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**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P.A. 9141 of 2020

(Through Video Conference)

**Dr. Malabika Bhattacharjee
-versus
Internal Complaints Committee,
Vivekananda College & Ors.**

Mr. Soumya Majumder,
Mr. Debashis Banerjee,
Mr. Subrata Saha.
...For the Petitioner.

Mr. Kallol Basu,
Mr. Suman Banerjee.
...For the Respondent No.5.

Mr. Prabir Kumar Ghosh.
...For the Respondent Nos.
1 to 4.

Mr. Mit Guha Roy.
...For the Respondent Nos.
3 and 4.

The petitioner contends that the respondent authorities acted without jurisdiction in entertaining a complaint on alleged sexual harassment against the petitioner on the complaint of the private respondent, despite the fact that both of them are of the same gender.

Learned counsel appearing for the petitioner places reliance on a portion of the complaint, annexed at page

53 (Annexure P-5) of the writ petition, in particular Clauses (iv) and (v), to stress the point that the allegation of the private respondent revolved around alleged vilifying and defaming the private respondent in public. It is submitted that the act as alleged, could not fall within the purview of “sexual harassment” as contemplated in the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Mr. Soumya Majumder, Learned counsel appearing for the petitioner places particular reliance on the definition of “sexual harassment” in Section 2(n) of the said Act and seeks to impress upon the Court that the acts contemplated therein have no nexus with the present complaint.

Learned counsel also places reliance on Section 3(2) of the 2013 Act to argue that the acts stipulated therein pre-suppose an act of “sexual harassment” having been committed in the first place and thus relate back to the definition of the said term in Section 2 (n).

The petitioner next argues that, as per Section 19(h) of 2013 Act, an employer shall cause to initiate action, under the Indian Penal Code or any other law for the time being in force, against the perpetrator, or if the aggrieved women so desires where the perpetrator is not an employee, in the workplace at which the

incident of sexual harassment took place. It is argued that such an action, as envisaged under the Indian Penal Code, only pertains to a man being involved in the offence, which ingredient has to be factored in while appreciating the connotation of “sexual harassment” under the 2013 Act.

Learned counsel for the petitioner also places reliance upon ***Vishaka & Ors. -vs- State of Rajasthan & Ors.***, reported at **1997(7) JT 384**. It is submitted that, since the said judgement was the genesis of the 2013 Act, the concept of the 2013 Act has to be read and interpreted in the light of the said judgement. It was held therein, *inter alia*, that in the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution of India and the safeguards against sexual harassment implicit therein. It is further submitted that, as per the said judgment, the meaning and contents of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality, including prevention of sexual harassment or abuse.

Reading in such light, it is argued, the question of gender equality acquires primacy in deciding whether a complaint falls within the periphery of the 2013 Act. In the present case, since the gender of the complainant and the respondent is the same, the question of the Act being invoked does not arise.

Mr. Kallol Basu, learned counsel appearing for the private respondent argues on the basis of the University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015 and submits that the said Regulations are broad enough to encompass respondents of all genders, implicitly meaning that the gender of the complainant and the respondents can very well be the same in order to attract the rigours of the Regulations, which govern the present parties as well. By placing particular reliance on Regulation 8(2), learned counsel for the private respondent argues that the expression “the respondents shall file his/her reply” has been used therein, thereby bringing within its purview respondents of both genders.

This, read with the definition of “respondent” in Section 2(m) of the 2013 Act, which contemplates “a person” as a respondent, indicates clearly, according to the private respondent, that same-gender allegations can also be entertained under the 2013 Act.

Learned counsel appearing for the respondent-authorities adopts the same argument and prays for the writ petition to be dismissed.

A cursory glance at Section 2(m) of the 2013 Act shows that the term “respondent” brings within its fold “a person”, thereby including persons of all genders.

Although there is substance in the submission of the petitioner that the said expression has to be read in conjunction with the rest of the statute as a whole, there is nothing in Section 9 of the 2013 Act [which has been referred to in Section 2(m)] to preclude a same-gender complaint under the Act. Although it might seem a bit odd at the first blush that people of the same gender complain of sexual harassment against each other, it is not improbable, particularly in the context of the dynamic mode which the Indian society is adopting currently, even debating the issue as to whether same-gender marriages may be legalized.

That apart, the definition of “sexual harassment” in Section 2(n) cannot be a static concept but has to be interpreted against the back-drop of the social perspective. Sexual harassment, as contemplated in the 2013 Act, thus, has to pertain to the dignity of a person, which relates to her/his gender and sexuality; which does not mean that any person of the same gender cannot hurt the modesty or dignity as envisaged by the 2013 Act. A person of any gender may feel

threatened and sexually harassed when her/his modesty or dignity as a member of the said gender is offended by any of the acts, as contemplated in Section 2(n), irrespective of the sexuality and gender of the perpetrator of the act.

If Section 3(2) is looked into, it is seen that the acts contemplated therein can be perpetrated by the members of any gender, even *inter se*. In such context, the language of Section 2(m), Section 2(n) and Section 3 of the 2013 Act is set out below:-

“2(m) *“respondent” means a person against whom the aggrieved woman has made a complaint under section 9;*

2(n) *“sexual harassment” includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:-*

- (i) *physical contact and advances; or*
- (ii) *a demand or request for sexual favours; or*
- (iii) *making sexually coloured remarks; or*
- (iv) *showing pornography; or*
- (v) *any other unwelcome physical, verbal or non-verbal conduct of sexual nature;*

3 Prevention of sexual harassment – (1) *No woman shall be subjected to sexual harassment at any workplace.*

(2) *The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment:-*

- (i) *implied or explicit promise of preferential treatment in her employment; or*
- (ii) *implied or explicit threat of detrimental treatment in her employment; or*
- (iii) *implied or explicit threat about her present or future employment status; or*

- (iv) *interference with her work or creating an intimidating or offensive or hostile work environment of her; or*
- (v) *humiliating treatment likely to affect her health or safety.*

In such view of the matter, the act alleged by the private respondent to have been perpetrated by the petitioner, as evident from the complaint dated September 15, 2020 (Annexure P-5), is maintainable under the 2013 Act. Hence, the complaint cannot be turned down at the outset.

Accordingly, W.P.A. 9141 of 2020 is dismissed on contest.

However, it is made clear that the merits of the allegations levelled by the private respondent against the petitioner have not been gone into in any manner by this court. It will be open to the appropriate authorities to decide the matter independently, on its own merits, without being influenced by the observations made herein in any manner.

Since it is submitted by the petitioner that the complainant's cross-examination was closed in the meantime, due to pendency of the writ petition, it is further made clear that the authorities concerned shall give a further opportunity to the petitioner to cross-examine the complainant (private respondent) at the earliest.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)