



WEB COPY

W.P(MD)No.23561 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P(MD)No.23561 of 2019

and

W.M.P(MD)No.20181 of 2019

Mari Anantharaj

... Petitioner

vs.

1.The Registrar,
Anna University, Chennai.

2.The Principal,
Holy Cross Engineering College,
7/131, Holy Cross Nagar,
Vagaikulam Srivaikuntam Express Road,
Thoothukudi - 628 851.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the respondents to permit the petitioner to continue his study of B.E Civil Engineering in second respondent College for the academic year of 2017 -2021.

For Petitioner : Mr.T.A.Ebenezer

For R - 1 : Mr.M.Rajarajan,
Standing Counsel.

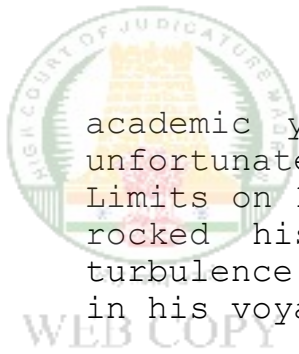
For R - 2 : Mr.G.Prabhu Rajadurai

ORDER

Mr.T.A.Ebenezer, learned counsel on record for writ petitioner, Mr.M.Rajarajan, learned Standing Counsel for Anna University (first respondent) and Mr.G.Prabhu Rajadurai, learned counsel for second respondent are before this Court.

2.With consent of all three aforementioned learned counsel, main writ petition is taken up, heard out and is being disposed of.

3.Writ petitioner before this Court is a 19 year old young man, who joined a four year Engineering Degree programme in academic year 2017 - 18 in the second respondent College. Writ petitioner joined a Civil Engineering stream and is therefore an aspiring Civil Engineer. This Court is informed that the four year programme is from Mid 2017 and Mid 2021 and there are two semesters in each academic year. In other words, four year programme consists of eight semesters in all. Writ petitioner had completed four semesters (two



academic years) and was in the midst of fifth semester when a unfortunate occurrence within Thoothukudi South Police Station Limits on 15.09.2019 in which two men were done to death by a group, rocked his life. In other words, it has ruffled and caused turbulence qua smooth sailing of writ petitioner's academic career in his voyage towards becoming a Civil Engineer.

4. There is no disputation or contestation on facts that owing to aforesaid occurrence an 'First Information Report' (hereinafter referred to as 'FIR' for brevity) in Crime No.587 of 2019 was registered in the jurisdictional Police Station for alleged offences under various provisions of 'Indian Penal Code' (hereinafter referred to as 'IPC' for brevity) naming seven accused. To be noted, writ petitioner is admittedly not one of seven named accused.

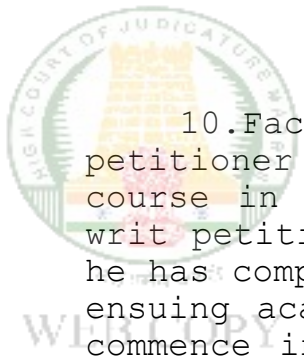
5. There is also no disputation or contestation about the factual position that subsequently, on the basis of confession of one of seven named accused, writ petitioner was added as tenth accused. Thereafter, writ petitioner voluntarily surrendered before Judicial Magistrate, Tirunelveli on 19.09.2019, he was remanded and subsequently granted bail by this Hon'ble Court on 24.10.2019 vide order made in Crl.O.P(MD)No.15258 of 2019.

6. After being enlarged on bail, writ petitioner went over to second respondent College, but second respondent College turned him away and did not permit writ petitioner to attend lectures. It is the case of writ petitioner that second respondent College directed writ petitioner to take Transfer Certificate and leave the College citing writ petitioner being implicated in the aforesaid case as the lone reason.

7. The above scenario has necessitated writ petitioner approaching this Court by way of filing instant Writ Petition with a prayer to direct second respondent College to permit writ petitioner to continue the aforementioned course with an interim prayer to permit writ petitioner to write fifth semester examinations which commenced on 06.11.2019.

8. This Court issued notice and respondents entered appearance through counsel. To be noted, second respondent is the College where writ petitioner is pursuing Engineering Course and first respondent is the University ie., Anna University to which second respondent is affiliated.

9. Learned Standing Counsel for first respondent University submits that writ petitioner does not have requisite attendance to write fifth semester examination.



10.Faced with the above situation, learned counsel for writ petitioner limited his prayer to writ petitioner continuing the course in second respondent College. It was also pointed out that writ petitioner has not cleared five papers in four semesters which he has completed and therefore, he has to redo fifth semester in the ensuing academic year which this Court is informed is scheduled to commence in June of 2020. Learned counsel for writ petitioner, on instructions, submits that writ petitioner would redo fifth semester if permitted to join the second respondent College in the ensuing academic year which is scheduled to commence in June of 2020.

11.On the side of writ petitioner, four orders of this Court being orders dated 04.10.2019 in W.P(MD)No.21251 of 2019, dated 21.10.2019 in W.P(MD)No.17951 of 2019, dated 04.11.2019 in W.P(MD)No.23019 of 2019 and dated 12.11.2019 in W.P(MD)No.22479 of 2019 respectively have been pressed into service.

12.Though factual setting in each of aforesaid four cases have their own unique flavour, these four orders were pressed into service to highlight the principle that pendency of an FIR cannot be a bar for a student to get admitted in and pursuing or continuing a course in which he or she has already secured admission in.

13.In case of *K.Surandhran Vs. The Principal Secretary and others* [W.P(MD)No.17951 of 2019, dated 21.10.2019], this Court had relied on / drawn inspiration from the principle laid down by Hon'ble Supreme Court in *Miss.Mohini Jain Vs. State of Karnataka and others* reported in AIR 1992 SC 1858 that right to education is concomitant to the fundamental rights enshrined in Part III of the Constitution. Also to be noted, this Mohini Jain's case principle was subsequently followed by Hon'ble Rajasthan High Court in *Pradeep Choudhary Vs. The Rajasthan Agricultural University* vide order dated 11th October, 1996. To be noted, this order of Hon'ble Rajasthan High Court was also relied on by this Court in *Surandhran's* case.

14.Most relevant part of *Pradeep Choudhary's* case is paragraph 5 and part of paragraph 6 which are as under:

'5.The point arises in the case for consideration of this Court is, whether there is right of education guaranteed under the Constitution of India; and condition of prohibiting admission on the ground of criminal complaint lodged by the University with the police is arbitrary, unfair and unjust condition and as such is violative of Article 14 of the Constitution of India. Article 41, Chapter IV of the Constitution recognises the individual's right to education. It says that the State shall, within the limits of its pecuniary capacity and development, make effective provisions for securing



the right to education. Although a citizen cannot enforce directive principles contained in Chapter IV, but they are not intended to be mere pious legislation. In Miss Mohini Jain v. State of Karnataka and Ors. MR 1992 SC 1858, the apex Court has said that the right to education is concomitant to fundamental rights contained in Part III of the Constitution. The State is under a constitutional mandate to provide educational institutions at all levels for the benefit of the citizens. Every citizen has right to education under the Constitution and the State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right. The right to education directly flows from the right to life and liberty. Right to life with dignity is guaranteed under Article 21 of the Constitution and the dignity of the individual cannot be assured unless it is accompanied by the right to education.

6. When the person has a right to education, guaranteed under the Constitution of India, that right can only be denied on the grounds which are reasonable, just and fair and not arbitrary. Can a meritorious student be denied admission in college on the ground that the College or University has lodged an F.I.R. against him. Lodging a complaint with the police simply brings into operation the police force to investigate in the matter. The F.I.R. is neither proof of guilt nor conclusively establishes the offence being committed by the person named. The police after investigation may close the F.I.R. on the ground that the facts mentioned therein are not found true. It is against criminal jurisprudence that the man shall be presumed to be innocent unless and until proved to be guilty by a competent Court after giving full opportunity to defend himself.'

(underlining made by this Court to supply emphasis / highlight).

15.What is of utmost significance is, this Court is informed that all four orders, have been duly complied with / implemented and respective students are pursuing their respective courses in Institutions concerned.

16.In the aforesaid backdrop, this Court carefully examined the counter-affidavit of second respondent.



17. In the counter-affidavit of the second respondent, it has been made clear that College has not initiated any enquiry till today and three points have been raised. First point is regarding possible retaliation, second point is regarding what has been described as 'uneasiness' in the College qua interaction of other students and lectures with writ petitioner owing to the aforesaid pendency of FIR and third point is a suggestive averment in the counter-affidavit which is to the effect that writ petitioner can continue his studies in some other Town or College.

18. Before dealing with these three points in the counter-affidavit, it is necessary to record that there is no disputation or contestation that writ petitioner was added as tenth accused solely on the basis of confession of a named accused and that the only overtact attributed to writ petitioner as of now is that he was watching the movements of victims.

19. With regard to first point alluded to supra which has been raised by second respondent in counter-affidavit, it is for Law Enforcing Authorities to ensure peace and tranquillity. In any event, first point is dovetailed with third point which is suggestive that writ petitioner can pursue his education in some other Town or College. It is very fairly submitted by learned counsel for writ petitioner that both these points will get diluted by the time writ petitioner commences redoing fifth semester which will be in June 2020 as it will be more than eight months from the date of occurrence.

20. With regard to second point which has been described as uneasiness, this Court is unable to countenance the same as it is predicated on stigmatising an student (owing to mere pendency of an FIR) with regard to pursuing the programme / course.

21. With regard to first respondent University, it is submitted that issue is regarding writing examinations and attendance. As writ petitioner has now agreed to redo fifth semester from ensuing June of 2020, this aspect of the matter is put to rest.

22. Learned counsel for second respondent drew the attention of this Court to Regulations 2017 of first respondent with regard to Affiliated Institutions and clause 19 therein captioned 'Discipline', which reads as follows:

'19. Discipline

19.1 Every student is required to observe disciplined and decorous behaviour both inside and outside the college and not to indulge in any activity which will tend to bring down the prestige of the University / College. The Head of Institution shall constitute a disciplinary



committee consisting of Head of Institution, Two Heads of Department of which one should be from the faculty of the student, to enquire into acts of indiscipline and notify the University about the disciplinary action recommended for approval. In case of any serious disciplinary action which leads to suspension or dismissal, then a committee shall be constituted including one representative from Anna University, Chennai. In this regard, the member will be nominated by the University on getting information from the Head of the Institution.

19.2 If a student indulges in malpractice in any of the University / internal examination he / she shall be liable for punitive action as prescribed by the University from time to time.'

23.As writ petitioner was originally not named in FIR, but subsequently added on confession of co-accused, as the allegation against writ petitioner qua overtact is that he was watching the movement of victims, viewed in the light of this being a case of only pending of FIR where anything put against the writ petitioner is only in the realm of allegations / accusations these do not hold water. This is so as second respondent College had admittedly not initiated any disciplinary proceedings against writ petitioner. On the contrary, it is made clear that second respondent College did not prevent writ petitioner from attending lectures and writ petitioner's case is he could not attend lectures only during the period of /owing to incarceration.

24.Learned counsel for writ petitioner, on instructions, submits that young writ petitioner will ensure disciplined and decorous behaviour inside and outside the College in the days to come. This is also recorded. It is also brought to the notice of this Court that first respondent University has not written to second respondent directing any enquiry to be initiated.

25.In sum totality of the narrative thus far, this Court disposes of this Writ Petition by directing second respondent College to permit writ petitioner to continue his four year B.E Civil Engineering Course by redoing fifth semester from the commencement of ensuing academic year which this Court is informed is in June of 2020.

26.Though obvious, it is made clear that writ petitioner will be permitted to sit for examinations subject to attendance requirements of the University.



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27.Instant Writ Petition is disposed of with above directives.
No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

Ps

To

1.The Registrar,
Anna University, Chennai.

2.The Principal,
Holy Cross Engineering College,
7/131, Holy Cross Nagar,
Vagaikulam Srivaikuntam Express Road,
Thoothukudi - 628 851.

+1 CC to Mr.G. PRABHU RAJADURAI, Advocate (SR-101693[F] dated
27/11/2019)

+1 CC to Mr.M. RAJARAJAN, Advocate (SR-101901[F] dated 27/11/2019)

+1 CC to Mr.T.A. EBENEZER, Advocate (SR-102110[F] dated 28/11/2019)

W.P (MD) No.23561 of 2019
26.11.2019

VB(13.12.2019) 7P 6C