

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2020

CORAM :

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.13596, 13597, 14551 & 26823 of 2016
and
W.M.P.Nos.11900, 11902 & 12714 of 2016

Orders reserved on 07.02.2020	Orders pronounced on 19.02.2020
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M.I.E.T.Engineering College,
Rep., by its Chairman,
Er.A.Mohamed Yunus,
Trichy-Puduckkottai Main Road,
Tiruchirappalli-620 007.

.. Petitioner in W.P.No.13596 of 2016

Jayaram College of Engineering & Technology,
Rep., by its Chairman,
M.Subramanian,
Karattampatti - Pagalavadi,
Thuraiyur Taluk,
Trichy District-621 014. ..

Petitioner in W.P.No.13597 of 2016

Kings College of Engineering,
Rep., by its Principal, Dr.S.Duraiaraj,
Punal Kulam Village,
Gandharvakottai Taluk,
Pudukottai District. ..

Petitioner in W.P.No.14551 of 2016

M.A.M.College of Engineering,
Rep., by its Secretary & Correspondent,
Dr.M.A.Mohamed Nizam,
Trichy - Chennai Trunk Road,
Siruganur,
Trichirapalli-620 105. ..

Petitioner in W.P.No.26823 of 2016

-vs-

1.The Registrar,
Anna University of Technology,
Guindy, Chennai-600 025.

2.The Controller of Examination,
Anna University of Technology,
Guindy, Chennai-600 025.

.. Respondents in all W.Ps.

Common Prayer:

Petitions filed Under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records relating to the impugned order passed by the 1st respondent in his Procs.No.22500/COE/C70/MP/2015 dated 09.02.2016, quash the same.

For Petitioner : Mr.V.Selvaraj
(In W.P.Nos.13596, 13597 and 14551 of 2016) for Mr.B.Rabu Manohar

For Petitioner : Ms.V.Pavithra,
(In W.P.No.26823 of 2016) for Mr.R.Natarajan

For RR1 & 2 : Ms.Narmadha Sampath,
(In W.P.Nos. 13596, 13597, Additional Advocate General
14551 of 2016 and for assisted by
R2 in W.P.No.26823 of 2016) Mr.M.Vijayakumar

For R1 : Mr.L.P.Shanmugasundaram,
(In W.P.No.2823 of 2016) Sc for Anna University

COMMON ORDER

Since the relief sought for in all the four writ petitions is identical, they were heard together and are being disposed of by this common order.

2.Heard Mr.V.Selvaraj, learned counsel for Mr.B.Rabu Manohar, learned counsel for the petitioner in W.P.Nos.13596, 13597 and 14551 of 2016; Ms.V.Pavithra, learned counsel for Mr.R.Natarajan, learned counsel for the petitioner in W.P.No.26823 of 2016; Ms.Narmadha Sampath, learned Additional Advocate General assisted by Mr.M.Vijayakumar, learned counsel for the first and second respondent-University in W.P.Nos.13596, 13597 and 14551 of 2016 and for the second respondent-University in W.P.No.26823 of 2016; and Mr.L.P.Shanmugasundaram, learned Special Government Pleader for the second respondent-University in W.P.No.26823 of 2016.

3.The petitioners are Engineering Colleges, which have been affiliated to the Anna University of Technology, Chennai. The petitioners have impugned the orders passed by the respondent-University, dated 09.02.2016, by which a sum of Rs.36,80,000/- has been imposed as fine on the petitioner-MIET; Rs.70,40,000/- on Jayaram College of Engineering and Technology; Rs.11,20,000/- on Kings College of Engineering; and Rs.62,40,000/- on M.A.M.College of Engineering for admitting students in the M.E./M.Tech., Post Graduate

programmes as regular students while they were simultaneously working in the Institutions. The respondent- University issued show cause notices calling upon the petitioners to submit their explanation with regard to the tentative decision of the Syndicate of the respondent-University. The annexure to the show causes notice contained the decision of the Syndicate, which stated that an enquiry was conducted on 9th, 10th, 26th and 27th of September, 2013 at the Regional Office of the Anna University, Coimbatore, in connection with some of the Faculty Members working with the petitioner-Institutions or some other institutions are simultaneously pursuing Post Graduate M.E., Programme in the petitioner-Institutions for the academic years 2009-10 and 2010-11 against the Regulations of the respondent-University. The list of faculty members/students was enclosed along with the show cause notice.

4.It was further stated that during the enquiry, the petitioner-Institutions have accepted that knowing fully well about the facts, the faculty members had been permitted to do such acts with the knowledge of the institutions. It was further stated that the Syndicate of the respondent-University has provisionally decided to impose fine on the institutions, which indulged in such activity and the fine proposed was twice the amount of tuition fee collected from the students, who were admitted/permitted for M.E., course and in addition, proposed severe warning to be issued. The petitioner-Institutions were called upon to explain within seven days as to why they should not be imposed with fine and should not be warned severely for their acts. It would suffice to refer to the reply given by one of the petitioners, though there may be a subtle variance in the language or/and mode of delivery.

5.The petitioner-Institution (MIET) submitted their reply dated 23.12.2014, reiterating the stand in their letter dated 15.09.2011. Among other things, the Institution stated that it may be true that some of the faculties might have tinkered with the full time Post Graduate programme not after the issuance of the show case notice dated 05.12.2014.

6.With regard to the charge that some of the faculties were working in the Institutions and simultaneously pursuing their Post Graduate course in some other Institutions, the petitioners stated that they came to know about the same only on receipt of the letter of the University dated 06.09.2011, and on enquiry with those faculties, they accepted the same and immediately, the faculties were relieved from the employment in the Institutions and the petitioner-Institutions pleaded ignorance.

7.With regard to the other allegation regarding some of the faculties working in some other Institutions and pursuing

Post Graduate course in the petitioner-Institutions simultaneously, the petitioners stated that those persons did not disclose the same in the admission form and unless it is disclosed, the petitioners would not be in a position to know that they are really faculties or non-faculties. Thus, the petitioners shifted the blame on the faculties/candidates and pleaded innocence and requested for dropping the proceedings.

8. After considering the reply given by the petitioners, the respondent University by the impugned orders dated 09.02.2016, informed the petitioners that they have not denied the mistake committed by them, but stated certain reasons, which could not be substantiated to disprove the allegation against the petitioners and therefore, fine was imposed, which was double the tuition fee collected from the students.

9. The petitioners, on receipt of the impugned orders, sent a letter to the University dated 25.02.2016, stating that they have not committed any mistake and that the imposition of fine is legally not tenable and they are not bound to pay the fine and the action amounts to double jeopardy, that is, against the college as well as the students. In response to the said representation dated 25.02.2016, the respondent-University informed the petitioners by notification dated 31.03.2016, that the fine has been imposed on the petitioners for not following the Regulations of the University, a thorough enquiry was conducted by the committee, which gives its recommendation and the Syndicate also considered the recommendation, and after issuing show cause notice, and finding that there was material evidence available in the office of the University, a conclusion was arrived at that the petitioner-Institutions have committed the mistake and called upon them to pay the fine amount on or before 11.04.2016. It is, in this background, the petitioners filed these writ petitions.

10. The contention of the petitioner-Institutions is that the respondent-University has no power to impose fine. Though certain other grounds were raised regarding alleged violation of principles of natural justice, the same were not urged before me during the course of argument.

11. The sheet anchor of the argument of the learned counsel for the petitioner-Institutions is on the ground that Chapter V of the Anna University (Chennai) Act, 1978 (hereinafter referred to as "the Act"), contains six sections, viz., Sections 21 to 26. Section 21 deals with "Funds and Accounts of the University". Under the said Section, there are two categories of funds, viz., "general funds" and "other funds". Under the category "general funds", the following have been enumerated, that is, income from fees, grants, donations and gifts, contribution or grant by the Central

Government, any State Government, University Grants Commission or like authority, endowments and other receipts, and nowhere the Act empowers the respondent-University to impose fine and appropriate it to the general funds of the University. Furthermore, the Statute also does not provide for any other category of funds. Therefore, it is submitted that the impugned order is wholly illegal and without jurisdiction.

12.The learned Additional Advocate General appearing for the respondent-University contended that it was brought to the notice of the University that several persons employed as teaching faculties for Under Graduate courses such as B.E./B.Tech., in affiliated institutions like the petitioners, have also enrolled themselves in full time Post Graduate M.E./M.Tech., course either in the same institution or in other institutions affiliated to the respondent-University. This is impermissible because a full time employee cannot pursue a full time course simultaneously. In this regard, the learned Additional Advocate General referred to Regulation 2.2.1, which defines, who are 'full time' candidates and in terms of the said regulation, the full time candidate should be available in the college/institution/University during the complete working hours for the curricular, co-curricular and extra curricular activities assigned to them.

13.Heard the learned counsels for the parties and carefully perused the materials placed on record.

14.In terms of Regulation 9.1, every student is expected to attend all classes and secure 100% attendance. However, in order to allow for certain unavoidable reasons such as medical/participation in sports/personnel, the student is expected to attend at least 75% of the classes. Thus, a candidate, who is a full time candidate cannot pursue the full time Post Graduate course. Based on the complaint received, a Committee was constituted by the Vice Chancellor to inquire into the matter. After ascertaining the full facts, and having found that the candidates were illegally pursuing the full time course and simultaneously working as full time employees either in petitioner-Institutions or in some other institutions, the University took a decision to extend the period of study for two more semesters, that is, from 2009-2012 in respect of candidates studying in the fourth semester and 2010-2013 for candidates studying in the second semester. Parallely, notices were issued to the petitioner-Institutions and the Committee identified 17 affiliated institutions like the petitioners were adopting such an activity and totally 255 students were found to have been pursuing the full time course and also were full time faculty. The committee after a detailed probe, divided the candidates into three categories, viz.,

(i) Students who have not worked as faculty members since

August, 2008 and those who have resigned the faculty position prior to February, 2009, that is, during the first semester of study;

(ii) Students who have not resigned their faculty position even after January, 2009;

(iii) Students who have been already warned during their first semester or second semester or M.E./M.Tech., programme have not resigned after January, 2010.

15. With regard to the first category of students, they were permitted to continue the full time four semester of the respective M.E./M.Tech., Programme during 2009-10. With regard to the second category of students, the course period was extended to 2010-11 and with regard to the third category, they were permitted to rejoin the programme during 2011-12. Some of the candidates filed writ petitions before this Court challenging the above decision, which were dismissed, affirmed by the Hon'ble Division Bench and the Special Leave Petitions were also dismissed by the Hon'ble Supreme Court. In the counter affidavit filed by the Registrar of University, a detailed narration of the entire proceedings, which were taken against the students, has been set out. However, for a decision in these writ petitions, those facts may not be very relevant except to note that the decision of the respondent University qua the students were affirmed by the Hon'ble Supreme Court.

16. With regard to the petitioner-Institutions, which have been imposed fine, the respondent would state that the fine amount is nothing but double the tuition fee collected from the students in spite of knowing fully well about the rules and regulations of the University and attendance was given to the students without attending classes in order to allow them to write the examination and the petitioner-Institutions having not able to refute their misbehaviour, they cannot escape from remitting the fine amount. Further, on earlier occasion, fines have been imposed and in one such case relating to Archana Institute of Technology, Krishnagiri District, the imposition of fine was upheld by this Court in W.P.No.10899 of 2012.

17. The respondent-University seeks to trace its power to issue the impugned order by referring to Section 5(af), which empowers the University to conduct the evaluation or inspection of the colleges at required interval and to take suitable action to improve academic excellence of the colleges. Section 5(ag) empowers the University to monitor academically the affiliated institutions in order to prescribe the control mechanism to achieve the academic excellence. Further, the respondent-University relies on Section 7.9 of the Statute for Affiliation, 2004, as amended on 21.02.2007,

which states that the affiliation (provisional/permanent) granted to any academic programme(s) in a college may be suspended/withdrawn for adopting the procedures laid down in the Regulations, if the college fails to comply with the provisions made in this behalf or the college has failed to observe/implement any of the conditions of affiliation or the college has conducted in a manner, which is prejudicial to the interests of the university, education and / or students.

18.The report of the Committee, the Syndicate approval, the show cause notices issued, the reply from the petitioner-Institution, the list of colleges, which have been imposed fine were placed before this Court in the form of a paper book. Further, the printed minutes of the 234th meeting of the Syndicate was also placed for the consideration of this Court.

19.From the above facts, it is evidently clear that the petitioner-Institutions have no other option except to reconcile to the fact that they have committed a gross mistake. The acts of the petitioner-Institutions have to be deprecated, as they have acted in a manner prejudicial to the interest of higher education, acted prejudicial to the interest of the students and have thus, grossly violated the provisions of the Act and the relevant regulations, by which the respondent-University is administered. The challenge by the students to the orders passed by the respondent-University had failed and the students were permitted to complete the course by treating them as part time candidates, that is, the Post Graduate programme would be completed by them in three years.

20.In the considered view of this Court, the respondent-University was lenient in taking action against the students presumably with a view not to pre-jeopardize their career. It has been conclusively proved that the candidates were full time faculties in the institutions. If that is so, he/she cannot be a full time Post Graduate student in the same institution or in any other institution. Therefore, the presumption is the candidate did not attend classes, yet they were granted attendance to enable them to sit for the examination. This is a gross misconduct committed by the petitioner-Institutions. In fact, they have cheated and played fraud on the entire system of higher education for financial gain and other mala fide reasons. Therefore, the respondent-University would have been well justified in suspending the affiliation granted to the petitioners or withdrawing the affiliation granted to the petitioners, as the University is empowered to do so in terms of Section 7.9 of the Statutes for Affiliation. However, the respondent-University acted thoughtfully in not doing so, because by suspending or withdrawing the affiliation, the other students of the institutions, who have committed no wrong would be

affected. Therefore, the University, in their wisdom rightly targeted those errant students and also brought to books the errant petitioner-Institutions. The petitioner-Institutions can be shown no leniency for their misconduct. They have committed fraud and cheated the education system.

21. In terms of the provisions of the Anna University Act, the University being the affiliating University is the supreme body and empowered to exercise their control over the functioning of the petitioner-Institutions. Section 5 of the Act deals with the 'powers and functions' of the University and on a cursory perusal of those powers, it is evidently clear that the University exercises full control over the petitioner-Institutions and it is empowered to withdraw the affiliation and after such withdrawal, the petitioners cannot function. The respondent University is entitled to evaluate the functioning of the petitioners; they are empowered to conduct inspection; they are entitled to monitor the academic excellence of the petitioner-Institutions and other affiliated institutions.

22. In the considered view of this Court, the 'powers and functions' as enumerated in Section 5 of the Act should be read to be illustrative and not exhaustive. This would be the correct method of interpreting Section 5 of the Act bearing in mind the purpose of establishment of the University as mentioned in Section 7 and the objects of the University as mentioned in Section 4. Therefore, the plea raised by the petitioners that the respondent-University cannot take action against them is far-fetched and to be summarily rejected.

23. The argument of Mr. V. Selvaraj, learned counsel is that the University has no power to impose fine and if at all, it can suspend or withdraw affiliation and if need be, the University can amend its regulation even now with retrospective effect.

24. As mentioned above, the respondent-University was thoughtful while taking action, they did not want the innocent students to be penalised and the target was the petitioner-Institutions and the errant students, who adopted such an illegal modus. Though the amount demanded from the petitioners has been given the nomenclature "fine", it is in effect, the amount equivalent to twice the course fee collected by the petitioners from those errant students. Thus, it is in the nature of a fee collected by the institutions, which has been taken as the yardstick for quantifying the penalty. Rustication can be in various forms and Courts cannot substitute its views in such matters, especially in matters where Universities and education institutions take disciplinary action to maintain excellence of education. The Court should be slow to interfere in such

matters, unless and until it is found to be palpably erroneous. The purpose for collecting twice the course fee collected from those students is to impose upon the petitioner-Institutions a deterrent punishment, not a 'capital punishment'. The petitioner-Institutions have been permitted to continue, despite they having adopted fraudulent practice. In fact, to say the least, the University was lenient even as against the petitioner-Institutions. If no action is initiated against the petitioners, then it would be putting a premium on illegality. If the argument advanced by the petitioners before this Court is to be accepted, then no affiliating University can exercise control over the affiliated institutions. The provisions of Section 7.9 of the Statutes for Affiliation have to be read in such a manner that while the University is empowered to suspend or withdraw the affiliation, would also be entitled to impose lesser penalty instead of suspension or withdrawal of affiliation and this is what has been done by the respondent-University by passing the impugned orders.

25. Thus, for the above reasons, this Court finds there are absolutely no grounds to interfere with the impugned orders.

26. In the result, the writ petitions are dismissed and the interim orders are vacated. The petitioner-Institutions are directed to pay to the respondent-University the amount demanded in the impugned orders within a period of twelve weeks from the date of receipt of a copy of this order, failing which the respondent-University is at liberty to exercise their power under Section 7.9 of the Statutes for Affiliation. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

abr

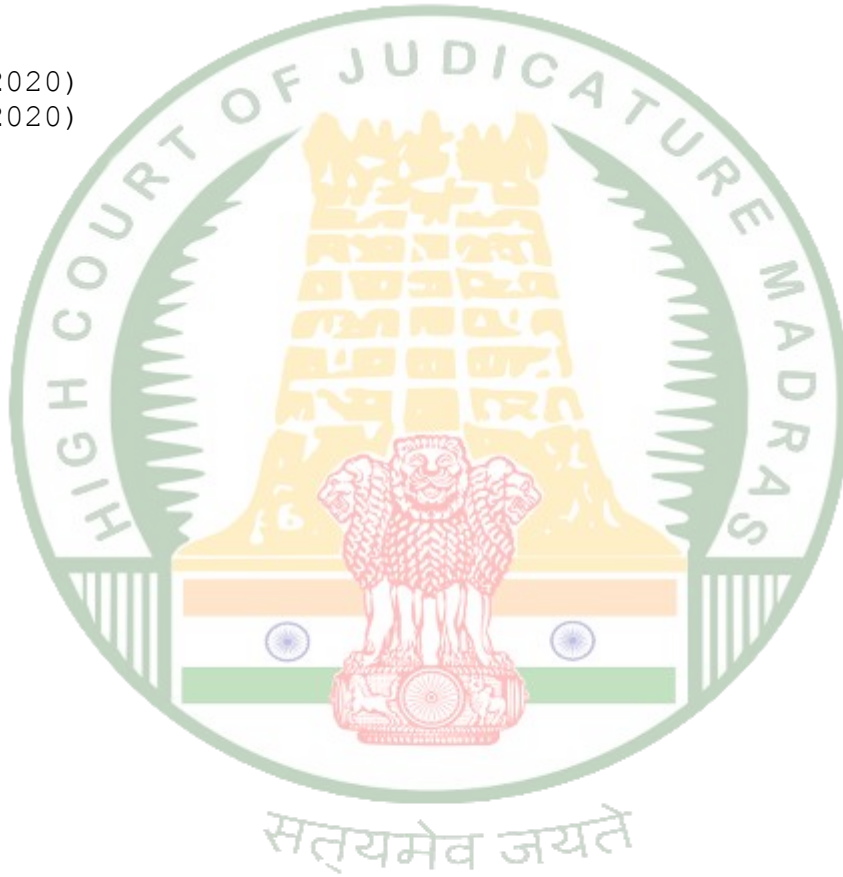
To

1. The Registrar,
Anna University of Technology,
Guindy, Chennai-600 025.
2. The Controller of Examination,
Anna University of Technology,
Guindy, Chennai-600 025.

+1cc to Mr.L.P.Shanmugasundaram, Advocate SR.14437
+1cc to Mr.R.Natarajan, Advocate SR.13968
+4cc to Mr.B.Rabu Manohar, Advocate SR.13920, 13921
+2cc to Mr.M.Vijayakumar, Advocate SR.13913,13911
+1cc to Mr.M.Vijayakumar, Advocate SR.13912(03/08/2020)

Pre-delivery common order made in
Writ Petition Nos.13596, 13597,
14551 & 26823 of 2016

GMR (CO)
CB(01/07/2020)
CB(03/08/2020)



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