May, 2009. The EC, *vide* its Resolution dated 26th June, 2009, opined that the petitioner had committed a serious act of misconduct and, accordingly, issued a Show Cause Notice, dated 29th June, 2009, to the petitioner, requiring him to show cause as to why his services be not disengaged. The reply of the petitioner, to the said Show Cause Notice, was referred back to the ACC, which forwarded its report, containing its comments and observations on the Show Cause Notice dated 29th June, 2009, and the response of the petitioner thereto, to the EC, on 14th October, 2009.

**2.** In the interregnum, the Supreme Court, on 12th January, 2010, passed an order in ***Delhi University v. Bidyug Chakraborty***[1] , acceding to the request of the respondent in that case – who had also been charged with sexual harassment – for permission to cross examine witnesses produced by the University. While doing so, the Supreme Court permitted the respondent Bidyug Chakraborty, before it, to submit a questionnaire, to which responses would be sought, from the witnesses. Following this precedent, the petitioner was also directed to submit a questionnaire, to which the response of 'M' would be sought. The petitioner did so. However, as 'M' did not respond to

[1] **SLP (C) 23060/2009**

the questions, or cooperate, the University wrote, on 12th May, 2010, to the petitioner, informing him that, owing to non-co-operation by 'M', in the process of cross-examination, the proceedings were closed. Challenging this decision, 'M' moved this Court, by way of WP (C) 8208/2010. During the pendency of the said writ petition, however, the impugned Memorandum, dated 4th or 8th July, 2011, came to be issued, compulsorily retiring the petitioner from the services of the University. In view thereof, WP (C) 8208/2010, insofar as it sought relief against the petitioner, did not survive, as noted by this Court in its order dated 5th July, 2011, whereby the said writ petition was disposed of.

**3.** The impugned Memorandum, dated 4th/8th July, 2011 states that the ACC forwarded a report, to the EC, *vide* letter dated 31st August, 2010 and that, having considered the said report, the EC, accepting the findings therein, resolved that the petitioner be compulsorily retired.

**4.** Aggrieved by the decision to compulsorily retire him from service, the petitioner has moved this Court, by means of the present writ petition

**5.** Having thus presented the factual matrix, in which the present writ petition arises, in conspectus, a more detailed narrative, thereof, follows.

## **Facts**

**6.** On 9th September, 2008, 'M', an M.Phil student in the Department of Hindi in the University, addressed a complaint, to the Chairman, Apex Committee, Women Development Centre in the University, alleging that, over a period of one and a half to two years prior thereto, the petitioner, along with the erstwhile Head of the Department of Hindi Prof. Ramesh Gautam and the then Head of the Department Prof. Sudhish Pachauri, had been exploiting her "physically, mentally and educationally". It was specifically alleged, by 'M', in her complaint, that, during their journey to the University, and back home, the petitioner used to pass sexually charged remarks. She further alleged that, at the Metro station, the petitioner, on finding himself alone with her in the elevator, used to subject her to forcible unwelcome physical contact. (The complaint sets out, in somewhat lurid detail, the specifics of the alleged physical advances, by the petitioner to 'M', but any detailed reference thereto is, for the purposes of this judgment, being eschewed.) She also alleged that, while travelling with her in his car, the petitioner submitted her to inappropriate physical contact, which she sought to rebuff. Over a period of time, according to 'M', the intensity of the physical advances, of the petitioner towards her, progressively increased, and the petitioner also threatened 'M' that, were she to resist his advances, he would ensure that she failed her examination. According to the complaint, she, out of fear, "repeatedly engaged" the petitioner "in sexually demeaning talks". The complaint also referred to various text messages, addressed by the petitioner, to her, which, according to her,

were sexually coloured. Alleging that, in these advances, the petitioner was assisted by Prof. Ramesh Gautam and Prof. Sudhish Pachauri, the complaint requested that adequate punishment be meted out to them.

**7.** The Policy against Sexual Harassment, of the University, is codified in Ordinance XV-D of the Ordinances governing the University. Sub-clause (viii), of Clause 2 of Ordinance XV-D defines "sexual harassment", in the following terms:

> " 'Sexual harassment' includes any unwelcome sexually determined behaviour, whether directly or by implication and includes physical contact and advances, a demand or request for sexual favours, sexually coloured remarks, showing pornography or any other unwelcome physical, verbal or non-verbal conduct of sexual nature.
>
> *Explanation:* "Sexual harassment" shall include, but will not be confined to the following:
>
> > (a) When submission to unwelcome sexual advances, requests for sexual favours, and verbal or physical conduct of a sexual nature are made, either implicitly or explicitly, a ground for any decision relating to employment, academic performance, extra-curricular activities, or entitlement to services of opportunities at the Delhi University.
> >
> > (b) When unwelcome sexual advances, and verbal, non-verbal and/or physical conduct such as loaded comments, remarks or jokes, letters, phone calls or email, gestures, exhibition of pornography, lurid stares, physical contact, stalking, sounds or display of a directory in nature at the purpose and/or effect of interfering with the individual's performance or of creating an intimidating, hostile or oppressive environment.
> >
> > (c) When a person uses, with a sexual purpose, the body or any part of it or any object as an extension of the body in relation to another person without the

> latter's consent or against the persons will, such conduct will amount to sexual assault.
>
> (d) When deprecatory comments, contact or any such behaviour is based on the gender identity/sexual orientation of the person and/or when the classroom or other public forum of the University is used to denigrate black discriminate against a person or create a hostile environment on the basis of a person's gender identity/sexual orientation."

**8.** The redressal mechanism, in the University, to deal with cases of alleged sexual harassment, consists of a three-tier hierarchical structure, the College Complaints Committee/University Units Complaints Committee (UUCC), followed by the Apex Complaints Committee (ACC), followed by the Executive Council (EC).

**9.** The complaint, dated 9th September, 2008, of 'M', in the present case, was marked, by the Vice-Chancellor, to the ACC, which convened a Sexual Harassment Complaints Committee (hereinafter referred to as "SHCC") to enquire into the complaint. Accordingly, on 14th October, 2008, the Member-Secretary of the SHCC wrote, directing him to appear before the SHCC on 21st October, 2008 and state his position with respect to the allegations leveled by 'M'.

**10.** The petitioner responded, *vide* communication dated 18th October, 2008, addressed to the Member Secretary, SHCC, requesting that a copy of the complaint, of 'M', be provided to him, so that he could reply thereto.

**11.** The SHCC responded, *vide* communication dated 27th October, 2008, informing that it was not empowered to provide, to the petitioner, a copy of the complaint of 'M'.

**12.** On 8th December, 2008, 'M' wrote to the Vice Chancellor, complaining that members of the SHCC had misbehaved with her and requesting, therefore, that the inquiry, on her complaint dated 9th September, 2008, be transferred to the ACC.

**13.** Apparently acting on the aforesaid request of 'M', the Vice Chancellor transferred her complaint, dated 9th September, 2008, to the ACC. The Sub-Committee constituted by the ACC, to enquire into the complaint, wrote, on 24th February, 2009, to the petitioner, informing him of the transfer of the complaint to the ACC and requiring him to appear before the Sub-Committee on 4th March, 2009, with any material that he would seek to rely upon. A copy of the complaint of 'M' was enclosed with the aforesaid communicated dated 24th February, 2009.

**14.** The petitioner responded, to the aforesaid communication dated 24th February, 2009, *vide* his letter, dated 4th March, 2009, addressed to the ACC, wherein he requested for being supplied the printouts of the SMS exchanges, between 'M' and himself, to which reference was contained in the complaint, as well as any other document or material furnished by 'M', in support of her complaint. He also requested for permission to place oral and documentary evidence, on record, in his support, and for permission to cross examine 'M' and her witnesses.

**15.** The petitioner also objected to the complaint being entertained by the ACC, as, according to the prescribed procedure, the UUCC was the designated authority to deal with such complaint. He, therefore, expressed his discomfiture on the complaint, which was being examined by the UUCC, being withdrawn from the UUCC and placed before the ACC. He also submitted that, by this change of Committee, he had lost a valuable right of appeal to the ACC.

**16.** Apart from this, the petitioner also advanced the following submissions, in his defence, in the aforesaid communication dated 4th March, 2009:

(i) "Harassment" etymologically, connoted an unwelcome act.

(ii) Sub-clause (a), of the explanation to Clause (2)(vii) of Ordinance XV-D, contemplated "sexual harassment" as referring to submission to unwelcome sexual advances.

(iii) Consent, on the part of the complainant, to the alleged sexual overtures, therefore, *ipso facto,* ruled out possibility of any "sexual harassment" having taken place.

(iv) Where the complainant herself provoked the alleged indecent overtures or advances, she could not complain of having been "sexually harassed".

(v) The petitioner was a victim of a conspiracy, hatched by the complainant along with one Anil Solanki, and other persons, who had vested interests, and whose demands – which included securing admission for the complainant – were not being met with, by the petitioner.

(vi) 'M' had alleged that the petitioner was sexually harassing her, during travel from her residence to the University by Metro. On facts, this allegation was unbelievable. 'M' used to board the Metro at Nawada station, which was six stations after the station where the petitioner used to board the train. Acceptance of the version of 'M' would necessarily imply that she was waiting at the station, till the petitioner reached there. This, even by itself, belied the possibility of the petitioner having subjected 'M' to any unwelcome advance. Similarly, the classes of 'M' ended at 10.00 a.m., whereas the petitioner's classes were scheduled at 2.00 pm.

(vii) The allegation that, on the way back from the University to their respective residences, the petitioner subjected 'M' to sexual harassment, therefore, implied that 'M' was waiting in the University till it was time for the petitioner to return home. This, too, belied the allegation of sexual harassment.

(viii) In fact, it was 'M' who had made sexual overtures towards the petitioner. She had personally approached to the petitioner and addressed indecent queries to him. Though the

petitioner rebuked her, he was of the view that, as an immature student, 'M' was probably suffering from infatuation.

(ix) 'M' used to frequently contact the petitioner, telephonically, and indulge in indecent and provocative conversation. The petitioner admitted that, "due to the influence of ambience and provocation thrown by her", the petitioner also participated in such indecent conversation. He characterized these occasions as "moments of indiscretion" and admitted that, on certain such occasions, he used to call 'M', and they indulged in sexually charged conversation. He also admitted having sent her provocative text messages, on these occasions, and expressed regret, submitting that these acts of indiscretion could not justifiably be regarded as acts of sexual harassment, as he had been provoked into acting thus.

(x) If the petitioner had, actually, been subjecting 'M' to sexual harassment, she could easily have avoided his company. That she did not do so itself indicated that the acts of the petitioner were not "unwelcome".

(xi) The allegation that the petitioner used to forcibly drive 'M' around in his car, and that, on these occasions, he subjected her to sexual advances, was denied.

(xii) 'M' had admitted, in her complaint, that she had recorded the allegedly indecent conversation, between the petitioner and

herself. Were the conversation to be unwelcome, there was no reason for 'M' to record it.

(xiii) That the petitioner did not subject 'M' to any unwelcome sexual harassment was also borne out by the admission, in the complaint, that, even if such alleged acts of sexual harassment had been perpetuated, by the petitioner towards her, she approached him to help her in her studies.

In view the above facts, the petitioner submitted that it could not be alleged that he had "sexually harassed" 'M' within the meaning of the expression as defined in the explanation to Clause 2 (viii) of Ordinance XV-D.

**17.** On 4th March, 2009, the petitioner appeared before the Sub-Committee of the ACC, and reiterated the contents of the aforesaid response, dated 4th March, 2009, submitted by him.

**18.** On 18th March, 2009, the ACC wrote to the petitioner, informing him that the Sub-Committee had framed the following charges against the petitioner:

> "You have sexually harassed Ms. 'M' and created an intimidating and hostile environment for her in the following ways:-
>
> a. You subjected her to unwelcome verbal conduct of a sexual nature on phone and in person on several occasion in the period March to September 2007,

b. You subjected her to unwelcome sexual advance and physical conduct of a sexual nature on several occasions in the period March to September 2007.

c. You explicitly made submission to your demand- for sexual favours a condition of decisions regarding her academic performance in the period March to September 2007."

**19.** The petitioner was informed that inquiry would be conducted into these charges, and was requested to submit, in writing, his defence thereto, as well as a list of witnesses, on whom he chose to rely.

**20.** On receiving the aforesaid communication, dated 18th March, 2009, informing him of the charges which had been framed against him by the Sub-Committee of the ACC, the petitioner responded, *vide* letter dated 24th March, 2009, addressed to the ACC. He also reiterated his request to be permitted cross-examination of 'M'.

**21.** Despite the request contained in the letter dated 4th March, 2009, the petitioner had not been provided the documents annexed to the complaint, dated 9th September, 2008, of 'M'. He, therefore, reiterated his request for being furnished all the documents, which were before the ACC.

**22.** To a request, made by ACC, to him, to submit a list of questions, which could be put to 'M', the petitioner submitted that such a procedure was no substitute for cross examination of 'M'. Even so, the petitioner submitted a list of questions, for being put to 'M'.

He objected to the summary procedure which was adopted by ACC, and reiterated his discomfiture at the transfer of the proceedings, which were earlier being conducted by UUCC, to the ACC.

**23.** The petitioner further submitted that, if the period during which 'M' was a student in the Arts faculty, was taken into account, vis-à-vis the official duties of the petitioner, the only three days when the petitioner officially came into contact with 'M' were 11th March, 2007, 18th March, 2007 and 25th March, 2007. Any allegation of the petitioner having sexually harassed 'M', on any other occasion, would necessarily imply that 'M' had herself provoked such acts. The petitioner once again admitted the fact that he had, on certain indiscreet occasions, indulged in exchange of text messages, of a sexual nature, with 'M', but submitted that these were provoked by 'M' herself. The petitioner also requested for permission to cross examine five witnesses, namely, Anil Solanki, Pratibha Solanki, Rasal Singh, Tek Chand and Sunil Kumar.

**24.** The ACC responded on the very same day, i.e. 24th March, 2009, which also answered the petitioner's earlier communication dated 4th March, 2009 *supra*. The letter enclosed all the documents relating to the complaint, dated 9th September, 2008, of 'M', stating that these documents had not been furnished to the petitioner, earlier, owing to an oversight. The petitioner's apprehension that the ACC was conducting the proceedings in a summary fashion, was sought to be allayed, by pointing that the ACC was an impartial body, which would provide every reasonable opportunity, to the petitioner, to

present his defence. The petitioner was therefore requested to name the witnesses whom he sought to cite in support of his stand.

**25.** The request, of the petitioner, to be permitted to cross examine 'M', and her witnesses, was, however, rejected, pointing that Ordinance XV-D did not permit cross examination either by the complainant or by the accused. In so far as transfer of the proceedings, to the ACC was concerned, it was pointed out that, the Vice-Chancellor had ordered such transfer of the petitioner and the petitioner was, therefore, directed to communicate directly with the Vice Chancellor on this issue.

**26.** The writ petition avers that, though the aforesaid communication, dated 24th March, 2009, from the ACC, purported to enclose, therewith, the complete set of documents relating to the complaint of 'M', only two pages of SMS communications were, in fact, enclosed therewith. The said two pages of text message exchanges, between the petitioner and 'M', are also on the record of these proceedings, and a bare glance thereat reveals their nature.

**27.** The following three examples, of text messages, sent by the petitioner, to 'M', in vernacular, on 10th June, 2007 (at 9.47 p.m.), 17th July, 2007 (at 9.49 p.m.) and 19th July, 2007 (at 3.40 p.m.), may, with their translations, be reproduced, for ready reference:

> **10th June, 2007 (at 9.47 p.m.)**
>
> "Shikwa Karu Kyo? Gila bhi Karu Kyo? Tumse mile to lagaye gale se Aaj rat tum bahut yaad aa rahi ho, Fone bhi nahi uthati ho. Chalo sms se hi baat karo."

Translation:

*"Why should I complain? Why should I get upset? If we met, I could embrace you. Tonight, I am continuously remembering you. You are not even answering your phone. Let's converse via SMS."*

**17th July, 2007 (at 9.49 p.m.)**

"Khubsurati aur aqlamandi ka ek jagah milna mushqil hota hai! Lekin tumne is kahawat ko galat sabit kar diya hai. Bas thoda gussa kar do. Kabhi–kabhi samajdari bhi aachi lagi hai."

Translation:

*"It is rare to find beauty and brains at one place! But you have disproved this adage. Just be angry for a while. At times, it is good to be understanding."*

**19th July, 2007 (at 3.40 p.m.),**

"Kahan Khoi hui ho Shakuntala? Kya Soch rahi ho? Dekho tumhara Dushyant Kahin bhatak raha hai."

Translation:

*"Where are you lost, Shakuntala? What are you thinking of? See, your Dushyant is wandering somewhere."*

(Shakuntala and Dushyant were the star-crossed couple, who were separated and met years later, in the poet Kalidasa's Sanskrit classic, "*Abhigyan Shakuntalam*".)

**28.** On 30th May, 2009, 'M' wrote to the ACC, answering the queries addressed by her, on the basis of the questionnaire submitted by the petitioner. It is not necessary to enter into the specifics of this communication. Suffice it to say that 'M' made pointed allegations, of

the petitioner having subjected her to unwelcome conversation of explicitly sexual nature.

**29.** On 8th April, 2009, the petitioner wrote to the ACC, submitting his defence, to the messages, sent by him to 'M', of which three relevant messages stand reproduced in para 27 hereinabove. Apropos these three text messages, the petitioner submitted as under:

(i) Regarding the message sent by the petitioner, to 'M', at 9.47 p.m. on 10th June, 2007, the petitioner submitted that, on the said day, 'M' had called him and involved him in exchange of telephonic conversation for about one and a half hours between 2 p.m. and 4 p.m., during which "she provoked (him)" immensely through sexually explicit talk, addressed "in a seductive manner".

(ii) Apropos the message sent by him on 17th July, 2007 at 9.49 p.m. and on 19th July, 2007 at 3.40 p.m., the petitioner submitted that, while he could not vouchsafe the contents of the SMS, 'M' used to continuously pester him with requests to send her romantic text messages, and used to threaten not to talk to her unless and until he sent her text messages, addressing her as "Menaka", "Rambha", "Shakuntala" etc.. He further submitted that the messages indicated "mutual and consensual exchange without any hint of pressure or coercion for sexual favours".

(iii) On 1st May, 2009, the petitioner represented to the Vice-Chancellor as well as to the ACC, requesting that Prof. Vibha

Maurya be not permitted to be a member of the ACC, inquiring into the complaint, against him, as he had alleged bias against her husband, Professor Abhay Maurya, in his response to the complaint of 'M'.

**30.** The writ petition avers that, at about this time, the petitioner came to learn that the Sub-Committee, constituted by the ACC, had submitted its report, regarding the complaint, dated 9th September, 2008, of 'M', to the ACC, which had deliberated thereon and forwarded its recommendations, on the said report, to the EC, on 30th April, 2009. A copy of the said report, dated 30th April, 2009, of the ACC, was also made available to the petitioner.

**31.** A perusal of the report, dated 30th April, 2009, of the Sub-Committee, as forwarded to the ACC, reveals that a detailed inquiry was conducted by the Sub-Committee, into the complaint of 'M'. The Sub-Committee noted that the petitioner had admitted having telephonic conversation of explicitly sexual nature with 'M', though, in his defence, he had sought to contend that these conversations had been provoked by 'M'. This fact, seen in conjunction with the number of calls exchanged between the petitioner and 'M', indicated, in the opinion of the Sub-Committee, that there existed a close and intimate relationship of sexual nature between 'M' and the petitioner. The Sub-Committee, however, expressed its inability to determine, on the basis of the available record, whether this relationship was, from the beginning, entirely consensual, or non-consensual, but chose, nevertheless, to opine that the issue at stake was not one of consent,

but of power. The following findings, from the report of the Sub-Committee, merit reproduction, *in extenso:*

> "Thus it is evident that there existed a close and intimate relationship of a sexual nature between the accused and the complainant. On the basis of the available records the SC cannot determine whether this relationship was, from the beginning, entirely consensual (as claimed by the accused) or non-consensual (as claimed by the complainant), but it believes that what is at stake here is not the issue of consent, but of power. The relationship between a teacher and a student is not one between equals, and involves the power dynamics of the hierarchical difference between the two. At every point in the relationship, it would be difficult for a student to refuse the advances of the teacher, as she may have apprehensions that the teachers can adversely affect her academic career if she resists/spurns the teacher's advances. In such a scenario, a teacher must always be mindful of the fact that even apparent' consent' is not likely to be unmediated by this power relationship, and submitted to because the affected individual believes that the request for sexual favours "is an implicit/explicit term or condition of teaching/guidance and employment".
>
> In the present case, the accused has not produced any direct or indirect evidence to show that the complainant had taken the initiative to establish the relationship. Moreover, there is no evidence to show that the accused took steps to discourage or discontinue the relationship with Ms. 'M' till August, 2007. He decided to distance himself only when he began to suspect that his telephonic conversations with Ms. 'M' might be getting recorded.
>
> Therefore, the complainant's contention that she was afraid of her result being adversely affected, if she did not oblige Prof. Tiwari cannot be dismissed as completely unfounded. A teacher does exercise control over evaluation of the performance of students in written examinations and interviews. This is an essential aspect of the power dynamics of teacher-taught relation. It is therefore, extremely important that a teacher maintains a friendly and dignified distance from the students. The responsibility for ensuring this lies much more with the teacher than the students, since a teacher by

> virtue of his position and age is expected to be more mature and responsible than a student. Even if Ms. 'M' made attempts to befriend him, as alleged by Prof. Tiwari, he should have taken steps to ensure that the girl become discouraged. However, Prof. Tiwari not seem to have taken any such steps.
>
> The SC is not convinced by Prof. Tiwari's assertion that he was simply a victim of the complainant's provocative overtures since it is not supported by available records. It is difficult to believe that a senior teacher like him would allow himself to be dragged into such a situation against his will. Prof. Tiwari has stated that the recordings of the telephonic conversations between him and the complainant will substantiate his contention. The complainant was asked about such recordings by the SC and was also requested in writing to submit the recordings of her conversations with the accused, if she had any. However, she denied that any such recordings existed."

Following the above observations, the Sub-Committee found the petitioner guilty of sexually harassing 'M', and of having created a hostile environment, by his verbal and physical conduct, which was explicitly sexual in nature. However, the claim, of 'M', that the petitioner had victimized her, was found to be unsupported by evidence. The Sub-Committee expressed its deep concern over the fact that a senior teacher of the University had entered into an explicit sexual relationship with a student, and observed that such relationships vitiated the atmosphere of the University and resulted in failure, on the part of the University, to provide a safe and secure environment for girl students to pursue their academic goals. The conduct of the petitioner was found to be entirely unacceptable. Adverse notice was also taken, of the fact that the petitioner had recorded his conversations, with 'M', at his residence, without her consent.

**32.** Even while returning these findings, qua the allegation of sexual harassment, contained in the complaint dated 9th September, 2008, of 'M', the Sub-Committee also expressed concern regarding the allegation, of the petitioner that 'M' had used the aforesaid material to pressurize the petitioner into clearing a job for herself, as well as for certain other favours. A separate inquiry, into these allegations was, therefore, recommended.

**33.** As noted hereinabove, the report of the Sub-Committee was forwarded to the ACC. The ACC, in its meeting dated 30th April, 2009, approved the findings of the Sub-Committee, and recommended that the petitioner be punished by (i) demoting him with reduction in salary, (ii) debarring him from holding any administrative position, or position of authority in the University, for the remainder of his service, (iii) debarring him from membership of all selection committees for the remainder of his service and (iv) debarring him from being appointed as research supervisor in future.

**34.** On 20th May, 2009, the petitioner addressed a representation, to the Vice-Chancellor, voicing his objections to the report of the ACC.

**35.** In the said representation, the petitioner contended, *inter alia,* as under:

(i) A reading of the report of the ACC revealed that the Sub-Committee had relied on several documents, including pages

from the personal diary of 'M', and had also assimilated other evidence, in the form of statements from various witnesses, as well as a complaint by a former student of the School of Open Learning (SOL), to which the response of 'M' was also sought. The petitioner objected that none of these documents were ever made available to him, despite his repeated requests. He pointed out that he had been called by the Sub-Committee only on one occasion, i.e. 4th March, 2009, when his statement was recorded, and that the entire proceedings, of the Sub-Committee had, thereafter, taken place, behind his back. This, the petitioner submitted, constituted stark violation of the principles of natural justice and fair play.

(ii) The participation of Prof. Vibha Maurya, who was biased against the petitioner, completely vitiated the proceedings, as well as the final report of the ACC. The petitioner drew attention to the fact that he had, in his representation, dated 1st May, 2009 *supra*, and 4th May, 2009 *supra*, objected to the participation of Prof. Vibha Maurya in the deliberations of the ACC, and had requested that she be directed to recuse herself from the said proceedings. The decision, of the ACC, to enhance the punishment recommended by the Sub-Committee, was, he submitted, solely owing to the participation of Prof. Vibha Maurya.

(iii) The submission, regarding "sexual harassment" within the meaning of explanation Sub-clause (viii), of Clause 2 of

Ordinance XV-D, necessarily having to be non-consensual in nature, was reiterated. It was also submitted that the Sub-Committee, having found substance in the petitioner's submissions that he was being blackmailed and that there was a conspiracy against him, could not, in the same breath, have found him guilty of "sexual harassment". The submissions, regarding the alleged conspiracy, amongst Anil Solanki, Abhay Maurya and 'M', as contained in the earlier representations, were reiterated.

(iv) The Sub-Committee had proceeded on the basis of its perceived notion of an ideal student-teacher relationship, and its understanding that such relationship had to be free from power dynamics. These findings, it was submitted, was presumptuous in nature, and could not constitute a legitimate basis to find the petitioner guilty of sexual harassment against 'M'.

It was also requested, by the petitioner, that a separate independent inquiry be instituted, to ascertain the truth of the entire matter and that, till the completion of such inquiry, the recommendations of the ACC be kept in abeyance.

**36.** Apparently, on 26th June, 2009, the recommendations and report of the ACC were placed before the EC of the University.

**37.** On 29th June, 2009, the University issued a memorandum/Show Cause Notice, to the petitioner, informing him that, the EC had, after considering the report of the ACC, as well as the evidence on record

and the various representations, of the petitioner, noted that the facts disclosed a "serious act of misconduct on the part of a Professor of the University" and had decided, consequently, that the petitioner be issued a Show Cause Notice, asking him to show cause as to why his services, as Professor in the University, be not disengaged, in terms of the Annexure to Ordnance XI of the University, for having committed the said misconduct. In the interregnum, the EC resolved to place the petitioner under suspension.

**38.** The aforesaid Show Cause Notice, dated 29th June, 2009, was challenged, by the petitioner, before this Court, by way of WP (C) 9933/2009, which was disposed of, *vide* order dated 9th July, 2009, with liberty to the petitioner to take all contentions in his response to the Show Cause Notice.

**39.** The petitioner, accordingly, submitted a reply, dated 13th July, 2009, to the Show Cause Notice dated 29th June, 2009. In the said reply, the petitioner placed reliance on the judgment, dated 29th May, 2009, of this Court in ***Prof. Bidyug Chakraborty v. Delhi University***[2]**,** to contend that the ACC had, by not affording him an opportunity to cross-examine 'M', infringed the principles of natural justice. He submitted that the questionnaire, which had been requisitioned from him, and on which the comments of 'M' had been sought, was no substitute for cross-examination. He also protested against not having been permitted to lead his own evidence, and at the fact that all the documents and other material/evidence, to which the final report of

[2] **2009 (112) DRJ 391 (DB)**

the ACC alluded, including the personal diary of 'M' and statements of witnesses who deposed before the Sub-Committee, were never made available to him. These lapses, he submitted, were serious enough to vitiate the findings, of the Sub-Committee, in their entirety. He submitted that the requirement of permission to cross-examine the complainant and other witnesses, and of being provided all documents and evidence, on which reliance was proposed to be placed, had necessarily to be read into Ordinance XV-D, as, otherwise, the Ordinance would be rendered unconstitutional. He also reiterated his objections to the participation, in the ACC, of Prof. Vibha Maurya and the transfer of the proceedings from the UUCC to the ACC, by the Vice-Chancellor. In fine, he submitted that, even on merits, the allegation of "sexual harassment", as defined in Ordinance XV-D, could not be said to have been made out against him. In the circumstances, he prayed that the charges against him be dropped, his order of suspension be revoked, and he be honorably discharged.

**40.** The judgment of this Court in ***Prof. Bidyug Chakraborty***[2], on which the petitioner had placed reliance, was carried, in appeal, by the University, before the Supreme Court. The appeal was disposed of, by the Supreme Court, *vide* order dated 12th January, 2010, which read thus:

> "After hearing the learned counsel for the parties we are of the opinion that the respondents are entitled to a hearing on to cross-examine the witnesses produced by the University. We further direct that as this appears to be a case of sexual harassment the identity of the witnesses need not be revealed to the respondent of his counsel and for this purpose the respondent would be entitled to submit the questionnaire which will be put to the witness for their answers in writing.

Mr. Rao states that the statements made by the witnesses without their names will be supplied to the respondents within 2 weeks from today. The said documents will also be supplied to Ms Binu Tamta, the Advocate-Commissioner who is being appointed by this Court for the purpose of getting answers to the questions to be supplied by the respondents. Ms Tamta will ensure the anonymity of the witnesses.

Mr. Rao further states that the respondents would be entitled to produce the entire defence evidence in addition to the aforesaid questionnaire and that all annexures which have not been supplied with the enquiry committee will also be handed over to the respondent without revealing the identity of the witnesses.

We request Ms Tamta to complete the entire proceedings as soon as possible, preferably within 2 months from today. She will be paid a sum of ₹ 25,000/- as her feet by the petitioner No 1.

The Special Leave petition is disposed of accordingly."

**41.** Apparently acting on the basis of the aforesaid order, dated 12th January, 2010, of the Supreme Court in ***Bidyug Chakraborty***[1], the Dean of Colleges issued certain instructions on 25th January, 2010, following which the ACC wrote, to the petitioner, on 18th February, 2010, affording the petitioner an opportunity to cross-examine 'M', and the witnesses, through a written procedure. The petitioner was, accordingly, provided copies of the complaint and other documents submitted by 'M', the statements of the witnesses who had deposed before the Sub-Committee and the proceedings of the meetings of the Sub-Committee, and was directed to submit a written questionnaire to the ACC on or before 8th March, 2010. A similar communication was

also addressed, by the ACC, to 'M', affording her an opportunity to cross-examine the petitioner, by way of a written questionnaire.

**42.** On 8th March, 2010, the petitioner wrote to the ACC, enclosing, with the letter, a written questionnaire, to be put to 'M'. He also enclosed statements of witnesses, on which he sought to place reliance in his defence. These witnesses, who comprised teachers and staff of the University, essentially wrote, in their communications, that they had never noticed anything remiss in the conduct of the petitioner, and that the allegations against him were not believable. The petitioner also exhorted the ACC, in his communication dated 8th March, 2010, to recommence the enquiry afresh and *de novo*, and to assign the enquiry to the UUCC. It was submitted that the earlier report and recommendations of the Sub-Committee of the ACC, having been arrived at without following the procedure outlined by the Supreme Court in ***Bidyug Chakraborty***[1], could not be allowed to prevail and influence the ACC in the proceedings which were to follow. Accordingly, it was prayed that the enquiry be conducted *de novo*. This, the petitioner submitted, was also justified for the reason that the relevant documents had been provided, to him, for the first time, with the communication dated 18th February, 2010 *supra,* and that the earlier proceedings had been conducted in violation of the principles of natural justice. Even so, he objected to the fact that all relevant documents, which would serve to establish the fact that there was a conspiracy afoot, hatched by Anil Solanki and Abhay Maurya, in which 'M' was a willing participant, had, as yet, not been provided to

him. He also questioned the veracity and genuineness of the diary of 'M', as well as the truth of the entries therein.

**43.** The aforesaid questionnaire, submitted by the petitioner to the ACC, was forwarded, by the ACC, to 'M', under cover of letter dated 25th March, 2010, requiring her to provide answers, in writing, to the questions contained therein, and to appear before the Sub-Committee on 31st March, 2010. 'M', however, objected to this course of action, *vide* communication dated 1st April, 2010, addressed to the Vice-Chancellor, in which she queried as to whether Ordinance XV-D permitted to re-starting of the process of cross-examination even after the enquiry proceedings had formerly been concluded. Any reopening of the proceedings, she submitted, would amount to a violation of Ordinance XV-D, and would, even otherwise, be illegal. She also pointed out that the petitioner had, even on an earlier occasion, submitted a questionnaire, to which she had provided her response.

**44.** The aforesaid communications, of the petitioner and of 'M', dated 8th March, 2010 and 1st April, 2010 respectively, were considered, by the Sub- Committee, in its meeting held on 23rd April, 2010, and it was decided that 'M' be asked to appear in person on 29th April, 2010, and submit a written response to the questionnaire of the petitioner.

**45.** On the same day, i.e. 23rd April, 2010, the ACC responded, in writing, to the representation, dated 1st April, 2010, of 'M'. It was pointed out, in the said letter, that the complaint, of 'M' was required

to be dealt with, in accordance with the mechanism contained in Ordinance XV-D of the University, read with the judgment of the Supreme Court in ***Bidyug Chakraborty***[1]. It was opined, in the said communication, that the process of cross-examination could not be said to have been completed during the earlier proceedings before the Sub-Committee, as the petitioner had not been provided copies of the statements of the witnesses, or of the statement of 'M'. As such, 'M' was directed, once again, to furnish her response to the questionnaire suggested by the petitioner, failing which it would be presumed that she did not intend to co-operate with the process of cross-examination. As such, 'M' was directed to appear, before the Sub-Committee on 29th April, 2010, and to provide a written response to the questionnaire given by the petitioner.

**46.** A response, to the communication, dated 8th March, 2010 *supra*, of the petitioner, was also provided, by the ACC, on the same day, i.e. 23rd April, 2010, in which, while rejecting the request, of the petitioner, for the enquiry to be conducted afresh and *de novo*, it was clarified that the enquiry would be conducted by the same Sub-Committee, which had conducted the proceedings till then, and that the Sub-Committee would cross-examine 'M', as well as the petitioner, and would take the material, which would become available consequent thereupon, into consideration, while taking a final decision in the matter.

**47.** The petitioner represented, to the ACC, on 26th April, 2010, requesting for the response, of 'M', to the questionnaire submitted by

him. It was further requested that the proceedings be conducted in accordance with the judgment of the Supreme Court in ***Vishaka v. State of Rajasthan***[3].

**48.** 'M' also objected, *vide* her letter dated 26th April, 2010, addressed to the ACC, to the proceedings being reopened. It was submitted, in the said communication, that the facts, in the case of Prof. Bidyug Chakraborty, were different from those of the petitioner and that, therefore, the decision of the Supreme Court, in ***Bidyug Chakraborty***[1] could not automatically be applied to the petitioner's case. It was contended, by 'M', that, once the EC had arrived at a decision, and, pursuant thereto, Show Cause Notice had been issued to the petitioner, Ordinance XV-D did not permit reopening of the proceedings against the proceedings by the ACC. In the circumstances, 'M' requested that the fresh proceedings, initiated in the matter, be called off.

**49.** On 12th May, 2010, the ACC wrote to the petitioner, informing him thus:

> "In its meeting held on 3 May 2010 the Enquiry Committee resolved that in view of (M's) non-cooperation in the process of cross-examination, the proceedings are closed."

**50.** An identical communication was sent, by the ACC, to 'M', on the same date, i.e. 12th May, 2010.

---

[3] **(1997) 6 SCC 241**

**51.** 'M' moved this Court, at this stage, by way of WP (C) 8208/2010, praying, qua the petitioner, that he be awarded punishment on the basis of the Enquiry Report dated 30th April, 2009, of the ACC, and the decision, of the EC, taken thereon. Reliefs were also claimed, by 'M', against two other Professors, but it is not necessary to advert thereto, for the purposes of this decision. Suffice it to state that the aforesaid WP (C) 8208/2010 came to be disposed of, by a learned Single Judge of this Court, *vide* judgment dated 5th July, 2011, noting the submission, made before him, that punishment already stood meted out, to the petitioner, consequent on a finding that he had, in fact, indulged in sexual harassment of 'M' and that, therefore, the reliefs sought, by 'M', against the petitioner, did not survive for consideration.

**52.** The petitioner avers, in the writ petition, however, that, till the passing of the aforesaid judgment by this Court on 5th July, 2011, no order, imposing any punishment on him, had been served by him. This appears to be correct, as the impugned Memorandum, awarding punishment to the petitioner, though dated 4th July, 2011, has been signed, by the Registrar of the University, only on 8th July, 2011. Apparently, therefore, the impugned Memorandum was, apparently, served on the petitioner only on or after 8th July, 2011.

**53.** The impugned Memorandum, dated 8th July, 2011, communicates, to the petitioner, the decision of the EC, taken *vide* Resolution No 137 dated 1st July, 2011, to accept the report, dated 31st August, 2010, of the ACC and, on the basis thereof, to compulsorily

retire the petitioner from the services of the University, w.e.f. 1st July, 2011.

**54.** It is averred, in the writ petition, that the report, dated 31st August, 2010, of the ACC, was never supplied to the petitioner, though this assertion has been baldly denied in the corresponding paragraph of the counter-affidavit filed by Respondent No.1. The said report has, however, been placed on record in these proceedings, and a reading thereof reveals that it relies, essentially, on the earlier report, dated 30th April, 2009, as no additional evidence had come to light, and 'M' had not cooperated in the matter of submission of a response to the questionnaire supplied by the petitioner. The report, dated 31st August, 2010, therefore, reiterated the recommendations, contained in the earlier report dated 30th April, 2009, for demotion of the petitioner, with reduction in salary, debarment of the petitioner from holding any administrative position or position of authority for the remainder of his service, debarment from membership of any Selection Committee in the University for the remainder of his service and debarment from appointment as Research Supervisor in future. The EC, however, in the impugned Memorandum dated 4th/8th July, 2011, decided to compulsorily retire the petitioner from the services of the University, w.e.f. 1st July, 2011, in accordance with Clause 6 of the Annexure to Ordinance XI of the Ordinances governing the University.

**55.** Aggrieved thereby, the petitioner has approached this Court by means of the present writ petition.

**Analysis**

**56.** Detailed submissions, on the writ petition, were advanced by Mr. Manish Bishnoi, learned Counsel for the petitioner, Ms. Beenashaw N. Soni, appearing for the University and Ms. Tanya Agarwal appearing for ' M '.

**57.** To facilitate ease of reference, the definition of "sexual harassment", as contained in Clause 2(viii) of Ordinance XV-D may, albeit at the cost of repetition, be reproduced thus:

> " 'Sexual harassment' includes any unwelcome sexually determined behaviour, whether directly or by implication and includes physical contact and advances, a demand or request for sexual favours, sexually coloured remarks, showing pornography or any other unwelcome physical, verbal or non-verbal conduct of sexual nature.
>
> *Explanation:* "Sexual harassment" shall include, but will not be confined to the following:
>
> > (a) When submission to unwelcome sexual advances, requests for sexual favours, and verbal or physical conduct of a sexual nature are made, either implicitly or explicitly, a ground for any decision relating to employment, academic performance, extra-curricular activities, or entitlement to services of opportunities at the Delhi University.
> >
> > (b) When unwelcome sexual advances, and verbal, non-verbal and/or physical conduct such as loaded comments, remarks or jokes, letters, phone calls or email, gestures, exhibition of pornography, lurid stares, physical contact, stalking, sounds or display of a directory in nature at the purpose and/or effect of interfering with the individual's performance or of creating an intimidating, hostile or oppressive environment.

(c) When a person uses, with a sexual purpose, the body or any part of it or any object as an extension of the body in relation to another person without the latter's consent or against the persons will, such conduct will amount to sexual assault.

(d) When deprecatory comments, contact or any such behaviour is based on the gender identity/sexual orientation of the person and/or when the classroom or other public forum of the University is used to denigrate black discriminate against a person or create a hostile environment on the basis of a person's gender identity/sexual orientation."

**58.** Considerable emphasis was placed, by Mr. Bishnoi, learned counsel for the petitioner, on the use of the word "unwelcome" in Clause 2 (viii) of Ordinance XV-D, and in clause (a) of the Explanation thereto, as well as the words "without the latter's consent or against the person's will", as employed in clause (c) of the said Explanation. Mr. Bishnoi sought to impress, upon this Court, that the textual, and verbal, exchanges, between his client and 'M' were not, in the least, "unwelcome", or without the consent of 'M'. In fact, he submitted, his client had been "provoked" into entering into such exchanges, as 'M' had caught him off guard in moments of vulnerability, and had subjected him to repeated provocative and suggestive verbal and textual assault. Any person, placed in the position in which his client found himself, would, Mr. Bishnoi would seek to submit, have reacted similarly. Having, thus, provoked his client into behaving as he did, Mr. Bishnoi would submit that it did not lie in the mouth of the petitioner to complain that she had been sexually harassed.

**59.** It is apparent, at a very first glance, that the definition of "sexual harassment", as contained in Clause 2(viii) of Ordinance XV-D is inclusively worded, not once, but twice, in the main body of the definition as well as in the Explanation thereto. It is obvious that the framers of the Ordinance have deliberately worded the definition of "sexual harassment" in an inclusive manner, and due respect has necessarily to be accorded to the intention of the framers of the Ordinance, while construing the provision. Clearly, the definition of "sexual harassment" would include, not only conduct conforming to the circumstances outlined in the definition, but also any other conduct as would be understood, commonly, to constitute "sexual harassment".

**60.** Inclusive definitions have necessarily to be expansively construed. Ordinarily, when a definition is worded in inclusive terms, the common and ordinary parlance understanding of the expression would continue to apply[4]. At times, courts have interpreted the expression "includes", as contained in definition clauses, to expand the ambit of the expression defined, beyond the boundaries of the commonplace understanding of the expression. The expression "District Judge", as inclusively defined in Article 236(a) of the Constitution of India, was interpreted, in ***State of Maharashtra v. Labour Law Practitioners Association***[5], as encompassing the entire hierarchy of specialised Civil Courts, including Labour Courts and Industrial Courts. In ***State of Uttarakhand v. Harpal Singh Rawat***[6],

---

[4] **Carter v. Bradbeer, (1975) 3 All ER 158 (HL)**
[5] **AIR 1998 SC 1233: (1998) 2 SCC 688**
[6] **AIR 2011 SC 1506: (2011) 4 SCC 575**

the word "lease", as inclusively defined in Section 2(16)(c) of the Stamp Act, 1899, was construed as covering a transaction, for the purposes of the Stamp Act, which may not, otherwise, amount to "lease", as defined in Section 105 of the Transfer of Property Act, 1882. In ***State of Bombay v. Hospital Mazdoor Sabha***[7], the position in law was pithily encapsulated, by Gajendragadkar, J. (as he then was), thus:

> "It is obvious that the words used in an inclusive definition denote extension and cannot be treated as restricted in any sense. Where we are dealing with an inclusive definition, it would be inappropriate to put a restricted interpretation upon terms of wider denotation."

**61.** In attempting to understand the concept of "sexual harassment", as defined in Ordinance XV-(D), therefore, it would not be justifiable to restrict the scope of the interpretation to the specific types of conduct referred to therein.

**62.** In ***Apparel Export Promotion Council v. A. K. Chopra***[8], it was opined that sexual harassment was "a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such a conduct by the female employee was capable of being used for effecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile working environment for her". ***Vishaka***[3] held that "sexual harassment" includes "such

---

[7] **AIR 1960 SC 610:1960 (2) SCR 866**
[8] **(1999) 1 SCC 759**

unwelcome sexually determined behaviour (whether directly or by implication) as: (a) physical contact and advances; (b) a demand or request for sexual favours; (c) sexually-coloured remarks; (d) showing pornography; (e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature".

**63.** As observed hereinabove, Mr. Bishnoi emphasises the use of the word "unwelcome" in Clause 2(viii) in Ordinance XV-D. Inasmuch as the exchanges, between the petitioner and 'M' took place with her consent, he submits, the acts of the petitioner could not be regarded as "unwelcome".

**64.** In so submitting, Mr. Bishnoi, in my view, has confused the concept of "unwelcome" acts, with acts done with the consent of the other party. "Consent" is essentially a physical act. Consent may either be express or implied. Conscious failure to put up a resistance, to an act which is being committed, may indicate consent. At all times, however, the issue of whether the alleged victim of an act, consented, or did not consent, to the doing thereof, would have to be gauged on the basis of the manner in which the victim acted, herself or himself. It is precisely for this reason that "consent" itself, is rarely a defence to an act of oppression or assault. "Consent" may become a defence, where it is *free*. This is for the obvious reason that a victim of an assault, or an act of oppression, may consent to the doing thereof, owing to circumstances beyond the victim's control, which may partake of coercion. Consent, given under coercion, or without volition, is no consent at all.

**65.** The word "welcome" – or, equally, the word "unwelcome" – on the other hand, denotes a state of mind. If a person welcomes an act, that, by itself, denotes free, voluntary and willing consent. An act is "welcome" when there is an active element of conscious and willing acquiescence, by the person, to the doing of the act. Contrariwise, an act is "unwelcome", when the person, on whom the act is perpetrated, does not invite the doing thereof, or "welcome" the act. Examination of the question of whether an act, performed by one person or another, is "welcome", or "unwelcome", would necessarily involve an element of psychoanalysis of the purported victim.

**66.** Free consent, or "welcome", can constitute a defence, however, only where the act itself is not proscribed by the law. Generally speaking, sexual intercourse, between adults, is legally permissible. Where, therefore, it is alleged that such intercourse amounts to "rape", the perpetrator of the act may legitimately urge, in his defence, that the victim freely consented to the act. If the act complained of, is, however, not legally permissible in the first place, the existence, or otherwise, of consent, on the part of the "other party", pales into insignificance.

**67.** The relationship between student and teacher is sacred. It partakes of divinity. The *guru stotram* of Adi Sankaracharya teaches us that the *guru* (teacher) embraces, within his form, the holy trinity of Brahma, Vishnu and Maheshwara[9]. The poet-saint Kabir, in a

---

[9] गुरुर्ब्रह्मा ग्रुरुर्विष्णुः गुरुर्देवो महेश्वरः ।
गुरुः साक्षात् परं ब्रह्म तस्मै श्री गुरवे नमः ॥

celebrated couplet, declares that obeisance to the *guru* (teacher) takes precedence, even over salutations to the Almighty, as it is only through the *guru*, that one aspires to God[10]. The nature of the relationship, between the teacher and the taught, was tellingly underscored, in the following passages from ***Avinash Nagra v. Navodaya Vidyalaya Samiti***[11], as penned by K. Ramaswamy. J.:

> "**6**. … In ***Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi***[12] this Court, while holding that right to education is a fundamental right, had held the native endowments of men are by no means equal. Education means a process which provides for intellectual, moral and physical development of a child for good character formation; mobility to social status; an opportunity to scale equality and a powerful instrument to bring about social change including necessary awakening among the people. Education promotes intellectual, moral and social democracy. Education lays foundation of good citizenship and is a principal instrument to awaken the child to intellectual and cultural pursuits and values in preparing the child for later professional training and helps him to adjust to the new environment. Education, therefore, should be correlated to the social, political or economic needs of our developing nation fostering secular values, breaking the barriers of casteism, linguism, religious bigotry and should act as an instrument of social change. Education kindles its flames for pursuit of excellence, enables and ennobles the young mind to sharpen his or her intellect more with reasoning than blind faith to reach intellectual heights and inculcate in him or her to strive for social equality and dignity of person.
>
> **7.** In *Human Values and Education* edited by S.P. Ruhela under the article on "*The Problem of Values*" by P.N. Mathur, it is stated that the spiritual values taught in education act as the guiding stars providing motive force behind man's thought, emotion and action; the value should be moral and spiritual in socio-cultural and spiritual life of man has to be

---

[10] गुरू गोविन्द दोऊ खड़े, काके लागूं पांय।
बलिहारी गुरू अपने गोविन्द दियो बताय।।

[11] **(1997) 2 SCC 534**

[12] **(1991) 2 SCC 716**

such as brings peace, progress and welfare of both, the individual and the society. The talk of scientific temper, egalitarianism, freedom, social justice and secularism will be fruitless unless these constitutional values are imbued with spiritual and moral values. The need for religious, moral and spiritual education, as a part of educational curriculum, being taught in Sathya Sai Educational Institutions and its utility to the social regeneration of falling standard of moral and social conduct, was re-emphasised in those articles published in book form on the 60th birthday of Shri Sathya Sai Baba. In the foreword to the said book, Shri Justice V. Balakrishna Eradi, a former Judge of this Court, has emphasised that the rich cultural and spiritual heritages we have been endowed with, is being neglected after independence, denying to the youth of this country the opportunity to imbibe moral, cultural and spiritual values that form part of our heritage. He emphasised that in value-oriented education, ethical values help in character-building and develop discipline in students; cultural values enable the students to transcend the bounds of narrow sectarianism and develop equal respect for all faiths. Similarly spiritual values open the vision of a student to "one spirit" dwelling in all and unite him with the whole mankind as one family. He, therefore, emphasised that it is the duty of every citizen interested in the future of the country and in the preservation of our great cultural heritage, to extend cooperation for successful implementation of the programme of value-oriented education being imparted by Sri Sathya Sai Educational Institutions.

**8.** In *The Social and Political Thought of Dr S. Radhakrishnan* by Clarissa Rodrigues, at p. 120, it has been stated that education helps to improve the social order. An educated man has an open mind, a broad outlook, is willing to reconsider issues and make his own decisions. He is liberated from the *tutelage* to outmoded notions, to oppressive institutions and is always willing to learn from others and change whenever it is necessary. On the necessity of education, it is stated that the view of Dr Radhakrishnan was that education is meant to enable individuals to tackle the myriad problems of society (such as ignorance, disease, poverty and so on) and to cope with the accelerated pace of change in several spheres (such as agriculture, industry, medicine, transport, communication) which is a characteristic feature of society today. According to Dr Radhakrishnan,

education from the individual point of view will be incomplete, if it does not initiate the child to the supreme values of love, truth, goodness and beauty and fill him with a sense of purpose or else he suffers from greed, pusillanimity, anxiety and defeatism. Education, therefore, should not only train the intellect, promote technical skill but also develop a person's aesthetic abilities and especially moral and spiritual values. This is in accordance with the Upanishadic view that we should aim at the play of life (*pranaraman*), the satisfaction of mind (*manarandam*) and the fullness of tranquillity (*santisamdharm*). On social aims of education, according to Dr Radhakrishnan, man must also realise that in a society where there is social injustice, gross inequality and lack of fraternity, individual liberty cannot be preserved. It must also be borne in mind that individual freedom entails social responsibility. Education, therefore, transforms the social order by promoting a healthy nationalism and the spirit of internationalism.

**9.** On the functions of a teacher, at p. 133, according to Dr Radhakrishnan, the success of the educational process depends considerably on the teacher, for it is the teacher who has to implant aims, and to build the character of the students. According to Laski, at bottom of the education, the quality of a university is always in direct proportion to the quality of its teacher. A good teacher is one who knows his subject, is enthusiastic about it and one who never ceases to learn. Communication with the students and sense of commitment to his work are necessary. *A good teacher, therefore, according to Dr Radhakrishnan, is one who is objective, just, humble and is open to correction. According to Whitehead the teacher must be a self-confident learned man. The teacher, therefore, is the primary functionary to transmit the intellectual and ethical values to the young. He should encourage the attitude of free enquiry and rational reflections. The teacher should try to remove the leaden weights of pride and prejudice, passion and desire which are likely to cloud a student's vision. The devoted teacher is not only concerned with the child's intellectual development but also has the obligation to attend to his moral, emotional and social growth as well.*

**10.** Mahatma Gandhi, the Father of the Nation has stated that "*a teacher cannot be without character. If he lacks it, he*

*will be like salt without its savour. A teacher must touch the hearts of his students*. Boys imbibe more from the teacher's own life than they do from books. If teachers impart all the knowledge in the world to their students but do not inculcate truth and purity amongst them, they will have betrayed them". Shri Aurobindo has stated that "it is the teacher's province to hold aloft the torch, to insist at all times and at all places that this nation of ours was founded on idealism and that whatever may be the prevailing tendencies of the times, our children shall learn to live among the sunlit peaks". Dr S. Radhakrishnan has stated that "*we in our country look upon teacher as gurus or, as acharyas. An Acharya is one whose aachar or conduct is exemplary. He must be an example of Sadachar or good conduct. He must inspire the pupils who are entrusted to his care with love of virtue and goodness.* The ideal of a true teacher is *andhakaraniridhata gurur itya bhidhiyate*. Andhakar is not merely intellectual ignorance, but is also spiritual blindness. He who is able to remove that kind of spiritual blindness is called a guru. Are we deserving the noble appellation of an acharya or a guru?" Swami Vivekananda had stated that "the student should live from his very boyhood with one whose character is a blazing fire and should have before him a living example of the highest teaching. In our country, *the imparting of knowledge has always been through men of renunciation. The charge of imparting knowledge should again fall upon the shoulder of Tyagis*".

**11.** It is in this backdrop, therefore, that the Indian society has elevated the teacher as "*Guru Brahma, Gurur Vishnu, Guru Devo Maheswaraha*". As Brahma, the teacher creates knowledge, learning, wisdom and also creates out of his students, men and women, equipped with ability and knowledge, discipline and intellectualism to enable them to face the challenges of their lives. As Vishnu, the teacher is preserver of learning. As Maheswara, he destroys ignorance. Obviously, therefore, *the teacher was placed on the pedestal below the parents.* The State has taken care of service conditions of the teacher and he owes dual fundamental duties to himself and to the society. As a member of the noble teaching profession and a citizen of India he should always be willing, self-disciplined, dedicated with integrity to remain ever a learner of knowledge, intelligently to articulate and communicate and imbibe in his students, as social duty, to

impart education, to bring them up with discipline, inculcate to abjure violence and to develop scientific temper with a spirit of enquiry and reform constantly to rise to higher levels in any walk of life nurturing constitutional ideals enshrined in Article 51-A so as to make the students responsible citizens of the country. Thus the teacher either individually or collectively as a community of teachers, should regenerate this dedication with a bent of spiritualism in broader perspective of the constitutionalism with secular ideologies enshrined in the Constitution as an arm of the State to establish egalitarian social order under the rule of law. Therefore, *when the society has given such a pedestal, the conduct, character, ability and disposition of a teacher should be to transform the student into a disciplined citizen, inquisitive to learn, intellectual to pursue in any walk of life with dedication, discipline and devotion with an enquiring mind but not with blind customary beliefs*. The education that is imparted by the teacher determines the level of the student for the development, prosperity and welfare of the society. The quality, competence and character of the teacher are, therefore, most significant to mould the calibre, character and capacity of the students for successful working of democratic institutions and to sustain them in their later years of life as a responsible citizen in different responsibilities. Without a dedicated and disciplined teacher, even the best education system is bound to fail. *It is, therefore, the duty of the teacher to take such care of the pupils as a careful parent would take of its children and the ordinary principle of vicarious liability would apply where negligence is that of a teacher.* The age of the pupil and the nature of the activity in which he takes part are material factors determining the degree and supervision demanded by a teacher.

**12.** It is axiomatic that percentage of education among girls, even after independence, is fathom deep due to indifference on the part of all in rural India except some educated people. *Education to the girl children is nation's asset and foundation for fertile human resources and disciplined family management, apart from their equal participation in socio-economic and political democracy*. Only of late, some middle-class people are sending the girl children to co-educational institutions under the care of proper management and to look after the welfare and safety of the girls. Therefore, greater responsibility is thrust on the

> management of the schools and colleges to protect the young children, in particular, the growing up girls, to bring them up in disciplined and dedicated pursuit of excellence. *The teacher who has been kept in charge, bears more added higher responsibility and should be more exemplary. His/her character and conduct should be more like Rishi and as loco parentis and such is the duty, responsibility and charge expected of a teacher.* The question arises whether the conduct of the appellant is befitting with such higher responsibilities and as he by his conduct betrayed the trust and forfeited the faith whether he would be entitled to the full-fledged enquiry as demanded by him? The fallen standard of the appellant is the tip of the iceberg in the discipline of teaching, a noble and learned profession; it is for each teacher and collectively their body to stem the rot to sustain the faith of the society reposed in them. Enquiry is not a *panacea* but a nail in the coffin. It is self-inspection and correction that is supreme."
>
> (Emphasis supplied)

Significantly, in ***Avinash Nagra***[11], the Supreme Court upheld the decision, of the disciplinary authority, to dispense with the holding of an enquiry, altogether, before chastising the delinquent teacher, on the ground that the teacher had admitted to committing the act in question.

**68.** So sacred, therefore, is the student-teacher relationship, that the slightest sexual tinge, therein, indelibly tarnishes the relationship, and consigns it to profligacy.

**69.** Viewed thus, in the opinion of this Court, there can never be any question of a teacher seeking to justify having committed acts, admittedly of a sexual colour and connotation, towards a student, seeking to urge, in his defence, that the acts were not "unwelcome".

The very idea, in the opinion of this Court, is preposterous, and bordering on absurdity. In the opinion of this Court, it is completely foreclosed, to a teacher, who has made sexually coloured remarks to his student, to urge that the remarks were not "unwelcome" and that, therefore, he cannot be accused of "harassment". It is true that the definition of "sexual harassment", as ordinarily understood, and as defined in Clause 2 (viii) of Ordinance XV-D, refers to "unwelcome" acts. That, however, might be a factor to be taken into the reckoning, where the allegation of sexual harassment is between two adult colleagues, or two adults working in the University. It can never apply to the equation between the teacher and a student. This is essentially because sexually coloured conduct or behaviour, towards a student, by a teacher, is *completely proscribed*, morally as well as legally. Any such conduct, therefore, if committed or exhibited, can *never* be defended on the ground that the conduct was not unwelcome to the student. It is not, therefore, in the opinion of this Court, open to a teacher, accused of sexual harassment towards a student, by making lewd, or sexually coloured remarks, or exhibiting other conduct having sexual connotations, to urge, in his defence, that the student welcomed the acts. The "unwelcome" caveat, as contained in Ordinance XV-D is, in the opinion of this Court, intended to apply to other cases of alleged sexual harassment, and could never have been intended to apply to a case of a charge of sexual harassment, made by a student against a teacher.

**70.** It hardly matters, in this context, whether the student was being taught by the particular teacher, against whom the allegation of sexual

harassment was made, or not. The teacher, in an educational institution, is a teacher, qua every student in the institution. He is *in loco parentis*, not only towards the students whom he teaches, but to every student, studying in the institution. During the time spent by a student, pursuing her, or his, studies in an educational institution, the institution partakes of the character of a home away from home, and the teachers and the institution over responsibility to afford, to every student in the institution, the safety, security and sanctuary that the parents of the student would provide, when the student is at home. A teacher who, instead of maintaining this high degree of moral conduct, indulges in sexually coloured text messages, or telephonic conversations, with his student, has no place in the institution, and is an insult to the entire teaching community. For a teacher who regards himself as Dushyant to the student's Shakuntala, there can be no lesser punishment, in administrative civil law, then wholesale expulsion from the portals of the institution.

**71.** It is no defence to a teacher, in such a situation, to urge that the student provoked the allegedly delinquent behaviour on his part. Students may be impressionable, and infatuation, towards a teacher, on the part of a student, is not an unknown phenomenon. It may be pardonable for a student to harbour such an infatuation, towards the teacher; it is, however, entirely unpardonable, for the teacher, to succumb to the infatuation, and reciprocate. This court is completely convinced that any such reciprocation, on the part of the teacher, renders him unfit to continue to teach in the institution. There is, in the opinion of this Court, no half-way house in such matters.

**72.** In recent times, the principle of purposive interpretation has ousted the earlier prevalent principle of literal interpretation, as the "golden rule" of interpretation of statutes[13]. This principle – also known as the "mischief rule" , or "Heydon's rule" of interpretation, owing, as it does, its origin to ***Heydon's case***[14] requires statutes to be interpreted keeping in mind the purpose thereof, and the mischief that is sought to be remedied by the statute, in mind. Allowing placement, on Clause 2(viii) of Ordinance XV-D, any interpretation which would permit, or even condone, the making of sexually coloured remarks, by a teacher of the University, to a student, whether orally or textually, would, in the estimation of this Court, defeat the entire purpose of having an Ordinance to deal with cases of sexual harassment within the portals of the University. For this reason, too, therefore, this Court is of the firm view that the defence, so fervently urged by Mr. Bishnoi, of the conduct, of his client, not having been "unwelcome" to 'M', is thin as tinsel.

**73.** This Court is also of the view that, in this context, the issue of whether 'M' conspired, with Anil Solanki, or Abhay Maurya, or anyone else, or conceived a grandiose scheme to blackmail the petitioner, is entirely irrelevant. These facts, even if true, do not detract, one jot, from the fact that the petitioner engaged in unacceptable, sexually charged communication with 'M'. Mr. Bishnoi would seek to contend that, as a willing conspirator in the plan to

---

[13] **Shailesh Dhairyawan v. Mohan Balkrishna Lulla, (2016) 3 SCC 619; Richa Mishra v State of Chattisgarh, (2016) 4 SCC 179**

[14] **(1584) 3 Co. Rep. 7a: 76 ER 637**

blackmail the petitioner, 'M' could not claim to be a victim of unwelcome sexual harassment. The submission, in the opinion of this Court, misses the wood for the trees. In the context of sexual harassment, especially in the backdrop of teacher-student relationships, a wider connotation is required to be ascribed to the expression "unwelcome". Acceptance of the contention of Mr. Bishnoi, and the interpretation placed by him on the expression "unwelcome" would result in permitting any teacher, with whom a student may be infatuated, to enter into a sexual relationship with the student and, thereafter, seek to claim that the relationship was consensual and, therefore, not "unwelcome" to the student. Such an interpretation, which is clearly against public interest has, in the opinion of this Court, necessarily to be eschewed. *What has to be seen, in such circumstances, is not whether the conduct of the teacher is welcome, or unwelcome, to the student, but as to whether it is welcome, or unwelcome, to societal interest, and to preservation of the societal moral fabric.* The acts of the petitioner, qua 'M', even as admitted by the petitioner, could not be regarded as minor peccadilloes. The manner in which the petitioner conducted himself, qua 'M', at least in the matter of exchanges, verbal and textual, made a mockery of the teacher-student relationship. The infraction was undoubtedly serious, in the opinion of this Court. Such conduct cannot be regarded as "welcome". It is inherently unwelcome, to public and societal interest, and to preservation of the sanctity of the educational edifice. For this reason, the motivations of 'M', or her co-conspirators, if any, cannot mitigate, to any extent, the indiscretions committed by the petitioner. This Court does not, therefore, intend to enter into that

arena, in respect which the ACC rightly recommended initiation of an independent, and separate, inquisitorial exercise.

**74.** Equally, this Court finds no substance in the objection, voiced by Mr. Bishnoi on behalf of his client, to the proceedings having been transferred from the UUCC to the ACC, or to the participation of Prof. Vibha Maurya in the proceedings. The submission, of the petitioner, that the proceedings could have been transferred to the ACC only in exceptional circumstances, and for specific reasons, is not borne out by a reading of Ordinance XV-D. Clause 4 of the "Procedure to be followed", in dealing with complaints of sexual harassment, clearly states that the Vice-Chancellor could refer any complaint to any of the Committees including the Apex Committee. The stipulation, regarding cases being taken up by the ACC in exceptional circumstances is, on the other hand, to be found in Clause 5 of the said Procedure, which deals with the right of the complainant to directly approach the ACC. In such cases, the complainant is required to give reasons for bypassing the UUCC. No such stipulation is contained in Clause 4, which deals with the power of the Vice-Chancellor to refer the complaint to the ACC, and reads as under:

> "The Vice-Chancellor can refer any complaint to any of the Committees including the Apex Committee."

**75.** No infraction of the prescribed procedure can, therefore, be said to have been committed by the Vice-Chancellor, in directing the ACC to look into the complaint. As the recital of facts, hereinabove, discloses, the complaint was transferred, from the UUCC to the ACC, consequent on a representation made by 'M', in which she was

apprehensive regarding the conduct of the members of the UUCC. In such cases, some amount of deference is, necessarily, required to be accorded to the alleged victim of sexual harassment, vis-à-vis the perpetrator thereof, as the latter is, in fact, merely being subjected, in a way, to a peer review. If, therefore, the Vice-Chancellor decided to have the complaint enquired into, by the ACC, and was possessed of the requisite power to do so, as per Clause 4 of the Procedure stipulated in this regard in Ordinance XV-D, this Court finds no reason to interfere therewith, in exercise of its jurisdiction under Article 226 of the Constitution of India.

**76.** Though the present writ petition could be dismissed even on the aforesaid ground, this court deems it appropriate to examine the other contentions advanced by Mr. Bishnoi.

**77.** The misgivings, expressed by the petitioner, regarding the participation, in the ACC, of Prof. Vibha Maurya, equally fail to impress. The ACC was a body comprising of 13 members, of whom Prof. Vibha Maurya was but one. That apart, the apprehensions, expressed by the petitioner regarding the participation of Prof. Vibha Maurya, are founded on mere conjectures and surmises, involving a perceived and convoluted, conspiracy, in which 'M', Anil Solanki, Prof. Abhay Maurya and Prof. Vibha Maurya were, if the petitioner is to be believed, all conspirators. No positive finding, in favour of the petitioner, has been returned, on this aspect, either by the ACC or by the EC, and this Court is not inclined, in these proceedings, to entertain such a plea. In any event, there is nothing to indicate that

Prof. Vibha Maurya played any controlling role in the deliberations of the ACC, or could, in any manner, influence the decision of the EC.

**78.** The decision in ***Rattan Lal Sharma v. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School***[15], on which the petitioner places reliance, turned on entirely different facts. In that case, Maru Ram, the member of the Enquiry Committee against homebuyers was alleged, was one of three members constituting the Enquiry Committee and had, in fact, himself deposed against the charged officer, whereafter he himself submitted the report, holding the officer guilty of some of the charges, including the charge regarding which he himself had deposed. In view thereof, the Supreme Court found that Maru Ram had a real and prevailing interest in establishing the charge against the charged officer and could not, therefore, have been co-opted as a member of the Enquiry Committee. In the present case, except for vague allegations regarding the possible bias of Prof. Vibha Maurya, as the wife of Prof. Abhay Maurya, against whom, too, the allegation of bias is nebulous, there is little to discredit Prof. Vibha Maurya, or lead to an inference that her participation , as a member of the ACC, resulted in a "real likelihood of bias", as could justify a "reasonable apprehension" in the mind of the petitioner. The test, that is required to be satisfied in such cases, is the existence of a reasonable apprehension, or of a real likelihood, of bias, and not of any fanciful trepidation, in the mind of the petitioner.

[15] **1993 SCC (L & S) 1106: (1993) 4 SCC 10**

**79.** These two contentions, as advanced by Mr. Bishnoi, regarding the manner in which the proceedings had been transferred to the ACC, and the perceived bias, of the ACC, owing to the participation of Prof. Vibha Maurya are, therefore, rejected.

**80.** Mr. Bishnoi also sought to impress, repeatedly, on this Court, the fact that, once the proceedings stood "closed", as communicated to the petitioner *vide* the letter dated 12th May, 2010, there could be no question of penalising the petitioner, as that would amount to reopening closed proceedings. This Court is unable to agree. Closure of proceedings is one thing, and exoneration of the petitioner, is quite another. Significantly, the letter dated 12th May, 2010, does not even go to the extent of closing the *disciplinary proceedings*. All that it states is that the *proceedings* are closed. In the opinion of this Court, it is quite obvious that the letter did not intend to bring the disciplinary proceedings to an end. Any such attempt would, in fact, have been completely illegal, as disciplinary proceedings, once initiated, can end only with the punishment, or with the exoneration, of the charged official. There is no third option. The proceedings cannot be brought to an end in any other manner (unless, of course, they abate in law). No order, awarding any punishment to the petitioner, or exonerating him of the charges against him, had been passed, prior to the issuance of the letter dated 12th May, 2010. The petitioner had only been issued a Show Cause Notice, dated 29th June, 2009, to which the petitioner had submitted his response. Before any decision could be taken, by the EC, on the response of the petitioner, the matter veered off, as it were, towards the ***Bidyug Chakraborty***[1] tangent. The disciplinary

proceedings, therefore, remained inchoate and unconcluded. Once the petitioner had submitted his questionnaire, pursuant to the communication, dated 18th February, 2010 *supra*, of the ACC, and 'M', despite the communications addressed to her, failed to respond to the questionnaire, the EC could not, straightaway, have brought the proceedings to an end. The reference, in the letter dated 12th May, 2010, to the "closure" of the proceedings, therefore, necessarily has to be read as referring to the closure of the enquiry proceedings, insofar as they required the participation of the petitioner, or of 'M'. The ball, as it were, lay, thereafter, in the court of the EC, which was required to take a decision, regarding the culpability, or otherwise, of the petitioner, keeping in view all the material before it. It is this decision that was taken and communicated, to the petitioner, *vide* the impugned Memorandum dated 4th/8th July, 2011, by which the petitioner claims to be aggrieved. It cannot, therefore, be alleged that, by doing so, the EC reopened closed proceedings. One may refer, profitably, in this context, to the following words, from ***Yoginath D. Bagde v. State of Maharashtra***[16]:

> "…So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceedings. *The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent.*"
>
> (Emphasis supplied)

---

[16] **(1999) 7 SCC 739**

**81.** The reliance, by Mr. Bishnoi, on the "closure" letter, dated 12th May, 2010 is, therefore, misplaced.

**82.** Mr. Bishnoi has also made elaborate and eloquent submissions, regarding the manner in which the principles of natural justice had been infracted in the present case. He also sought to submit that the procedure outlined by the Supreme Court, in its decision in ***Bidyug Chakraborty***[1], too, had not been followed, as, despite 'M' having defaulted in responding to the questionnaire submitted by his client, the EC ultimately held in her favour. Ordinarily, these submissions may have merited some consideration; in the present case, however, in the face of the admission, by the petitioner, of his having exchanged suggestive text messages, and indulged in telephonic conversation, having sexual overtones, with 'M', albeit in what he termed "moments of indiscretion", it cannot be said that any procedural infraction, even if it were to be supposed to have existed, resulted in prejudice to the petitioner, so as to vitiate the final decision taken against him. It is, by now, well settled, in service jurisprudence, that procedural lacunae, even if they exist, would vitiate disciplinary proceedings only if, as a result thereof, the charged officer is subjected to prejudice. One may profitably refer, in this context, to, among others, ***State Bank of Patiala v. S. K. Sharma***[17], ***P. D. Agrawal v S.B.I.***[18] and ***Haryana Financial Corporation v. Kailash Chandra Ahuja***[19]. In the face of the consistent admission, by the petitioner, regarding the character of the text messages and verbal communications, established, by him,

---

[17] **AIR 1996 SC 1669: (1996) 3 SCC 364**
[18] **(2006) 8 SCC 776**
[19] **(2008) 9 SCC 31**

with 'M', it cannot be said that the petitioner has been prejudiced, in any manner, by any procedural infraction that might have taken place in these proceedings. In ***Channabasappa Basappa Happali v State of Mysore***[20], on which Ms. Agrawal, appearing for 'M', rightly placed reliance, it has been held that, "where the delinquent admitted all the relevant facts, on which the decision could be given against him, it could not be said that the enquiry was in any breach of principles of natural justice".

**83.** In his statement, as recorded before the Sub-Committee on 4th March, 2009, the petitioner admitted that, on 16th May, 2007, 'M' "had sex related talks and (he) also responded positively on that day". In a similar, but more elaborate, vein, the petitioner, in his reply dated 4th March, 2009, to the communiqué, dated 24th February, 2009, of the ACC, admitted thus:

> "As a part of the conspiracy, the complainant used to call me frequently on my telephone and her conversation would invariably drift towards romantic talks. On 16.5.2007 I had gone to Patna (Bihar) to attend a programme organised by Doordarshan. I was in a party with friends when the complainant called me at about 11.00 -11.30 p.m. she spoke to me in a completely provocative tone so as to induce or entice me into a sexually tinged conversation …. *I also participated in the conversation* due to the influence of ambience and provocation thrown by her at me. … *In those moments of indiscretion, I also called her back and we held conversation in which he incited me to talk about sex related matters*. Thereafter she used to call me frequently and used to challenge me to indulge into sexually explicit talks and also used to ask me to send her SMS.… *In those moments of indiscretion, I did not since the underlying design and*

[20] **AIR 1972 SC 32**

> *conspiracy to trap me and therefore I used to receive calls and also sent a few SMS* which I deeply regret now."
>
> (Emphasis supplied)

The aforesaid admission, on the part of the petitioner, seen in conjunction with the text messages, especially those extracted in para 27, conclusively bring home, to the petitioner, the charge of sexual harassment, as levelled against him in the complaint, dated 9th September, 2008, of 'M', and render the petitioner unfit to hold the post of Professor or, for that matter, any other teaching assignment, in the University.

**84.** For the same reason, the non-supply, to the petitioner, of the "report", dated 31st August, 2010, of the ACC, on the basis whereof the impugned order, dated 4th/8th July, 2011, came to be passed, cannot be regarded as fatal to the final decision to compulsorily retire the petitioner from service. A reading of the report, dated 31st August, 2010, discloses that the ACC merely noted the fact that, after the forwarding, of its earlier report dated 30th April, 2009, to the EC, there was no particular change in circumstances, as the questionnaire of the petitioner, though forwarded to 'M', did not elicit any response from her. As such, the ACC merely resolved, in its report dated 31st August, 2010, to stand by its earlier report, dated 30th April, 2009. As the said earlier report, dated 30th April, 2009, had been furnished to the petitioner, who also submitted his representation there against, no fatal procedural infraction could be said to have been committed, merely by the fact that the report, dated 31st August, 2010, was not

furnished to the petitioner, especially in view of his admission, on merits, to the allegation of having sent text messages, and having made voice calls, having sexual overtones, to 'M'.

**85.** The facts, in ***Prof. S. P. Narang v. University of Delhi***[21], rendered by a co-ordinate Single Bench of this Court, and on which Mr. Bishnoi places considerable reliance, clearly distinguish it from the case at hand. In the first instance, there was no admission, in ***Prof. S. P. Narang***[21], of commission, by the petitioner therein, of the acts which were alleged to constitute sexual harassment. Secondly, the learned Single Judge, deciding ***Prof. S. P. Narang***[21], based his decision on the judgment of the Division Bench of this Court in ***Prof. Bidyug Chakraborty***[2], which effectively stands diluted by the order passed by the Supreme Court in the Special Leave Petition preferred thereagainst. As a result, no substantial benefit can enure, to the petitioner, by the judgment of this Court in ***Prof. S. P. Narang***[21].

**86.** Mr. Bishnoi also sought to rely on the Guidelines, issued by the United States Equal Employment Opportunity Commission, as well as the decision of a learned Circuit Judge of the United States of Appeals, 11th Circuit, in ***Barbara J. Henson v. City of Dundee***[22]. This Court is not persuaded to advert thereto. Overseas jurisprudence, in cases of sexual harassment, does not, in the opinion of this Court, have any substantial precedential value, as, sexual harassment, being in the nature of a social, and societal, evil, the jurisprudence developed with respect to sexual harassment is also, inevitably,

---

[21] **2007 SCC OnLine Del 9458**
[22] **682 F. 2d. 897**

conditioned by the prevalent social, and societal, milieu. That apart, the law, relating to sexual harassment, may justifiably be regarded as having crystallised, in our jurisprudence, to a point where is not necessary to refer to decisions emanating from other jurisdictions.

**87.** Reliance was also placed, by Mr. Bishnoi, on the judgment, of a Division Bench of this Court in ***Union of India v. S. K. Das***[23]. That case, however, did not deal with an allegation of alleged sexual harassment of a student, by a teacher; neither was there any admission, by the respondent in that case, of his having made statements having sexual overtones, as in the present case.

**88.** Learned counsel for the respondents have invited the attention, of this Court, to the limited scope of its jurisdiction, as vested by Article 226 of the Constitution of India, insofar as re-evaluating the merits of the decision of the competent disciplinary authority, regarding the charges levelled against a charged officer, is concerned. Inasmuch as, on the facts as admitted, this Court has, in this judgment, come to considered view that the decision to compulsorily retire the petitioner from service cannot be said to be unjustified, or in any manner disproportionate to the "indiscretions" committed by him, it becomes unnecessary to consider this submission. Suffice it to state that, on the admitted facts, the decision, of the respondents, to compulsorily retire the petitioner from service cannot be said to warrant any interference, by this Court, in exercise of its extraordinary jurisdiction, conferred by Article 226 of the Constitution of India.

---

[23] **2016 SCC OnLine Del 5578**

## Conclusion

**89.** The writ petition is, therefore, dismissed, with no orders as to costs.

**C. HARI SHANKAR, J.**

**NOVEMBER 25, 2019**
*dsn/*HJ