

Madras High Court
M.Kavya vs The Chairman

In the High Court of Judicature at Madras

Reserved on: 17.11.2014 and Pronounced on: 4-12-2014

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

Writ Petition No.11217 of 2014
and
M.P.Nos.1 to 3 of 2014

1. M.Kavya
2. Vidya T Appukuttan ...Petitioners

Vs

1.The Chairman, University Grants
Commission, New Delhi.
2.The Vice-Chancellor, Pondicherry
University, Puducherry.
3.The Registrar, Pondicherry
University, Puducherry. ...Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorari

For Petitioners : Ms.R.Vaigai for Mr.M.Stalin Abhimanyu
For Respondent-1 : Mr.A.S.Vijayaraghavan
For Respondents 2 & 3 : Mr.R.Krishnamurthy, SC
for Mr.M.V.Balamurugane

O R D E R

The petitioners, who are students of the respondent-University, undergoing Post Graduate Courses, respectively in Mass Communication and English Literature, have come up with the above writ petition, challenging an order dated 01.11.2013, by which, they were placed under suspension for the even semester of the academic year 2013-14 and an order of the Appellate Authority, namely the

Vice-Chancellor dated 19.12.2013, by which, their suspension was revoked subject to their submitting an unconditional apology.

2. I have heard Ms.R.Vaigai, learned counsel for the petitioners, Mr.A.S.Vijayaraghavan, learned counsel for the first Respondent (University Grants Commission) and Mr.R.Krishnamurthy, learned Senior Counsel appearing for the University.

3. On 30.9.2013, the petitioners herein lodged a complaint with (1) the Vice-Chancellor of the University; (2) the Registrar of the University and (3) the Chairperson of the Anti-Ragging Cell, complaining that when they were walking towards the Mother Theresa Mess of the University, at about 8.00 p.m. on 21.9.2013, two students, studying in the Department of Physical Education in the same University passed snide comments about the petitioners, used abusive words and threatened to assault them and rape them. According to the said complaint, another co-student of the petitioners, by name Monu, was warned by one of those students that if the second petitioner herein lodged a complaint, he would stigmatize them as having been sexually assaulted.

4. On 01.10.2013, the petitioners gave a police complaint and the news about the complaint of the petitioners got published in The Indian Express, in its Edition dated 01.10.2013, in The Times of India in its Edition dated 01.10.2013 and in The Hindu later.

5. It appears that immediately, the Chairman of the Anti-Ragging Committee of the University constituted an Enquiry Committee comprising of about 9 members, some of whom were the Deans of various Schools of the University, one was an Assistant Dean and two were Chief Wardens of the Hostels for Boys and Girls. This Committee purportedly conducted an enquiry with five students namely (1) Kavya-the first petitioner herein, (2) Vidya-the second petitioner herein, (3) Monu-the boy accompanying the petitioners, (4) Sreejith, against whom the complaint was made, and (5) Aneesh. The Enquiry Committee submitted a report subsequently. In the report, it is stated that the Committee obtained the written statements of only 2 boy students, namely Sreejith and Aneesh, but recorded the statements of 7 students, including the 5 students, who appeared for the enquiry and two others. After taking their statements and questioning them, the Committee recorded (1) its major observations; (2) its recommendations; and (3) suggested disciplinary action.

6. Since the said report forms the basis for all the events that subsequently unfolded, it may be necessary to extract (1) the major observations of the Committee; (2) its recommendations; and (3) the suggested disciplinary action.

"Major Observations of the Committee (1) The committee feels that this is an incident of quarrel between two groups of students in which both the groups abused each other using derogatory words.

(2) The complainant girls (Kavya and Vidya) and their friends (Abhijith PV. Abhijith B, Ronny Paulose, Jyotish) have not explored all the ragging redressal mechanisms available in the University, which are very much known to them (Notices of Anti-ragging along with the mobile numbers of the Anti-Ragging Committee Members are displayed on the notice boards of all the departments,

hostels, messes, canteens and lecture hall complexes).

Further, they have not waited for the University administration to resolve the issue but instead have released news (false news) to the media and press.

(3) The enquiry also reveals that all these students have taken the law into their hands by taking out unauthorized procession/protests/ meetings and thereby violated the undertaking they have given to the University along with their parents/guardians at the time of their admission (copies of the undertakings are enclosed herewith for reference).

(4) The enquiry also reveals that the students are carried away by politically affiliated activities, a fact which is not acceptable as per our university regulations which states that there should not be any political allegiance during the course of study in the campus.

Recommendations:

Based on the above observations, the committee unanimously resolves that

1. appropriate disciplinary action be taken at the earliest against all the involved students (Kavya, Vidhya, N.C.Monu, Abhijith PV., Abhijith B., Ronny Paulose, Jyotish, Sreejith @ Jithu and Aneesh) for having indulged in the fight, exchanging abusive words.
2. Severe disciplinary action be taken at the earliest against these students who have violated the rules and regulations of the university. Abhijith P.V., Abhijith B. and N.C.Monu for having approached the media (as stated by Kavya, Vidya and N.C.Monu himself) to release the news (false news) without university's permission; Kavya and Vidhya for not having objected to the press releases; and
3. severe disciplinary action be taken at the earliest against Abhijith P.V., Abhijith B, Kavya, Vidya, Monu, Ronny Paulose and Jyothish for having organised a series of unauthorised protests in spite of university administration having initiated enquiry into the incident;
4. the University may issue a notification banning any politically affiliated activity inside the university campus.

Suggested disciplinary action:

1. Permanent Expulsion from the Hostel - all the students involved in this incident.
2. Suspension from the University for a period of one to two semesters depending on the seriousness of the offence - all the students involved in this incident."
7. On the basis of the report of the Enquiry Committee constituted by the Anti-Ragging Committee of the University, the Registrar of the University issued a show cause notice dated 25.10.2013, to 11

students, including the petitioners herein, calling upon them to appear for an enquiry before the Disciplinary Committee on 29.10.2013, at 3.30 p.m. The show cause notice contained certain allegations, which read as follows:-

"Whereas it is brought to the notice of the University Authorities that you have been actively engaging yourself in a group clash and hurling abusive and derogatory words against each other on 21.09.2013 and on subsequent days;

And whereas you have been instigating the other students to join the respective factions and created a tense situation in the University campus;

And whereas without exhausting remedial/ redressal mechanisms already available in the University system, you have sought redressal from other channels and outside agencies without the knowledge of the University and thereby attempting to denigrate the reputation of the University;

And whereas such acts of yours amount to unbecoming of the students of the University warranting disciplinary action."

8. Interestingly, the copy of the report of the Enquiry Committee constituted by the Anti-Ragging Committee dated 14.10.2013 was not furnished to the petitioners despite the fact that it formed the basis for the disciplinary action. However, the students appeared before the Disciplinary Committee. After questioning the petitioners and others, the Disciplinary Committee submitted a report dated 31.10.2013 recommending and suggesting a particular course of action. Accepting those recommendations, the Registrar of the University passed an order dated 01.11.2013, the operative portion of which, is as follows:-

"(I) Ms.Kavya, M. 1st Year M.A. Mass Communication, Ms.Vidya, T. Appukuttan, 1st Year M.A. English, Mr.N.C.Monu, 1st Year M.A. Mass Communication, Mr.Sreejith K.S. (@ Jiththu) 2nd Year M.P.Ed., Mr.P.V.Abhijith, 1st Year M.A. English, Mr.B.Abhijith, 1st Year M.A. English, Mr.Rony Paulose, 2nd Year M.Sc. Electronic Media & Communications and Mr.K.Jyotish, 3rd Year Integrated M.Sc., Physics are hereby directed to vacate their rooms from the respective hostels on or before 10.11.2013.

(II) the above mentioned eight students and Mr.M.Aneesh, 1st Year Master of Physical Education are placed under suspension for the next semester (from December 2013 to May 2014); and (III) Mr.Akhil Vijayan, 2nd Year M.Sc. Electronic Media & Communication and Ms.Ranjitha Raj, 1st Year M.A. English are hereby severely warned not to repeat such acts of misconduct in future (Warning Memos issued separately)."

9. Aggrieved by the aforesaid order dated 01.11.2013, the first petitioner herein filed a writ petition in W.P.No.30430 of 2013. On 08.11.2013, when the writ petition came up for admission, the Standing Counsel for the University took notice and this Court granted an interim stay of the order dated 01.11.2013, in favour of the first petitioner herein. Subsequently, 6 other students also came

up with a writ petition in W.P.No. 31101 of 2013, challenging the order dated 01.11.2013.

10. It appears that when the writ petitions came up subsequently for hearing, the learned Judge attempted to arrive at an amicable solution. But, it failed. The University thereafter took a stand that the petitioners had an alternate remedy of appeal to the Vice-Chancellor. Therefore, the learned Judge passed an order on 28.11.2013, giving liberty to the writ petitioners to file individual appeals to the Vice-Chancellor and further directed the Vice-Chancellor to consider the appeals sympathetically. However, the writ petitions were kept pending.

11. Pursuant to the above orders, all the students filed individual appeals. In the appeals so filed on 04.12.2013, the petitioners and the other students reiterated their original grievance.

12. Therefore, the Vice-Chancellor directed all the students, who had filed appeals, to appear before her for the hearing of the appeals, on 16.12.2013. Accordingly, the petitioners appeared.

13. However, the Vice-Chancellor passed an order on 19.12.2013. The operative portion of the said order reads as follows:-

"(i) The suspension order issued against you in PU/AS/Aca-10/Regr/2013-14/DA/07 dated 01.11.2013 is cancelled considering solely and sympathetically that your future career as a student shall not be affected, subject to your submitting an unconditional apology to the University for your acts of disturbing peace inside the University campus.

(ii) You shall continue to pursue your studies as a scholar in this University.

(iii) Notwithstanding the report of the Enquiry Committee constituted by the Anti-Ragging committee of the University, the Sexual Harassment Prevention Committee of the University shall independently enquire into the complaint.

(iv) You shall strictly adhere to the rules & regulations of the University with a view to upkeep the peace, cordial and conducive academic ambiance inside the campus.

(v) You shall strictly adhere to the declaration submitted by you and your parents at the time of admission into the University.

(vi) Any violation of the rules and regulations of the University or the declaration given by you at the time of admission henceforth and any indulgence in any activity affecting discipline inside the campus in future shall be viewed seriously with appropriate action."

14. It appears that all other students except the two writ petitioners herein, tendered unconditional apology, as directed by the Vice-Chancellor. But offended by the treatment meted out to them and the demand for apology, the petitioners protested.

15. In the meantime, the Anti-Sexual Harassment Committee of the University issued a notice dated 29.11.2013, calling upon the petitioners to appear for an enquiry into their complaints of sexual harassment against two male students. But, the petitioners did not appear before the said Committee.

16. Thereafter, the writ petitions in W.P.Nos.30430 and 31101 of 2013 came up for hearing on 05.3.2014. Since those two writ petitions challenged the first order dated 01.11.2013 and also since the said order had already been modified on appeal, during the pendency of those writ petitions, the petitioners sought to withdraw the writ petitions with liberty to challenge the Appellate Authority's order. Accordingly, the writ petitions in W.P.Nos.30430 and 31101 of 2013 were dismissed by this Court on 05.3.2014 with liberty to the petitioners to challenge the Appellate Authority's order.

17. Thereafter, the petitioners herein filed the present writ petition in W.P.No.11217 of 2014 along with a couple of miscellaneous petitions. One of the miscellaneous petitions was for a direction to the University to permit the petitioners to appear for the even semester (December 2013 to April 2014) Examination. This miscellaneous petition was rejected by a learned Judge, by an order dated 21.4.2014.

18. The petitioners filed an appeal in W.A.No.557 of 2014. In the appeal, the learned counsel for the University agreed that the petitioners may be allowed to continue the third semester subject to the result of the writ petition. Therefore, without permitting the petitioners to write the second semester examinations on the ground that they did not have required attendance for the second semester, the Division Bench of this Court merely directed the respondents to allow the petitioners to attend the third semester. Therefore, the petitioners started attending classes in the third semester from June 2014 and they have now completed the third semester and have started appearing for the third semester examinations. Since the petitioners are undergoing two year Post Graduate Courses, comprising of four semesters, the petitioners are now left only with one more semester, namely the fourth semester from January to April 2015. However, the second semester for the petitioners is now gone and they have not written examinations for the second semester. It is, at this stage, that the writ petition came up before me for final hearing.

19. Ms.R.Vaigai, learned counsel appearing for the petitioners submitted that the first complaint given by the petitioners was one of sexual harassment as well as ragging, but the officers of the University derailed the allegations of sexual harassment and treated the complaint as one of ragging; that the whole attitude of the officers of the University was completely unacceptable, since they treated the perpetrators as well as the victims alike and punished both of them; that the University adopted a prejudiced attitude due to the fact that the petitioners gave a police complaint, went to the media and organised a protest march inside the campus; that therefore, the complaint of sexual harassment was twisted and projected as one of group clash between two sets of students; that the reference of the complaint of sexual harassment at this stage to the Sexual Harassment Committee, after having belittled the same as a group clash and after having punished the petitioners, is nothing but an eyewash and does not inspire the confidence of the victims; and that as per law, the respondents were obliged first, to hold an enquiry into the complaint of sexual harassment, before holding any other enquiry into the other complaints.

20. Inviting my attention to the decision of the Supreme Court in *Medha Kotwal Lele v. Union of India* [(2013) 1 SCC 297], Ms.R.Vaigai, learned counsel for the petitioners contended that the guidelines issued in *Vishakha* should not remain symbolic and that all the States and Union Territories, were required to incorporate adequate provisions in their Conduct Rules. The conservative thinking that *Vishakha* guidelines are applicable only to work places, was rejected in *Medha Kotwal*.

21. The learned counsel for the petitioners also brought to my notice an order passed by the Supreme Court in *Ms.Bindu Tamta v. High Court of Delhi* dated 17.07.2013 [W.P.(Civil) No.162 of 2013], wherein the Supreme Court approved a set of regulations known as "The Gender Sensitisation and Sexual Harassment of Women at the Supreme Court of India (Prevention, Prohibition and Redressal) Regulations, 2013". Therefore, today, gender sensitisation and the need for a redressal mechanism, are matters of both social and legal necessity.

22. Though long after the decision of the Supreme Court in *Vishaka*, the Parliament enacted "The Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013", the Act is in addition to and not in derogation of any other law for the time being in force, by virtue of Section 28. Therefore, the learned counsel for the petitioners brought to my attention, a report published by the University Grants Commission, on the "Measures for Ensuring the Safety of Women and Programmes for Gender Sensitisation on Campuses". This report is the outcome of a survey conducted by a Task Force constituted by the UGC to explore the situation prevailing in campuses across the country. The recommendations made by UGC are:

- (1) setting up of a Gender Sensitisation Unit within the UGC;
- (2) taking care of the problem of protectionism, in the form of policing or curtailing the freedom of movement of women;
- (3) making the students undergo some course or workshop on gender sensitisation;
- (4) formulating guidelines for dealing with sexual harassments;
- (5) preparation of a booklet on sexual harassment and gender sensitisation;
- (6) preparation of courses and workshop modules on gender sensitisation;
- (7) providing counselling services and necessary infrastructure;
- (8) strengthening of women's study centres and development cells;
- (9) prioritising research proposals concerning sexual harassment and violence in Universities; and
- (10) incorporating a gender audit component as part of the evaluation process for NAAC.

23. In para 5.2.2 of the aforesaid UGC report, several recommendations are incorporated, in the backdrop of Vishaka guidelines and the 2013 Act. Since these recommendations are of significance, the said paragraph 5.2.2 of the UGC report is extracted as follows:-

" 5.2.2 Non-coercion and Interim Relief The 2013 Act has built on the Vishaka guidelines by adding that the following acts may also amount to sexual harassment:

presence or occurrence of circumstances of implied or explicit promise of preferential treatment in employment;

threat of detrimental treatment in employment;

threat about present or future employment;

interference with work or creating an intimidating or offensive or hostile work environment; or humiliating treatment likely to affect the woman employee's health or safety.

These provisions call for an explicit recognition of the fact that in a workplace, the exercise of patriarchal power may equally be expressed by the abuse of institutional power. It is therefore incumbent upon ICCs that once a complaint has been lodged, they should take steps to minimise such abuses. For example, some university rules require an order of restraint to be issued to the respondent as soon as the complaint is filed, prohibiting all direct or indirect contact with the complainant, her family or witnesses. Violations of the order of restraint are viewed as aggravating the offence committed.

As explicit protection from victimisation must be provided to all students and employee complainants and witnesses, by which in the pendency of a complaint and even after, the person charged with sexual harassment shall be expressly prevented from supervising or evaluating any academic or work-related activity of the complainant/witness.

This protection should explicitly extend to the supervision of research and writing of the Confidential Reports of the complainant. Importantly, if the research work of the complainant has been retarded because of her pursuing a complaint of sexual harassment against her supervisor or any other person employed or studying in the HEI, the concerned institution must ensure that the complainant should not be disadvantaged or penalised for any delays with regards to her academic work. Furthermore, the institution must ensure that she is sanctioned a reasonable amount of extra time to complete her work.

Furthermore, the 2013 Act also envisages the ICCs as providing interim relief to the complainant. The Act empowers the ICC to recommend to the employer, at the request of the aggrieved employee, interim measures such as (i) transfer of the aggrieved woman or the respondent to any other workplace; or (ii) granting leave to the aggrieved woman up to a period of 3 months in addition to her regular statutory/contractual leave entitlement. University-level ICCs must obviously guarantee these at the very minimum; however, in a workplace as complex as the University, special attention

must be paid to provide reasonable interim relief to students, particularly research students, as well. Appropriate procedures that are in consonance with the guarantee of confidentiality must be put in place in all HEIs.

Finally, it is important also to recognise that the principle of non-coercion must also guide the ICCs in recognising that the persons affected by sexual harassment may not always be women. Some-sex harassment and violence is a reality of our campuses and our society, and a commitment to non-coercion must also enable HEIs to redress such discriminatory acts. ICCs in educational institutions must also therefore be empowered to receive complaints of sexual harassment by men and women who have suffered same-sex harassment."

24. In paragraph 6.4 of the UGC report, under the caption "Recognizing and Combating Sexual Harassment", it is pointed out that "common tendencies of blaming the victim, putting pressure on a complainant to withdraw the complaint and so on must be actively prevented and counted."

25. The aforesaid report also contains in Sub-Para 8(i) of paragraph 6.4, the composition of Anti-Sexual Harassment Committees, as follows:-

"(a) A Presiding Officer, who shall be a woman faculty member employed at a senior level at the educational institution;

(b) Not less than two teaching employees and two non-teaching employees, preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

(c) Not less than three students, who shall be enrolled at the undergraduate, masters, and research scholar levels respectively.

(d) One member from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment.

Provided that at least one-half of the total Members so nominated shall be women."

26. It appears that the Pondicherry University itself has issued an Ordinance bearing No.8, replacing the earlier Administrative Ordinance-8. The caption for this Ordinance is "Ordinance Governing the Code of Conduct and Discipline for Protection of Women against Sexual Harassment". But, as rightly pointed out by Ms.R.Vaigai, learned counsel for the petitioners, the Ordinance has several shortcomings. Though the definition of the expression "Sexual Harassment" under Section 2(g) of the said Ordinance, is very wide, the definition of the expression "Sexual Harassment of Students", under Section 2(h) appears to be very narrow.

27. The definition of the expression "Sexual Harassment" under Section 2(g) of Administrative Ordinance No.8 of the Pondicherry University reads as follows:-

"Sexual Harassment" means:

commission of any verbal, physical or other conduct including comment, gesture or conduct of sexual nature, individually or collectively by men against women and includes

- (i) eve teasing
- (ii) unwelcome remarks
- (iii) jokes causing or likely to cause awkwardness or embarrassment
- (iv) innuendos and tauntry
- (v) gender based insults or sexually coloured remarks or demand / request for sexual favours
- (vi) unwelcome sexual overtone in any manner such as over telephone and the like
- (vii) touching or brushing against the body, and the like
- (viii) displaying pornographic or other offensive or derogatory picture, cartoons, pamphlets or sayings
- (ix) forcible physical touch or molestation
- (x) physical confinement against one's will and other acts tending to violate one's privacy
- (xi) denial of equal opportunity in pursuit of education/career development or
- (xii) otherwise making the study/work environment hostile or intimidating for students/employees"

28. The definition of the expression "Sexual Harassment of Students" under Section 2(h) of Administrative Ordinance No.8 of the Pondicherry University reads as follows:-

"Sexual Harassment of Students" means the use of authority by any person to exploit the sexuality or sexual identity of a student to harass in a manner which prevents or impairs that student's full utilization of educational benefits, climate or opportunities. It includes behaviour that covertly or overtly uses the power inherent in the status of a person of authority as a teaching or a non-teaching staff, to affect adversely a student's educational experience or career opportunities on the basis of sexual identity and or to threaten, coerce or intimidate a student to accept sexual advances or risk reprisal in terms of loss of a grade, a recommendation, a professional growth opportunity or a job."

29. Unfortunately, the definition in Section 2(h) falls woefully short of what is required. To come within the definition under Section 2(h), there must be a use of authority by any person to exploit a student, so as to impair the student's full utilisation of educational benefits, climate or opportunities. Therefore, the focus of Section 2(h) appears to be on the exercise of authority or power, inherent in the status of a person. The possibility of harassment of one student by another

student is not taken into account, in the definition under Section 2(h).

30. Section 8 of the aforesaid Ordinance deals with "Protection against Victimization". Six contingencies are covered by Section 8. They are:-

- (1) complaint by a student against a teacher;
- (2) where a student is a witness in a complaint against a teacher;
- (3) complaint by and against members of the academic and/or non-teaching staff of the University;
- (4) where both witnesses and accused are members of the academic and/or a non-teaching staff;
- (5) where the accused is an outsider; and (6) where the accused is a resident or service provider.

31. Thus, it is seen that Section 8 does not cover cases where a complaint is made by one student against another student. It is surprising that both the definition of "Sexual Harassment of Students" under Section 2(h) and the provision for protection against victimisation under Section 8, do not even contemplate that the offender could also be a student. Thus, the attitudinal deficiency on the part of the University Authorities, appears to have played a vital role, at least at the subconscious level, in shaping the approach adopted by them. Otherwise, a complaint of sexual harassment could not have been treated as one of ragging.

32. Keeping the above in mind, let me now turn to the defence taken by the respondents.

33. It is contended by Mr.R.Krishnamurthy, learned Senior Counsel for the University (1) that the first complaint was given by the petitioners only on 30.9.2013, though the incident allegedly happened on 21.9.2013; (2) that the complaint was primarily one of ragging and the petitioners did not bother to approach the Vishaka Committee, despite the existence of such a committee in the University; (3) that even before the complaint dated 30.9.2013 could be looked into by the authorities, the petitioners released reports to the press, gave a police complaint and organised a protest march inside the campus; (4) that a lot of students gave written complaints against the petitioners and their friends, about their political activities and group rivalry; (5) that the Anti-Ragging Committee comprising of 9 members, 6 of whom are Deans, 1 Assistant Dean and 2 Chief Wardens, enquired the petitioners as well as others on 03.10.2013 and found the petitioners guilty of various acts; (6) that on the basis of the report of the Anti-Ragging Committee, a show cause notice was issued initiating disciplinary action, which culminated, after an opportunity of hearing, in the order of penalty dated 01.11.2013; (7) that the challenge to the penalty, resulted merely in a direction to the petitioners to file an appeal to the Vice-Chancellor; (8) that the Vice-Chancellor gave relief to the petitioners, subject to certain conditions, keeping in mind the overall discipline to be maintained in the campus; (9) that not stopping with the issue of ragging, the Vice-Chancellor also referred to the Anti Sexual Harassment Committee, the complaint of the petitioners, but the petitioners failed to appear before the said Committee; and (10) that therefore, the petitioners are to be blamed.

34. In other words, the sum and substance of the contention of Mr.R.Krishnamurthy, learned Senior Counsel for the University is, (1) that the complaint of the petitioners was essentially one of ragging and hence it had to be enquired into by the Anti-Ragging Committee; (2) that by now, three enquiries are over, one by the Enquiry Committee constituted by the Anti-Ragging Committee, another by a Disciplinary Committee and the third by the Vice-Chancellor as the Appellate Authority; and (3) that now the matter has also been referred to a Vishaka Committee, as sought for by the petitioners, but the petitioners refused to appear before the Committee.

35. If the first contention of the respondent-University is correct, then the other 2 contentions automatically deserve to be accepted. But if the first contention is flawed, then the entire defence has to fall like a pack of cards. To test the first contention as to whether the complaint was essentially one of ragging, it is necessary to refer to the contents of the earliest complaint given by the petitioners on 30.9.2013, to (1) the Vice-Chancellor, (2) the Registrar and (3) the Chairperson of the Anti-Ragging Cell. The complaint reads as follows:

"This is to inform you that me and my friends were ragged by one senior student in this University. As I was walking towards the Mother Teresa Mess of the University along with my friend Vidya T. Appukkuttan (1st Year M.A. English) and my classmate Monu N.C on 21.09.2013 around 8 P.M. two persons on the bike (Reg.No.KL 22 C 2926) passed snide comments on us. When we asked them what was the matter, one of the persons whose name we later came to know as JITHU (He is commonly called as JITHU; we are unaware of his official name, but we are able to identify him.), studying in the Department of Physical Education, used the most abusive words against us. When we told him that this was not the way he should talk, he threatened to rape us. He said that in this two years of course of study in the University, he would assault us physically at any cost. And he used some vulgar gestures to us. A day after the incident the same person who threatened us came and told us that if we were about to go for a complaint, he would assault us sexually. And later I came to know from Monu that he was warned by Jithu that if Vidya T. Appukkuttan and me were about to go ahead with the complaint, he (Jithu) would make our image stigmatized as 'the girls who were sexually assaulted by Jithu'.

The mental depression we went through after the incident is inexplicable. Now we are in such a situation that we have to live under constant fear of being harassed and sexually assaulted at any moment and we fear that if we could not finish our course of study in this University. As we are first year students, the threat that we will not be able to complete our course of study and will be sexually assaulted before that is a clear case of ragging."

36. It is seen from the definition of the expression "sexual harassment" contained in Section 2(g) of Ordinance No.8 of the Pondicherry University, that the acts complained of by the petitioners against two students, come squarely within the definition of the expression. The fact that an event of ragging, is also indicated in the complaint, will not dilute the allegation of sexual harassment. Since the definition of the expression "sexual harassment" under Section 2(g) of Ordinance No.8 is of wide import, the University could not have understood the complaint as merely one of ragging.

37. Interestingly, the definition of the expression "sexual harassment" under Section 2(g) of the University Ordinance is wider than the definition of the very same expression under Section 2(n) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Section 2(n) of the Act reads as follows:-

"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; "

38. Therefore, the Vice-Chancellor ought to have referred the complaints, first to the Vishaka Committee for an enquiry. A complaint of sexual harassment is of more serious nature than a complaint of ragging. Ragging of a student may even take the form of sexual harassment. As a matter of fact, every act of sexual harassment of a junior student, by a senior student, can be part of ragging, but it is always something more. On the contrary, every act of ragging need not necessarily include sexual harassment.

39. The State of Tamil Nadu has an enactment for the prohibition of ragging in educational institutions. It is known as The Tamilnadu Prohibition of Ragging Act, 1997. I do not know whether the Union Territory of Puducherry has such an enactment. The Act defines ragging to mean "display of noisy, disorderly conduct, doing any act which causes or is likely to cause physical or psychological harm or raise apprehension or fear or shame or embarrassment to a student in any educational institution and includes teasing, abusing or playing practical jokes on, or causing hurt to such student or asking the students to do any act or perform something which such student will not in the ordinary course willingly do". Section 3 of the Act prohibits ragging within or without an educational institution and Section 4 makes ragging a punishable offence. Section 5 not only makes a student convicted of an offence of ragging liable to be dismissed from the educational institution, but also makes him ineligible for admission to any other institution. Therefore, it is clear that every act of sexual harassment of a student by another student may tantamount to ragging, but it is something beyond that. Ragging that includes or takes the form of sexual harassment, cannot be dealt with by an ordinary Anti-Ragging Committee. Vishaka Committee, by its very composition, is a special committee, comprising of certain types of individuals. Hence, whenever a complaint, which can be perceived both as one of ragging and as one of sexual harassment, is made, it can be referred only to the Vishaka committee. This is for the simple reason that Anti Ragging committee can have anybody as its member, but Vishaka committee cannot.

40. Therefore, the first blunder committed by the University, was to refer the complaint dated 30.9.2013 to the Anti-Ragging Committee rather than to the Vishaka Committee. The first blunder committed by the University, got complicated by all further steps taken by the University, making the original sin becoming irredeemable. In the enquiry, the Enquiry Committee was carried away by three things. They are:- (1) the fact that the petitioners had gone to the Press; (2) the fact that they had lodged a police complaint; and (3) the fact that the petitioners are members of the Students Federation of India.

41. Consequently, instead of enquiring into the complaint lodged by the petitioners, the Enquiry Committee first enquired the petitioners and pulled them up for going to the Press and lodging a complaint. The result is that the victims were seen as the perpetrators in the eyes of the Enquiry Committee and they were called upon to explain their conduct first. A careful look at the minutes of the meeting of the Enquiry Committee dated 03.10.2013 would show (1) that to begin with, the Committee recorded the statement of the first petitioner herein (2) that after she reiterated the contents of her written complaint, the Enquiry Committee questioned her as to why she did not inform either the Warden or the Head of the Department and as to why there was a delay in lodging the first complaint and (3) that thereafter, the petitioner was questioned as to why she lodged a complaint with the police and released the news to the Press.

42. The minutes of the meeting of the Enquiry Committee also shows that after examining the first petitioner herein and putting the above questions to her, the Committee recorded the statement of the second petitioner herein and questioned her only one thing namely as to why she went to the police and to the Press. The Enquiry Committee then examined another girl, who supported the petitioners. Interestingly, the Enquiry Committee ascertained from the petitioners whether they are members of the Students Federation of India.

43. After examining the writ petitioners and the other girl who supported the petitioners, the Enquiry Committee questioned the two boy students, against whom the allegations were made. Both of them not only denied the allegations of the petitioners, but also made complaints that the writ petitioners abused them. One of those boys also stated that he had given a complaint under the Protection of Civil Rights Act.

44. But interestingly, the Enquiry Committee, which took pains to question the girl students as to why they lodged a police complaint, did not choose to question the boy student Mr.Aneesh as to why he lodged a police complaint. Therefore, the whole attitude adopted by the Enquiry Committee, was lopsided. If only the complaint of the writ petitioners had first been referred to the Vishaka Committee, the approach that is lawfully required to be adopted in such cases, would have been adopted. Therefore, I am of the considered view (1) that the reference of the complaint of the petitioners, first to the Anti-Ragging Committee was erroneous and (2) that the attitude and approach adopted by the Anti-Ragging Committee, exhibited a complete lack of sensitivity towards gender justice and equality.

45. What the Respondents have done to the petitioners, is nothing but secondary victimisation. India has ratified the Convention on the Elimination of All Forms of Discrimination against Women,

which entered into force as an International Treaty way back in 1981. Respect for the dignity of women is one of the pillars of foundation of the said Convention. Article 1 of the Convention defines the term "discrimination against women" to mean any discrimination, exclusion or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by the women, irrespective of their marital status on the basis of equality of men and women, of human rights and fundamental freedom. Article 5 enjoins upon States Parties to take appropriate measures to modify the social and cultural patterns of contact of men and women, with a view to achieving the elimination of prejudice and customary and all other practices, which are based upon the idea of inferiority or superiority of either of the sexes or on stereotyped roles for men and women.

46. At this stage, it may be useful to refer to a case that came up before the Committee on the Elimination of Discrimination against Women. The facts of the case are as follows:-

(i) A Filipino National by name Karen Tayag Vertido, lodged a complaint against the Government of Philippines before the Committee on the Elimination of Discrimination Against Women, under a Communication dated 29.11.2007. Her grievance was that when she served as Executive Director of Davao City Chamber of Commerce and Industry in Philippines, she was raped by the President of the Chamber in March 1996. Within 48 hours, she reported the incident to the police and lodged a complaint. But her complaint was initially dismissed for lack of probable cause by a panel of Public Prosecutors, which conducted a preliminary investigation. However, her appeal to the Secretary of the Department of Justice was allowed and the accused was brought to Court on a charge of rape. The trial of the accused took an agonisingly long period of 8 years from 1997 to 2005. The delay was partly due to the transfer of Presiding Officers and partly due to the motions moved by the accused before various appellate Courts. Interestingly, three judges recused themselves from the case. On 26.4.2005, a lady Judge of the Regional Court of Davao City acquitted the accused on the basis of three principles derived from the precedents set by the Supreme Court. They are:

(a) It is easy to make an accusation of rape and it is difficult to prove, but more difficult for the person accused, though innocent, to disprove.

(b) In view of the intrinsic nature of the crime of rape in which only two persons are usually involved, the testimony of the complainant must be scrutinised with extreme caution and

(c) The evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence of the defence. The trial Court doubted as to why the victim did not escape when she allegedly had so many opportunities to escape.

(ii) The victim then filed a complaint before the Committee on the Elimination of Discrimination against Women, contending that she was a product of re-victimisation by the State. After taking up the case under Communication No.18/2008, and after issuing notice to the State Party (the Government of Philippines), the Committee considered the issues arising in the case with reference to the Optional Protocol, in its 40th Session between 12th July and 30th July 2010 and rendered its views on 1st September, 2010.

(iii) In paragraph 8.3 of its decision, the Committee noted that though Article 2(c) of CEDAW does not expressly provide for a right to a remedy, such a right is implied. Therefore, the Committee concluded that the prolongation of the trial for 8 years made the remedy illusory. In para 8.4 of its decision, the Committee recorded that State parties can be responsible for judicial decisions which violated the provisions of the Convention. The Committee stressed upon stereotyping effects and the woman's right to a fair and just trial and indicated that the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation. Eventually, the Committee held that the complainant had suffered re-victimisation through stereotypes and gender based myths.

I think the case on hand is also one of re-victimisation or secondary victimisation by the institution in which the petitioners happen to be students.

47. In 1999, a Hand Book of Justice for Victims was prepared by the United Nations Office for Drug Control and Crime Prevention. It was prepared by a group of experts from more than 40 countries. It was actually in pursuance of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which was adopted by the General Assembly of the United Nations 29.11.1985.

48. Chapter I of the Hand Book deals with "Impact of Victimisation". This Chapter covers (1) the physical and financial impact of victimisation; (2) psychological injury and social cost; and (3) secondary victimisation from the Criminal Justice System and Society.

49. Sub-Chapter (c) of Chapter I of the Hand Book points out that secondary victimisation refers to the victimisation that occurs not as a direct result of the criminal act, but through the response of institutions and individuals to the victim. In one of the paragraphs, it is stated as follows:-

"The attitude of individuals is important. Some people with whom the victim has contact (example: family, friends and colleagues) may wish to distance themselves from the distress of the crime by blaming the victim for what has occurred. They may view the victim's behaviour as having contributed to or even cause the victimisation".

By brushing aside the complaints of the petitioners as an outcome of a group clash and rivalry and by branding the petitioners as indulging in political activities, the respondents have belittled the very nature of the complaints. This response on the part of the university and their attempt to blame the victims, is what is pointed out by the U.N. in the aforementioned Hand Book as secondary victimisation.

50. After the case of Nirbhaya, the Government of India constituted a committee headed by former Chief Justice of India J.S.Verma. On the invitation of Verma Committee, Professor Sandra Fredman FBA QC (hon), with the assistance of members of Oxford Pro Bono Publico, prepared a report titled "Submissions on the Reform of India's Sexual Violence Laws". One of the recommendations contained therein is to provide "Survivor Support Services", which includes the avoidance of secondary victimisation by the criminal justice system and society.

51. In the aforesaid report, secondary victimisation is indicated as a victimisation that occurs not as a direct result of a criminal act but through the inadequate response of institutions and individuals to the victims. Such victimisation can range from experiences of isolation and confusion due to lack of support and information, while navigating the criminal justice system, to the shaming and ostracising of survivors and their families.

52. In so far as victims of domestic violence are concerned, the Protection of Women from Domestic Violence Act, 2005 provides for such support services. But there is no law in India, providing for such Survivor Support Services in respect of other crimes, except perhaps the SC & ST Prevention of Atrocities Act, 1989 and the Protection of Children against Sexual Offences Act, 2013. However, in several other jurisdictions, there are statutory enactments such as "Victims' Bill of Rights". Therefore, Sandra Fredman's submissions to the J.S.Verma Committee, recommended a provision for Support Services, to avoid secondary victimisation. Interestingly, his submissions took note of the decision rendered by the CEDAW Committee in the case of Vertido, the Woman from Philippines.

53. Paragraphs 39 and 41 of the submissions made by Sandra Fredman, contain interesting observations, which are as follows:-

"39. Legislative provision for survivor support services, often in the form of a 'Victims Charter', has been implemented in leading common law jurisdictions such as Canada, Australia and the United Kingdom. Many of these are based on the framework set out by the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the General Assembly of the United Nations in 1985 (UN Declaration of Basic Principles of Justice).

41. Also key to minimizing secondary victimisation is the provision of support to survivors in relation to the rape or sexual assault prosecution. The UN Declaration of Basic Principles of Justice recommends that legislation should provide that women who have been subjected to violence should be assisted in lodging complaints by providing them with protection. Appropriate measures should be taken to prevent hardship during the detection, investigation, and prosecution process in order to ensure that victims are treated with dignity and respect, whether they participate in the criminal proceedings or not."

54. Even the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, enacted in terms of Vishaka, does not provide for any victim support services. Apart from defining the expression 'sexual harassment', the Act also makes "humiliating treatment likely to affect a woman's health or safety", a sexual harassment under Section 3(2). Section 4 of the Act makes it obligatory for every employer to constitute a committee known as "Internal Complaints Committee". Section 9 indicates the methods in which, an aggrieved woman can make a complaint of sexual harassment. During the pendency of an enquiry, the Internal Complaints Committee is empowered under Section 12 to recommend to the employer, the grant of any relief to the aggrieved woman as may be prescribed.

55. Section 19 of the Act gives a list of the duties of the employer. Clause (g) of Section 19 makes it one of the duties of the employer, "to provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force". Clause (h) of Section 19, imposes yet another duty upon the employer, which is larger than the one contemplated in Clause (g). Clause (h) reads as follows:-

"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 woman so desires, where the perpetrator is not an employee, in the work place at which the incident of sexual harassment took place".

56. Therefore, the Respondent University itself was under an obligation, in view of Section 19(g) and (h) of Act 14 of 2013, to assist the petitioners to lodge a police complaint against the offenders. But unfortunately, the University has taken exception to the petitioners lodging the police complaint by themselves. Thus, the case on hand points out complete lack of sensitivity on the part of the Respondents, both with regard to the rights of the petitioners and with regard to the duties of the employer under Section 19(g) and (h) of the Act.

57. A careful look at Act 14 of 2013 would show that the place where sexual harassment takes place, need not necessarily be a work place in relation to an aggrieved woman. This is made clear by the definition of the expression "aggrieved woman" under Section 2(a), which reads as follows:-

"Aggrieved woman means- (i) in relation to a work place, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;

(ii) in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house"

58. Apart from the definition of the expression aggrieved woman, which includes even a non-employee, the provisions of Section 3 also steers clear any doubt. Section 3(1) declares that "No woman shall be subjected to sexual harassment at any work place". Section 3(1) uses the expression "No woman" and not the expression "No woman employee".

59. Therefore, the result is that the Respondent University is a work place within the meaning of Section 2(o) of Act 14 of 2013 and the petitioners fall within the definition of expression "aggrieved woman" under Section 2(a). Therefore, the petitioners were entitled to protection under Section 3(1) read with Clause (v) of sub-section (2) of Section 3. Hence, as a corollary, the University itself owed a duty in terms of Section 19(g) and (h), to help the petitioners lodge a police complaint, if they wanted. But the Respondents not only failed in their duty, but also found fault with the petitioners for having gone to the police and added insult to injury, by punishing them for the same.

60. Hence, it is a clear case of secondary victimisation of the petitioners. But unfortunately, the Act 14 of 2013 is silent about victim support services. However, Section 28 of Act 14 of 2013 makes it clear that the provisions of the Act are in addition to and not in derogation of any other law for the time being in force. Therefore, wherever there are treaty obligations, arising out of the ratification of

any United Nations Convention by India, the Courts have a duty to interpret the law, in tune with those obligations, so long as they are not in conflict with the Municipal Law.

61. Though the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly of the United Nations in 1985 is not a legally binding treaty, it is necessary to draw lessons from the said declaration. This is due to the fact that fundamentally the rights of a victim are human rights, which can be traced to International Instruments such as Universal Declaration of Human Rights and International Covenant on Civil and Political Rights, etc. which are already ratified by India.

62. Therefore, I am of the considered view that (1) the treatment of the complaints of the petitioners dated 30.09.2013, as essentially one of ragging, rather than of sexual harassment (2) the disciplinary action initiated by the Respondents against the petitioners as well as the perpetrators, by placing all of them together in the same line of fire (3) the objection taken by the University to the act of the petitioners in lodging a police complaint and releasing the news to the press (4) the suspicion entertained by the Respondents about the conduct of the petitioners, on account of their membership in the Students Federation of India (5) the perception on the part of the University that what had happened within the campus, was actually a group clash, merely on account of the fact that one of the perpetrators lodged a police complaint against the petitioners herein under the Protection of Civil Rights Act, as a counter blast (6) the punishment of suspension imposed upon the petitioners for a full semester of about 6 months (7) the so called sympathy shown by the Vice-Chancellor as an Appellate Authority, by agreeing to revoke the suspension if the petitioners tendered an unconditional apology and (8) the reference of the complaints of sexual harassment made by the petitioners to the Internal Complaints Committee at the last stage, perhaps as a last resort, are completely contrary to law. The persons at the helm of affairs in the Respondent University, appear to lack sensitivity towards the right of women students to dignity.

63. The Convention on Elimination of Discrimination Against Women and Act 14 of 2013 make it obligatory for the employers to organise workshops and awareness programmes at regular intervals for sensitising the employees and others. Rule 13 of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Rules, 2013 imposes certain obligations upon every employer. Rule 13 reads as follows:-

"13. Manner to organise workshops, etc. Subject to the provisions of section 19, every employer shall-

(a) formulate and widely disseminate an internal policy or charter or resolution or declaration for prohibition, prevention and redressal of sexual harassment at the workplace intended to promote gender sensitive safe spaces and remove underlying factors that contribute towards a hostile work environment against women;

(b) carry out orientation programmes and seminars for the Members of the Internal Committee;

(c) carry out employees awareness programmes and create forum for dialogues which may involve Panchayati Raj Institutions, Gram Sabha, women's groups, mothers' committee, adolescent groups, urban local bodies and any other body as may be considered necessary;

(d) conduct capacity building and skill building programmes for the Members of the Internal Committee;

(e) declare the names and contact details of all the Members of the Internal Committee;

(f) use modules developed by the State Governments to conduct workshops and awareness programmes for sensitising the employees with the provisions of the Act".

64. But unfortunately, the situation in the Respondent University is such that rather than directing those in management to organise workshops and programmes for the employees in terms of the above Rule 13, I have to first direct those in management to attend such workshops and programmes, to acquire the required degree of sensitivity to handle these issues. The manner in which the complaints of the petitioners were dealt with by the authorities, leaves much to be desired. The very fact that when all other students chose to tender unconditional apology and purchase peace, the petitioners alone stood to their ground and refused to tender unconditional apology as per the order of the appellate authority namely the Vice Chancellor, goes to show their courage of conviction and a refusal to compromise at the cost of honour. I am not for a moment recording a finding that the contents of their complaints dated 30-9-2013 are wholly true. It is a matter for enquiry. But what is laudable is that the petitioners have overcome the normal tendency and temptation of lesser mortals, especially girl students, whose whole career as well as life may be at stake, to surrender to the power of authority. This could not have been possible unless they had felt genuinely offended. Therefore the ordering of a proper enquiry alone and that too after setting at naught all the humiliation to which the petitioners have been subjected, will restore the confidence of the girl students in the campus that there is gender justice. Otherwise, the morale of the other girl students would go down and this will prove to be a retrograde step for gender equality. Hence the petitioners are entitled to the reliefs prayed for.

65. Therefore, in fine, the writ petitions are allowed to the following effect:

(1) The orders impugned in the writ petition, namely the one dated 01.11.2013, passed by the Registrar and the other dated 19.12.2013, passed by the Vice-Chancellor, as far as they are related to the petitioners herein, are set aside;

(2) Since the petitioners could not attend the second semester of their respective courses in full, the University shall conduct special classes for the petitioners during the current session and allow them to take the examination that they were not allowed to take earlier, without holding the lack of attendance against them;

(3) The Respondents shall not deny to the petitioners, any of the facilities that they are entitled to, such as hostel accommodation, participation in seminars, workshops, sports activities etc.;

(4) The University shall amend its Administrative Ordinance No.8 suitably, to include the sexual harassment of one student by another, within the definition of the expression "sexual harassment of students" under Section 2(h) and within the purview of Section 8, which provides for protection against victimisation;

(5) The Anti Sexual Harassment Committee of the Respondent University shall hold an enquiry into the complaints of the petitioners dated 30.9.2013, by having a fresh look at it, without reference whatsoever to the proceedings of the Anti-Ragging Committee or the Disciplinary Committee, which conducted an enquiry earlier. I am not ordering the University Grants Commission, which is the first Respondent herein, to conduct an enquiry, only for the simple reason that I have not so far lost faith in the members of the Anti Sexual Harassment Committee of the University. This Committee shall take note of the obligations enjoined upon the committee as per law indicated in this order;

(6) The Respondents shall pay costs of Rs.20,000/- to each of the petitioners, in view of the fact that the handling of their complaints by the University has made the remedy worse than the disease and added insult to injury.

All miscellaneous petitions are dismissed.

04-12-2014 Index:Yes Internet:Yes gr.

To

1. The Chairman, University Grants Commission, New Delhi.
2. The Vice-Chancellor, Pondicherry University, Puducherry.
3. The Registrar, Pondicherry University, Puducherry.

V.RAMASUBRAMANIAN, J gr.

ORDER IN W.P.No.11217 of 2014 04-12-2014