

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 08.12.2020

Delivered on: 14.12.2020

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WP No.10517 and W.P.No.10527 of 2020
and

WMP Nos. 12786, 12787, 12788, 13487, 13496, 13502,
13510, 21349 and 21352 of 2020

Mailesh S.B,
(Reg.No.810117251901),
S/o.M.Balakumar,
15/26, Poosari Street,
Surampatti Nall Road,
Erode-638 009.

..Petitioner
in W.P.No.10527 of 2020

C.Praveenkumar
(Reg.No.810117251018),
S/o.D.Chinnasamy,
3B, Velusamy Apartment,
Annamalai Gounder Street,
Verappanchatram,
Erode-638 004.

..Petitioner
in W.P.No.10517 of 2020

.Vs.

1. The Registrar,
Anna University,
Guindy, Chennai-25.

2. The Controller of Examinations,
Anna University,
Guindy, Chennai-25.

3. The Director,
Centre for Academic Courses,
Anna University,
Guindy, Chennai-25.

4. The Principal,
Care School of Architecture,
No.27, Thayanur,
Trichy-620 009.

..Respondents
in Both WPs

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Impugned Order passed in Lr.No.8101/COE/C31/2020-5151 dated 13.02.2020 by the 2nd respondent as well as the consequential order in Lr.No.8101/COE/C31/2020 - 8676, 8677 dated 03.03.2020 issued by the 2nd respondent and Lr.No.540/AU/CAC/AB/SAP/2020 dated 13.03.2020 issued by the 3rd respondent and quash the same and consequently direct respondents to permit the petitioner to move to next semester without insisting to re-do the 4th semester.

For Petitioners : Mr.S.Saravanan
in Both WPs
For Respondents : Mr.L.P.Shanmugasundaram
in Both WPs Standing Counsel

COMMON ORDER

The issues involved in both the Writ Petitions are common and hence they are taken up together, heard and this Common Order is passed.

2. Both the Writ Petitions challenges the Impugned Letter issued by the 2nd respondent dt. 13.02.2020, the consequential letter dt. 03.03.2020 and the letter issued by the 3rd respondent dt. 13.03.2020 and for a consequential direction to the respondents to permit the petitioners to join the next semester without insisting to redo the IV semester.

3. The case of the petitioner is that they joined in the 4th Respondent College which is affiliated to the Anna University in the B. Arch (Bachelor of Architecture) Course during the year 2017. The Course involves Theory subjects, Theory cum Studio subjects and Studio subjects. The Theory Courses are imparted based on textbooks and the written

examination is conducted at the end of the semester. For the Theory cum Studio Courses, the student is taught through drawings and the examination is conducted at the end of the semester in the form of written exam as well as drawings. Insofar as the Studio Courses are concerned, the students are taught to draw the designs of the structure and the exams are conducted at the end of the semester by way of Viva Voce Examination. The entire scheme of the course and conduct of the examinations and moving to the next semester, is regulated by the 2017 Regulations of the Anna University.

4. The petitioners completed the IV semester during the month of April 2019 and registered for the University examination. The Viva Voce for the Studio subject Architectural Design III in semester IV was scheduled to be held on 26.04.2019. Unfortunately the petitioners were not able to take the Viva Voce Examination on that day. The petitioners were also expecting the 4th respondent to conduct the supplementary exams. The petitioners were also permitted to move to the V semester during July 2019 and the petitioners also completed the V semester and took the exams during December 2019. The petitioners also cleared the exams. However, till then the supplementary exam of the Studio Course for the IV semester was yet to be conducted.

5. The 4th Respondent College took up the issue with the University and the 2nd respondent through the Impugned Letter informed that the petitioners have not satisfied Regulation 15.1 and hence they cannot move to the VI semester and they must undergo the arrear courses during January to April 2020 along with IV semester and the new attendance and assessment marks secured during January to April 2020 will be taken into account for appearing in the IV semester examination during April 2020. Virtually the petitioners were asked to redo the course pertaining to the IV semester.

6. The petitioners made a representation to the 3rd respondent requesting for conducting the supplementary exam as well as to permit the petitioners to move to the VI semester. A reply was sent by the 2nd respondent dt. 03.03.2020, wherein, it was informed that since the petitioners were absent for the Architectural Design III which is a Studio subject, they should redo the IV semester. The University relied upon Regulation 11.2.2, Regulation 18.4 and Regulation 15.1 to come to this conclusion. Aggrieved by the same, the present Writ Petitions have been filed before this Court.

7. The Respondent University has filed a counter affidavit. The relevant portions in the counter affidavit in WP No.10527 of 2020, are extracted hereunder:

"4. It is humbly submitted that the Regulations of the University stipulates the rules that governs the implementation of the entire teaching-learning process, conduction of examinations, passing requirements and declaration of results of the degree programmes. Presently, Regulation 2017 is in force for all the students joined in the affiliated colleges on or after the academic year 2017-2018. It is also submitted that Clause 10.4 of Regulation 2017 reads as follows:

10.4. Studio Courses

10.4.1 For Studio courses, the students shall submit the final art work/models/ presentation drawings for the Viva-Voce examination on the last working day of the semester.

10.4.2. The Viva-Voce examination will be conducted after the last working day of the semester based on the portfolio of class records of the candidate. The Viva-Voce for a batch of 40 will be conducted by two external examiners of which one shall be a Practicing Architect appointed by the COE. The weightage of marks is as indicated below.

Internal assessment 60%

Viva Voce examination 40%

Hence, as per the Clause 10.4 of Regulation 2017, the successful completion of the Studio course involves the submission of portfolio and the conduct of the Viva Voce examination.

5) It is submitted that if the independent powers of the University are abridged, the University will lose its sanctity and cannot develop the standards of higher education in the University. According to Clause 11.2.2 of the Regulations:-

"11.2.2 If a student fails to secure a pass in a studio course, the student shall

submit an improved Portfolio for a supplementary viva voce examination conducted the COE within 30 days of publishing the result, with the same set of Examiners. The internal marks shall be valid for the supplementary attempt."

The concept of improved Portfolio will occur only in case of students those who have attended the Viva-Voice Examination and failed to secure pass. Only these students are eligible for the supplementary examination and not the absentees. There is no question of improved Portfolio in case of absentees, as the portfolio was not reviewed by the examiners. Therefore, the question of conducting of supplementary examination for the absentees does not arise. Therefore, the supplementary examination will occur only for students who have attended the Viva-Voce Examination and failed to secure pass and not the absentees.

Hence, the students those who were absent must register for the studio course in which he/she had not secured a pass along with regular students when the course offered next.

6) It is humbly submitted that the above petitioner student was absent for the subject AR8411-Architectural Design-III and hence, he was not permitted to take up the supplementary examinations during April/May 2019. The Regulations 2017 states that:

15.1. A candidate of the B.Arch, shall move to the higher semester if he/she satisfies the following conditions. To move to:

(iv) VI semester, a pass is required in Architectural Design III in semester IV.

15.2. A candidate shall move to the next higher semester if he/she has satisfied the semester completion requirements (vide clause 6.0)

Hence, they must complete the course AR8411-Architectural Design-III by attending the course in the IV semester and only then they can be moved to VI semester. Therefore, the

petitioner student mentioned above must undergo the arrear course during Jan-April 2020 along with the regular students of IV semester as per the Regulations.

7) It is submitted that the clause 18.4 states as follows:-

"18.4. A candidate who is absent in the semester examination in a theory, theory cum studio course, elective course or in studio course after having registered for the same shall be considered to have appeared in that examination for the purpose of classification:"

Hence, Clause 18.4 is specifically applied for the purpose of classification only and not for the conduct of supplementary examination for the absentees, who were absent in studio courses. The absence of the candidates in the semester examination of any course is to be treated as an attempt for classification and not for the conduct of supplementary examination for the studio courses.

8. It is humbly submitted that the candidate was informed by an e-mail on 03.03.2020 by the Controller of Examinations through the Principal of the Petitioner to redo the course in January-April 2020 as per Clause 11.2.2 and 15.1 of Regulations 2017 and the same was confirmed by the Director, Centre for Academic Courses. This was confessed by the Petitioner in his affidavit filed in this case. Having informed him about the Regulations to be followed for his absence in Studio Course, without following that he has approached the Hon'ble High Court of Madras by misinterpreting the Regulations and to get due advantage for appearing for the studio course as an arrear course, in which he was absent, as like the theory/theory cum studio courses.

8. It is not necessary to take note of the counter affidavit filed in W.P.No.10517 of 2020 since it is verbatim same to that of the counter affidavit filed in W.P.No. 10527 of 2020.

9. Heard Mr.S.Saravanan, learned counsel for the petitioner and Mr. L.P Shanmugasundaram, learned Standing Counsel appearing on behalf of Respondents 1 to 3.

10. The relevant Regulations have been extracted in the counter affidavit filed by the University. When the matter came up for hearing on 02.12.2020, this Court on hearing either side formulated the issue involved in the present Writ Petitions and for proper appreciation, the order is extracted hereunder:

"The entire case revolves around understanding clause 11.2.2 and Clause 18.04 of the 2017 Regulations of the Anna University. Neither in the impugned order nor in the counter affidavit, the University has explained as to why the petitioners will not fall under clause 18.4. In this case, the specific stand taken by the University is that there is a difference between persons who attended the examination and failed and persons who do not attend the examination and are absentees. According to the University, both the categories cannot be treated in the same footing. However, a reading of Clause 18.4 gives a different impression than the one sought to be projected by the University. The learned Standing counsel appearing on behalf of Anna University must explain this Court the meaning of the term "for the purpose of classification" found in clause 18.4. Unless this is explained, no effective orders can be passed in this writ petition.

2. This Court has heard the arguments in full and it is adjourned only for clarifying this particular aspect. Post this case under the caption for orders on 04.12.2020 at 2.15.p.m."

11. The specific stand taken by the learned counsel for the petitioner is that Clause 18.4 of the Regulations specifically states that a candidate who is absent in the semester examination in a Theory paper or in a Theory cum Studio Course or in a Studio Course, after having registered for the same, shall be considered to have appeared in that examination for the purpose of classification. The learned counsel therefore submitted that persons who appeared and failed in the examination and persons who absented themselves in the

examination are treated equally under this Regulation. Clause 11.2.2 of the Regulations specifically enables a student who fails to secure a pass in a Studio Course to take a supplementary Viva Voce Examination with the same set of examiners. Therefore, the petitioners will also be entitled to participate in the supplementary examination and there is no requirement to undergo the semester once again and thereafter take the examination.

12. The learned Standing Counsel appearing on behalf of the University submitted that Clause 18.4 of the Regulations only provides for considering a candidate who is absent in the semester examination for the purpose of classification. While explaining the term classification, the learned Standing Counsel submitted that it must be understood as distinction/first class/second class etc. According to the learned Standing Counsel, the classification viz; distinction / first class / second class etc., will be awarded to the candidate even though he/she was absent for semester and cleared them in the consecutive semester examination.

13. This Court has carefully considered the submissions made on either side and also the relevant materials available on record.

14. The Anna University by relying upon Clause 11.2.2 of the Regulations have taken a specific stand that appearing in supplementary examination will not be made applicable insofar as candidates who were absent in the Viva Voce Examination conducted for the Studio Course. This Regulation is understood and applied across the Board in the same manner for all those students who absented in the Viva Voce Examination for the Studio Course. The University applies Clause 11.2.3 to such students which specifically provides that a student who fails to secure a pass in a supplementary Viva Voce Examination of Studio Course and such a student is expected to repeat the course and fulfill the attendance requirements and thereafter appear for the Viva Voce Examination. Till then, the student will not be permitted to proceed to the higher semester as given in Clause 15 of the Regulations.

15. Clause 15.1 of the Regulations specifically provides that a candidate of B.Arch can move to the VI semester only if he passes the Architectural Design III in semester IV.

16. Whether a student appears and fails in an examination or whether a student absents and fails in an examination, the result is the same and in both cases the student is treated as failed candidate only. Clause 11.2.2 specifically provides for conducting supplementary Viva Voce Examination for those students who fails to secure a pass in a Studio Course. The University is not right in relying upon Clause 11.2.3 to make the petitioners again undergo the IV semester. That Clause will apply only where a student fails to secure a pass even in the supplementary Viva Voce Examination. In the present case, admittedly the petitioners have not taken the supplementary Viva Voce Examination. Therefore, this Clause cannot be put against them.

17. When Clause 11.2.2 is made applicable to a failed candidate, it must also be made applicable to a candidate, who has absented himself in the Viva Voce Examination and such a candidate must have the advantage of taking the supplementary Viva Voce Examination.

18. The University without conducting a supplementary Viva Voce Examination for the petitioners, is also parallelly preventing the petitioners to move into the VI semester by relying upon Clause 5.1 of the Regulations.

19. In the considered view of this Court, the petitioners having cleared the other examinations in the IV Semester, should not be made to again undergo the Course for the IV semester, only for the purpose of taking the Viva Voce Examination. The petitioners can be brought within the ambit of Clause 11.2.2 and a supplementary exam should be conducted by the Anna University for the petitioners. Once they clear the Architectural Design III in the supplementary examination, they will be entitled to move into the VI semester. This is the only conclusion that can be arrived at on a harmonious reading of the relevant Regulations of the Anna University.

20. In the result, the Impugned Letters issued by the 2nd and 3rd respondents are hereby quashed and there shall be a direction to the respondents to conduct a supplementary Viva Voce Examination to the petitioners for Architectural Design III as per Clause 11.2.2 of the Regulations at the earliest and in the event of the petitioners clearing the supplementary examination, they shall be permitted to move to the next semester.

21. Both the Writ Petitions are allowed with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Registrar,
Anna University,
Guindy, Chennai-25.
2. The Controller of Examinations,
Anna University, Guindy, Chennai-25.
3. The Director,
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4. The Principal,
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+1cc to Mr.S.Saravanan, Advocate, SR40595
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+1cc to Mr.L.P.Shanmugasundaram, Advocate, SR41476
+1cc to Mr.L.P.Shanmugasundaram, Advocate, SR41479

Pre Delivery Common Order in
WP Nos.10517 and 10527 of 2020

CO(SRII)

BDL/06/01/2021