



## GSCASH case: Update on the hearing dated 21 September

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The JNUTA would like to begin by **congratulating the Counsel for the petitioners Sr. Counsel Indira Jaising and her legal team of Adv. Harsh Parashar and others**, as well as the petitioners themselves, for filing the Writ Petition less than 24 hours after the EC meeting, which so disastrously and callously put the confidentiality, health, and safety of parties and witnesses in GSCASH complaints at risk. **JNUTA's heartfelt thanks are due to the exemplary responsibility evinced by the GSCASH which refused to be bowed down by intimidatory tactics by the JNU Registrar to attempt to compel the GSCASH to hand over the keys to its office to him (when even the ICC rules provide his office with no *locus standi* in ICC matters). Were it not for the repeated insistence of the GSCASH Chairperson and its members for legal clarifications on multiple counts on 18 September, the relief that has been won in court yesterday would never have come about.**

### **The Hearing**

In the hearing today, the interim application prayers before the Division Bench of the Delhi High Court were to stay the orders arising out of the 18 September EC decision to supersede the GSCASH Rules with the UGC-ICC

rules, for Court directions to JNU to preserve all records of GSCASH from 1999 to till date in consultation with GSCASH, and also to allow the elections for the student representatives to GSCASH to be held. However, between the 19th of September when the interim application had been filed and today, the situation had changed — the JNU administration had gone and and double locked the office, and that issue was to be raised in Court today as well.

## **The Proceedings**

The GSCASH case was effectively the fourth item on the morning's agenda, but when the board moved to the case, the usual posse of lawyers that JNU seems to be able to muster these days was missing; indeed, there was no one from JNU at all. Initially, there was an attempt to suggest to the Court that the petition had not been served the writ petition on JNU/UGC by a junior lawyer, but the judge was served incontrovertible evidence to the contrary.

In the normal course of events, no order is passed when the other party is absent, and another date is set. However, Ms. Jaising requested to be heard, and laid on the record the double locking and sealing of the GSCASH Office by the JNU administration. The photograph featured in this post was submitted to the Court. Ms. Jaising that if an order restraining the JNU administration from entering the GSCASH office were not to be given, the confidential information in the GSCASH office could be compromised. She told the Court that the petitioners, who are not current GSCASH members themselves, are asking for the GSCASH office to remain double locked and sealed until the interim application is heard. The Chief Justice Gita Mittal,

taking on board Ms. Jaising's concerns, then ordered the clerks to go and locate Adv. Ms. Ginny Routray, and the ASG appearing for JNU, Mr.. Sanjay Jain, immediately.

## **Argument**

Even as the court turned to other matters, the petitioners' Counsel spotted both the JNU counsel hiding in plain sight, seated in the back row of the courtroom! As soon as Ms. Jaising could intervene, she pointed this fact out in open court, and amidst titters , the judge called out to Routray and Jain to step up to represent their clients. (The JNU Registrar was present throughout the proceedings, but seemed unfazed by the fact that his counsel were making JNU a laughing stock.)

JNU's reluctant counsel said that they were not yet ready to argue the interim application. Its counsel submitted that the ICC needed access to the GSCASH office because the ICC had been installed by the Executive Council, that GSCASH had no right to retain the records, and that the ICC had inquiries to complete, and new ones to begin. Ms. Jaising fiercely contested this, saying that this writ petition challenged the very constitution of the ICC and that the request was not that GSCASH have access to the records, but rather that *nobody* does.

JNU's second contention was that the records would not be safe without the ICC securing them. To this, the judge asked which records they were referring to, to which they had no satisfactory answer. Ms. Jaising immediately pointed out to the court that in fact the JNU administration has no idea at all what is in the GSCASH office, as the GSCASH is a fully

autonomous body, who is the sole custodian of all records pertaining to sexual harassment. The judge then remarked that if the GSCASH could have been trusted by the JNU administration for eighteen years on this, what could have changed on the 18th of September?

The JNU counsel then offered the court an assurance that were the ICC would not conduct any of the ongoing inquiries, which may be sealed, and that the ICC look into only fresh complaints. To do this, the ICC must be given to the GSCASH office. Ms. Jaising opposed this on multiple grounds. First, the petitioners have sought the quashing of the EC resolution giving them the power to do any inquiries at all, so this assurance cannot be accepted. Second, letting the ICC have access to any records would amount to creating conditions for the violation of confidentiality guaranteed in complaints of sexual harassment from *Vishaka* onwards. Third, when complaints were made, inquired into and resolved, at any point in these 18 years, it was GSCASH members who had taken the oath of confidentiality and safeguarding of the records, and could be held responsible for any misuse, disappearance, damage, or even leak (remember the collusive leak of answer scripts of the JNUEE written examination for the Centre for the Study of Social Systems?) Furthermore, Ms. Jaising stated that the request to have access to old records cannot be granted to as there is no proper procedure laid down for inspection, inventory, safeguarding of records.

The learned judge, Chief Justice Geeta Mittal, concurred with Ms. Jaising that the concerns for confidentiality had to be the paramount factor in this matter. She also painstakingly explained to the JNU Counsel what the guarantees expected from employers are in the SHW Act 2013. She then dictated the following order.

The next hearing of the interim stay application is on 31st October and the main petition on 28 November.

## **Assessment**

The JNUTA is gratified not only by the order that has been issued but also by the fact that the terms of the debate have been set around sexual harassment and the guarantees given to parties by an inquiring authority. Rather than being waylaid by the usual of 'UGC is mandatory' argument that the JNU administration trots out routinely in court, the Division Bench gave primacy to the confidentiality guarantee to sexual harassment complaints as argued for by the Counsel for the petitioners.

**It has also become clear through the arguments in the Court that the matter of confidentiality is not restricted to ongoing complaints but all complaints that have ever been recorded or inquired into by GSCASH over the last eighteen years. The JNUTA thinks it would be prudent at this stage for all individuals, including former members of the GSCASH, to communicate in writing to the GSCASH (gscash.jnu@gmail.com) if they have objections to the records of the complaints they were parties or witnesses to, being accessed by the ICC.**

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