

IN THE HON'BLE HIGH COURT OF DELHI AT NEW DELHI

WRIT JURISDICTION

WRIT PETITION (CIVIL) NO. 8446 OF 2017

IN THE MATTER OF:

MADHU SAHNI & ORS

...PETITIONERS

VERSUS

JAWAHARLAL NEHRU UNIVERSITY &
ANR

...RESPONDENTS

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New Delhi

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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IN THE MATTER OF:

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JAWAHARLAL NEHRU
UNIVERSITY & ANOTHER

...RESPONDENTS

COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENT

NO. 2 (UNIVERSITY GRANTS COMMISSION)

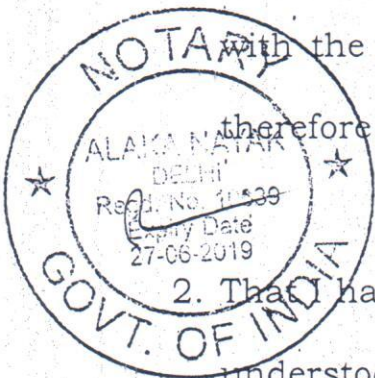
MOST RESPECTFULLY SHOWETH:

I, Madhu Mehra, working as Under Secretary in the University Grants Commission, Bahadur Shah Zafar Marg, New Delhi-110001, do hereby solemnly affirm and state as under:-

1. That I am the Under Secretary in the University Grants Commission (i.e. the Respondent No. 2 herein) [the "Answering Respondent"], and, as such, I am conversant

with the facts and circumstances of the instant case. I am therefore competent to swear the instant affidavit.

2. That I have read a copy of the present writ petition and have understood the contents of the same. All the averments made in the petition are denied, except those which are specifically admitted hereinafter. However, before proceeding to give a para-wise reply to the present writ petition, the Answering

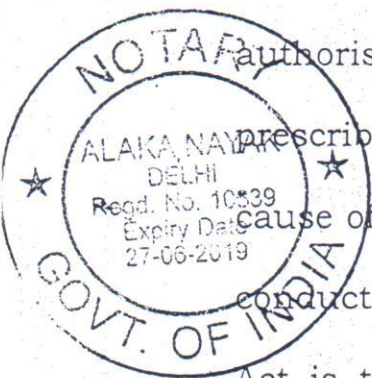


Respondent craves leave of this Hon'ble Court to make the following Preliminary Submissions.

PRELIMINARY SUBMISSIONS:

3. That the Answering Respondent has been constituted under the provisions of the University Grants Commission Act, 1956 (Act No. 3 of 1956) ["**UGC Act**"] which came into force with effect from 05.11.1956. The UGC Act was legislated to make provisions for the coordination and determination of standards in higher education in India. Under the provisions of the UGC Act, the Answering Respondent has been entrusted with the duty to take such steps as it may think necessary for the promotion and coordination of higher education in Universities and Institutions and for the determination and maintenance of standards of teaching, examination and research therein.

4. That, for the aforesaid purpose of performing its functions under the UGC Act, the Answering Respondent is inter alia authorised to perform such other functions as may be prescribed or as may be deemed necessary for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of the above functions. The UGC Act is traced to Entry 66 of List I of Schedule VII of the Constitution.

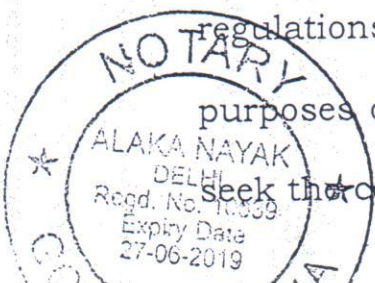


5. That the Petitioners' case, insofar as the Answering Respondent is concerned, is essentially that the University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015 [the "2015 Regulations"] are ultra vires the UGC Act. A copy of the 2015 Regulations is annexed herewith and marked as **Annexure R-2/1**.

6. The Petitioners allege that the Answering Respondent has no jurisdiction to impose and/or amend the applicability of regulations in the matter of misconduct, and, in particular, with regard to sexual harassment, on the Respondent No. 1 University, and that the Respondent No. 1 University has its own regulations relating to the issue of sexual harassment as a form of misconduct, which have the full effect of law, and which govern the practice and procedure for conducting an inquiry in relation to misconduct.

7. The Petitioners therefore submit that "the UGC has no power to determine the content of what constitutes 'misconduct' or the rule and regulations governing misconduct including the regulations relating to the conduct of an inquiry for the purposes of such misconduct." The Petitioners consequently

seek the continued application of the rules and procedures of

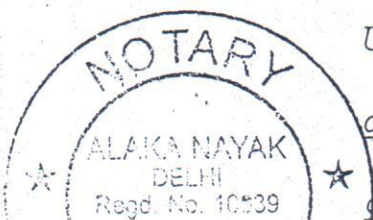


the erstwhile Gender Sensitisation Committee against Sexual Harassment ["GSCASH"] which they contend are in line with the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 [the "2013 Act"], and the 2015 Regulations. For that purpose, the Petitioners also claim that the rules and procedures of the erstwhile GSCASH, which were in force prior to the adoption of the 2015 Regulations by the Respondent No. 1 University in its 269th meeting of the Executive Council held on 18.09.2017, are more effective than the 2015 Regulations and the 2013 Act.

8. It is submitted that the Petitioners' case is fundamentally flawed because it ignores settled law that regulations framed by the Answering Respondent under section 26(1) of the UGC Act are binding on all Universities. In fact, in *Annamalai University v Secretary to Government, Information and Tourism Department and Others*, (2009) 4 SCC 590, the Hon'ble Supreme Court held that:

"41. ... The UGC Act was enacted for effectuating co-ordination and determination of standards in Universities. The purport and object for which it was enacted must be given full effect.

42. The provisions of the UGC Act are binding on all Universities whether conventional or open. Its powers are very broad. The Regulations framed by it in terms of clauses (e), (f), (g) and (h) of sub-Section (1)



of Section 26 are of wide amplitude. They apply equally to Open Universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by UGC. The standards and the coordination of work or facilities in universities must be maintained and for that purpose required to be regulated. The powers of UGC under Sections 26(1)(f) and 26(1)(g) are very broad in nature. Subordinate legislation as is well known when validly made becomes part of the Act. We have noticed hereinbefore that the functions of the UGC are all-pervasive in respect of the matters specified in clause (d) of sub-section (1) of Section 12-A and clauses (a) and (c) of sub-section (2) thereof.”

[Emphasis supplied]

This position of law has been reiterated in a number of judgments.

9. It is submitted that the 2015 Regulations were validly made in exercise of powers under section 26(1)(g) of the UGC Act, because said regulations are meant to regulate the maintenance of standards of higher education in India. It is submitted that gender sensitisation and the prevention of sexual harassment have a direct and causal link with standards of education in Universities, Colleges,

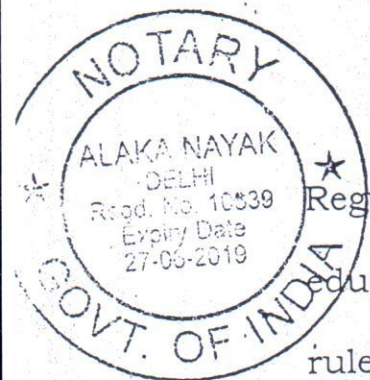


and institutions of higher learning in India. This is well recognised and is also borne out from the widely acknowledged report prepared under the aegis of the Answering Respondent titled 'SAKSHAM Measures for Ensuring the Safety of Women and Programmes for Gender Sensitization on Campuses' [the "SAKSHAM Report"] which was released in December 2013. A copy of the SAKSHAM Report is annexed herewith and marked as **Annexure R-2/2**.

10. Thus, the Petitioners are entirely wrong in claiming that the Answering Respondent does not have the power to make regulations dealing with sexual harassment for higher educational institutions in India. It is also wrong for the Petitioners to contend that such regulations are not binding on higher educational institutions, including the Respondent No 1 University. Regulation 1(1) of the 2015 Regulations clearly states that "[t]hey shall apply to all higher education institutions in India." Regulation 2(i) states as follows:

"2(i) [T]he HEI shall ensure that the constitution of such a Body is as required for ICC under these regulations. Provided further that such a Body shall be bound by the provisions of these regulations."

Regulation 3(a) further states that every higher educational institution shall "modify its ordinances and rules in consonance with the requirements of the



Regulations". The Petitioners' submission that the 2015 Regulations are "recommendatory" in nature when it comes to the Respondent No. 1 University is therefore incorrect and based on a misinterpretation of the 2015 Regulations.

11. It is submitted that even if the Respondent No. 1 University has the power to regulate and enforce 'discipline' among students and employees of the University, the Answering Respondent has the power to make regulations for dealing with instances of sexual harassment on campuses of Universities, Colleges, and institutions of higher learning in order to maintain the standards of higher education in India. Moreover, it is pertinent to note that the Respondent No. 1 University has itself adopted the 2015 Regulations, as noted in its office order no. 248/2017 (dated 18.09.2017) annexed at page 119 of the Writ Petition, in place of the rules and regulations of the erstwhile GSCASH.

12. Therefore, the Respondent No. 1 University is bound to deal with instances of sexual harassment in accordance with the 2015 Regulations and not as per the rules and procedure of the erstwhile GSCASH. The Petitioners' submission that the rules and procedure of the erstwhile ~~GSCASH~~ were more effective than the provisions of the

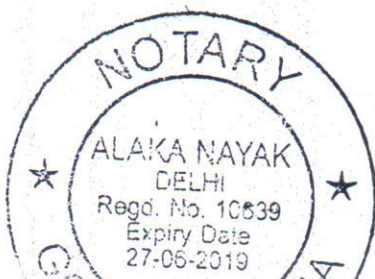


2013 Act and the 2015 Regulations is therefore irrelevant for purposes of adjudicating the instant writ petition.

13. It is pertinent to note that the 2015 Regulations, which apply to students as well, have been implemented in as many as 260 higher educational institutions across the country. The Answering Respondent has been intimating Universities and Colleges to do so on several occasions, including vide letters dated 28.01.2015, 15.06.2015, 23.07.2015, 01.10.2015, and 28.07.2016. Copies of the UGC letters dated 28.01.2015, 15.06.2015, 23.07.2015, 01.10.2015, 28.07.2016 and 06.06.2017 are annexed herewith as **Annexure R-2/3 (Colly)**.

PARAGRAPH-WISE REPLY

14. That the contents of paragraph nos. 1 to 6 do not need a reply from the Answering Respondent at present.
15. That the contents of paragraphs nos. 7 to 9 are references to the Jawaharlal Nehru University Act, 1966 and the UGC Act. The same therefore do not need a reply from the Answering Respondent at present.



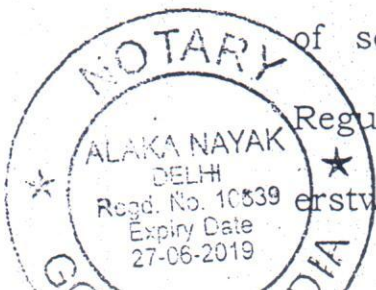
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16. That the contents of paragraph no. 10 are wrong in light of the Preliminary Submissions above, which are not being repeated herein for the sake of brevity.

17. That the contents of paragraph nos. 11 to 14 do not pertain to the Answering Respondent.

18. That, with respect to the contents of paragraph no. 15, it is submitted that the 2015 Regulations apply to students as well. In any event, as submitted earlier, the rules and regulations of the erstwhile GSCASH have been replaced by the Respondent No. 1 University pursuant to the decision taken by the Respondent No. 1 University in the 269th meeting of its Executive Council held on 18.09.2017.

19. That, with respect to the contents of paragraph no. 16, it is humbly reiterated that the rules and regulations of the erstwhile GSCASH have been replaced by the Respondent No. 1 University pursuant to the decision taken by the Respondent No. 1 University in the 269th meeting of its Executive Council held on 18.09.2017. The Respondent No. 1 University is therefore bound to deal with instances of sexual harassment in accordance with the 2015 Regulations and not as per the rules and procedure of the erstwhile GSCASH.



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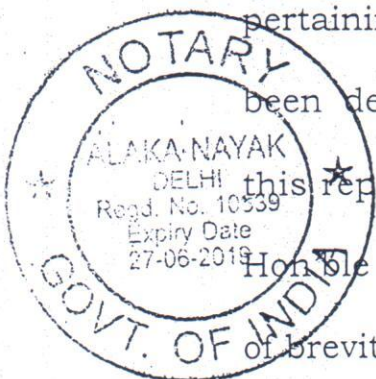
20. That the contents of paragraph nos. 17 & 18 are mere references to the 2015 Regulations and therefore do not need a reply from the Answering Respondent.

21. That the contents of paragraph nos. 19 & 20 pertain to the Respondent No.1 University and do not need a reply from the Answering Respondent except to say that the Respondent No. 1 University rightly implemented the 2015 Regulations by replacing the rules and regulations of the erstwhile GSCASH.

22. That, with respect to the contents of paragraph nos. 21 & 22, it is submitted that the present petition is devoid of merit and is therefore liable to be dismissed *in limine*.

23. That the Petitioners are put to strict proof of the contents of paragraph no. 23.

24. That the contents of the Grounds in the present petition pertaining to the Answering Respondent have already been dealt with/refuted in the preceding paragraphs of this reply. The Answering Respondent craves leave of this Hon'ble Court to refer and rely upon the same for the sake of brevity.



25. That the Hon'ble. Court may therefore be pleased to deny the relief(s) sought by the Petitioners, and to dismiss the present petition *in limine*.

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APOORV KURUP

COUNSEL FOR THE RESPONDENT No. 2

DATED: 5/12/2017

NEW DELHI

Madhu

DEPONENT

MADHU MEHRA
UNDER SECRETARY
UNIVERSITY GRANTS COMMISSION
BARADUR SHAH ZAFAR MARG
NEW DELHI-110002

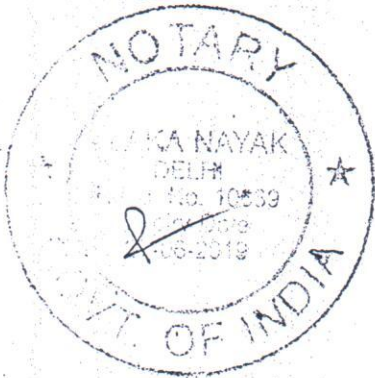
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I identified the deponent who has signed in my presence

VERIFICATION:

05 DEC 2017

I, the above named deponent, do hereby verify that the facts stated in the above affidavit are true to my knowledge. No part of the same is false and nothing material has been concealed therefrom.

Verified at New Delhi, on the 05 DEC 2017 day of November 2017.



Madhu

DEPONENT
UNDER SECRETARY
UNIVERSITY GRANTS COMMISSION
BARADUR SHAH ZAFAR MARG
NEW DELHI-110002

CERTIFIED THAT THE DEPONENT
Shri/Smt./Km. *Madhu Mehra*
S/o, W/o R/o. *Ankur Kumar*
Identified by *Apoorv Kurup*
Has solemnly sworn before me at
Delhi on *05/12/2017*
That the contents of the affidavit which
have been read & explained to
him are true & correct to his knowledge

[Signature]
NOTARY