

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 23.11.2020
Delivered on: 30.11.2020

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WP Nos.11018, 11184, 11187, 11713 and 12866 of 2020
and
WMP Nos.13629,13631,13632,13638,13640,13641,14400,14405 and
15908 of 2020

W.P.No11018 of 2020

- 1.Ms.N.Nandhini
- 2.B.Nares Kumar
- 3.E.Surya Prakash
- 4.M.Venkatesh

(Address for service for all Petitioners is
that of their college
Easa College of Engineering and Technology,
Rep.by its Chairman,
Pallakad Main Road,
Navakkari (PO),
Coimbatore-5.

...Petitioners
in W.P.No.11018/2020

.Vs.

- 1.The Vice-Chancellor,
Anna University,
Guindy,
Chennai 600 025.

- 2.The Controller of Examinations (I/C),
Office of the Controller of Examinations,
Anna University, Guindy,
Chennai-600 025.

- 3.The Principal Secretary to Government,
Department of Higher Education,
Govt.of Tamil Nadu,
Fort St.George,
Chennai 600 009.

4.Easa College of Engineering and Technology,
Rep.by its Chairman,
Pallakad Main Road,
Navakkari (PO),
Coimbatore-5.

..Respondents
in W.P.No.11018/2020

Prayer in W.P.No.11018 of 2020: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st and 2nd Respondents not to insist for payment of Examination fee and waive the same for the current semester for the students studying from first to pre-final year in Engineering course in the 4th Respondent college, taking into fact that Written exams are already been cancelled by the 3rd Respondent by their G.O.Ms.No.111 dated 27.7.2020 by considering the petitioner representation dated 03.08.2020.

W.P.No11184 of 2020

S.Hahiharan

...Petitioner
in W.P.No.11184/2020

.Vs.

1.The Anna University,
Rep.by its Registrar,
Anna University Campus,
Guindy,
Chennai 600 025.

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

..Respondents
in W.P.No.11184/2020

Prayer in W.P.No.11184 of 2020: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd Respondent in Letter No.13715/CoE/COVID- 19/C20-C30/2020/1 dated 01.08.2020 insofar it related to the demand of examination fees and quash the same and directing the 1st and 2nd Respondents to publish the Even Semester results of the academic year 2019-20 of the Petitioner without insisting upon payment of examination fees.

W.P.No11187 of 2020

B.Sowndharya

..Petitioner
in W.P.No.11187/2020

.Vs.

1.The Anna University,
Rep.by its Registrar,
Anna University Campus,
Guindy,
Chennai 600 025.

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

..Respondents
in W.P.No.11187/2020

Prayer in W.P.No.11187 of 2020: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd Respondent in Letter No.13715/CoE/COVID- 19/C20-C30/2020/1 dated 01.08.2020 insofar it relates to the demand of examination fees and quash the same and directing the 1st and 2nd Respondents to publish the Even Semester results of the academic year 2019-20 of the Petitioner without insisting upon payment of examination fees.

W.P.No11713 of 2020

B.Yuvan

..Petitioner
in W.P.No.11713/2020

.Vs.

1.The Registrar,
Anna University,
Chennai 600 025.

2.The Vice Chancellor,
Anna University,
Chennai 600 025.

3.The Controller of Examinations
Anna University, Guindy,
Chennai-600 025.

4.Principal Secretary to Government,
Department of Higher Education,
Government of Tamilnadu,
Secretariat,
Chennai - 600 009.

5.The Principal,
Prathyusha Engineering College,
Poonamallee,
Tiruvallur High Road,
Tiruvallur.

..Respondents
in W.P.No.11173/2020

Prayer in W.P.No.11713 of 2020: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the issuance of the Letter No.13715/CoE/COVID- 19/C20-C30/2020/1 dated 01.08.2020 in respect the Principals of the Colleges are requested to send the examination fees collected from the students for the Current Semester Course alone to the Office of the Controller of Examination issued by 3rd respondent and quash.

W.P.No12866 of 2020

Association of Self Financing Professional Engineering
Colleges Affiliated to Anna University
(Reg.No.52/2010),
Rep.by its President Mr.M.Subramaniam,
Having Office at No.6/C-86, 10 Cross (West),
Thillai Nagar,
Trichirappalli-18.

..Petitioner
in W.P.No.12866/2020

.Vs.

1.The Vice- Chancellor,
Anna University, Guindy,
Chennai 600 025.

2.The Controller of Examinations(I/C)
Office of the Controller of Examinations,
Anna University, Guindy,
Chennai-600 025.

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3.Principal Secretary to Government,
Department of Higher Education,
Government of Tamilnadu,
Fort St.George,
Chennai - 600 009.

..Respondents
in W.P.No.12866/2020

Prayer in W.P.No.12866 of 2020: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the 1st and 2nd Respondents not to insist for payment of Examination fee and waive the same for the current semester for the students studying from first to pre-final year in Engineering course and consequently declare their results considering the fact that written exams are already been cancelled by the 3rd Respondent by their G.O.Ms.No.111, dated 27.07.2020 and in view of the financial problems faced by the students/parents due to COVID-19 crisis.

For Petitioners in

W.P.No.11018/2020 : Mr.S.Sarath Chandran

W.P.Nos.11184 &11187/2020 : Mr.Doraisamy,
Senior Counsel
for Mr.Muthumani Doraisami

W.P.No.11713/2020 : Mr.G.Murugendran

W.P.No.12866/2020 : Mr.E.Vijay Anand

For Respondents in

W.P.Nos.11018,11184,11187,
11713 & 12866 of 2020 : Mrs.Narmadha Sampath
Addl. Advocate General Assisted by
Mr.M.Vijayakumar
Standing Counsel
for respondent/Anna University

COMMON ORDER

The issue involved in all these Writ Petitions are common and hence all the Writ Petitions are taken up together and this common order is passed.

2. These writ petitions have been filed by students undergoing Engineering Courses in colleges affiliated to Anna University and one of the Writ Petition has been filed by the association of self-financing professional Engineering Colleges affiliated to Anna University, challenging the decision taken by Anna University to collect the examination fees from the students and further directing the colleges to send the examination fees collected from the students for the current semester courses, even though the examinations were cancelled by the State Government in G.O.Ms.No.111, dt. 27.07.2020.

3. Due to outbreak of Covid-19 pandemic, all the Universities and Colleges in Tamil Nadu were closed due to lockdown from the 3rd week of March 2020. The Government of Tamil Nadu issued G.O.Ms.No.111, dt.27.07.2020, providing for a detailed procedure to declare as passed all the students who are undergoing the Engineering Courses in various semesters from 1st year to pre final year. The grievance of the petitioners is that even though the examination was not conducted, the Anna University was insisting for payment of the examination fees by the students and there was also a further direction to the colleges to send the examination fees collected from the students for the current semester courses to the University.

4. When the matter came up for hearing on 21.08.2020, the following order was passed by this Court.

Mr.Vijayakumar, learned counsel takes notice for respondents 1 and 2.

2. Mrs.Narmadha Sampath, learned Additional Advocate General, appearing on behalf of respondent-Anna University, vehemently opposed the grant of any interim order, since according to the learned Additional Advocate General, the University incurs a lot of expenses towards the preparation for pre-examination and post examination exercise and therefore, the University was justified in collecting the examination fees from the students. The learned Additional Advocate General further submitted that the concerned colleges have also received the examination fee from the students.

3.This Court has already entertained a writ petition in W.P.No.11018 of 2020 and passed an interim order on 14.08.2020 injuncting the University from collecting the examination fee. This Court expressed its mind by stating that for an examination, which was not even conducted, the University cannot be collecting the entire examination fee and if at all any expenses are

mark list, the same can be indicated and that alone can be collected from the respective students.

4.The learned Additional Advocate General sought for time to file a counter affidavit and also indicate in the counter affidavit with regard to the expenses incurred by the University in this regard.

5.A prima facie case has been made out and there shall be a direction to the Anna University to publish the results irrespective of the fact whether the students have paid the examination fee or not. If ultimately this Court finds that the students will have to incur certain expenses, once the Anna University provides the necessary particulars with regard to the expenses incurred for the Assessment and preparation of the mark list, the same will be directed to be paid by the students studying in various colleges. If the colleges have collected any amount from the students over and above the expenses to be incurred by the Anna University, the same will be directed to be refunded to the students, who have already paid the fee. The rest of the students who are yet to pay the fees will be directed to pay the expenses incurred by the Anna University. This position is made clear in this interim order. To that extent, the right of the University will also be safe-guarded.

6.Post this case on 01.09.2020 along with W.P.No.11018 of 2020.

5. When the matter came up for hearing on 15.09.2020, the following order was passed by this Court.

This Court while passing an order on 21.08.2020, had specifically expressed its mind at Paragraph No.5 and sought for the specific details from the Anna University.

2.The Counter Affidavit filed by the Anna University is completely bereft of details and the particulars that have been given in Paragraph Nos.18 and 19 are general figures from which this Court is not able to decipher as to what are the actual expenses that was incurred by the Anna University.

3.The Anna University is directed to file a better counter affidavit by giving correct particulars in order to enable this Court to ascertain the actual expenses that was incurred by the University towards pre-examination preparation and the expenses that will be incurred for the purpose of preparing the grade sheet, provisional

certificate, degree certificate etc., Only if the specific particulars are given, this Court will be able to exactly ascertain the cost that was incurred by the Anna University. On such ascertainment, the students can be directed to pay those expenses to the respective colleges which in turn will be paid to the Anna University. Any excess amount collected from the students by the respective institutions under the head of examination fees, can be directed to be refunded to the respective students.

Post this case on 24.09.2020 at 2.15 p.m.

6. The Anna University has filed a detailed counter affidavit explaining the various expenses incurred by them both during the pre-examination process and post-examination process. It is seen from the counter affidavit that nearly Rs.141 Crores is collected towards examination fees by the affiliated colleges and it is handed over to the Anna University. The University claims that it is incurring a deficit of Rs.23 Crores in receipt which is incurred as a direct expenditure towards pre and post examination processes and its routine revenue expenditure semester wise. It is further stated in the counter affidavit that the Government Order itself specifically provides that the semester results will be released only to the candidates who have paid their semester fees as well as examination fee to the respective colleges. A further stand has been taken in the counter to the effect that even though the students do not write the examination, unless the student pays the examination fees, the process of examination, publication of results and awarding of degree cannot be executed or initiated and therefore the claim made by the students and the institutions is totally unsustainable.

7. Based on the interim orders passed by this Court on 15.09.2020, an additional counter affidavit has been filed by the University providing the exact figures towards the expenditure incurred for each student in each subject in respect of conduct of examination. For proper appreciation, the tabular column provided along with the additional counter affidavit is extracted hereunder:

1.	Question paper setting, printing and dispatching (already incurred)	Rs. 12.50
2.	Answer paper cost (already printed for exam)	Rs. 14.10
3.	Salary/wages/stationary/etc.	Rs. 42.00

4.	Laboratory expenses from uploading primary data of the student's attendance, marks secured, Electricity charges, maintenance of high end served and high bandwidth internet connectivity	Rs. 28.00
5.	Cost of grade sheets including printing, postal expenses for dispatching of grade sheets to the colleges.	Rs. 6.50
6.	Remuneration paid to faculty members for valuation	Rs. 22.00
7.	Sitting fee, remuneration fee for chairman, Assistant examiner, Camp Officer, Camp Superintendent, Camp Assistant	Rs. 10.00
8.	Miscellaneous Expenditure for each paper	Rs. 1.40
9.	Transfer of answer scripts to different zones, loading and unloading, logistics	Rs. 10.00
10.	Telephone, mobile charges (communication of results, marks to the students)	Rs. 1.50
TOTAL		Rs. 148.00

8. Heard Mr.Doraisamy, learned Senior Counsel, Mr.G.Murugendran and Mr.E.Vijay Anand learned counsel for petitioners and Mrs.Narmadha Sampath, learned Additional Advocate General appearing on behalf of Anna University.

9. The common ground that was raised by the learned counsel appearing on behalf of the petitioners is that when the written examination has not even been conducted, the University cannot demand for the payment of the entire examination fee and that too where the students are already facing serious financial hardships due to the Covid-19 pandemic. It was further submitted that the University cannot unjustly enrich itself at the cost of the students and if at all any expense has been incurred towards pre examination process, the same can be collected from the students. In other words, it was submitted that whatever was the actual expenses incurred by the University should only be collected from the students and nothing more.

10. Per contra, the learned Additional Advocate General appearing on behalf of the Anna University submitted that payment of the examination fee is a condition precedent for releasing the results of the students. It has been specifically said so even by the State Government while issuing G.O.Ms.No.111, dt.27.07.2020, when it declared all the students as passed from first year to pre final year. The learned Additional Advocate General further submitted that the University has strictly followed the guidelines of the University Grants Commission [UGC] and All India Council for Technical Education [AICTE] and has given detailed guidelines to the colleges the manner in which the assessment mark will have to be calculated. It was further submitted that fixation of examination fee is purely an administrative decision taken by the University considering the expenses incurred by the University and the same cannot be made a subject matter of challenge before his Court since the fees fixed for each paper works out to a sum of Rs.148/- which is very nominal and not exorbitant. The learned Additional Advocate General further submitted that many colleges have already collected the fees from the students and it is actually some of those colleges who are behind this litigation and they want to enrich themselves by collecting the examination fees from the students and not giving it to the Anna University. The Learned Additional Advocate General concluded her arguments by submitting that if this Court interferes with the fixation of examination fee, it will set a very bad precedent and it will pave way for future litigations as and when any fee is fixed by the University. Therefore, the learned Additional Advocate General sought for the dismissal of all the Writ Petitions.

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

12. The term "fee" in legal parlance normally denotes a payment made for a special benefit or privilege. It is a sort of return or consideration for services rendered. There is always an element of quid pro quo whenever a "fee" is collected.

13. Whenever any fee is fixed by any academic body, it can become a subject matter of judicial review only in exceptional cases. The consistent judicial pronouncements clearly indicate that such a judicial review will be exercised only where the administrative decision suffers from illegality or irrationality or by procedural irregularity. When it comes to the test of irrationality, the Court will have to see if the administrative decision suffers from a patent error or perversity. This is the test to be applied in the present case.

14. The entire world was hit by an unprecedented pandemic which virtually closed down all the activities and confined people to their homes. The Anna University was making all preparations for conducting the semester examination during the month of April/May 2020. Due to the unprecedented situation, the State Government took a decision to declare all the students as passed from the first year to pre-final year stage. The State Government issued a Government Order in G.O.Ms.No.111, dt. 27.07.2020, with a detailed procedure to be followed for declaring as passed up to pre final year stage. After this Government Order was passed, a series of meetings took place to workout the modalities and to come out with a methodology to calculate the attendance and internal assessment marks for various courses both under the undergraduate and post graduate level.

15. The minutes of the meeting that was held on 29.07.2020, shows that apart from other things, instructions were also given for collection of regular semester fees for the academic year 2020-21 and also examination fees from the students. Therefore, it is clear that the Government permitted the Universities and academic Institutions to collect their regular semester fees and it was also provided that the March 2020 end semester results will be released only to the candidates, who pay the semester fees as well as the examination fees before the due date. It is therefore clear that even the State Government has given a clear indication to the Universities and Institutions that they can collect the examination fee.

16. There are nearly 560 colleges affiliated to Anna University and therefore the University undertakes massive preparation for conducting the examination much in advance. It is stated that the preparatory work for the conduct of examination starts immediately after the previous semester examinations are over. The counter affidavit filed by Anna University explains the conduct of examination under three heads namely pre-examination stage, actual examination and post-examination stage.

17. This Court has to take judicial notice of the fact that all the Universities under the aegis of Higher Education Department have collected the examination fees and thereafter declared the results. It is also stated that students of Polytechnic under the control of the Directorate of Technical Education of Government of Tamil Nadu have also paid the examination fees. It is claimed in the counter affidavit that nearly 378 non autonomous colleges affiliated to Anna University have paid the examination fees before the interim order was passed by this Court.

18. During the course of hearing, this Court strongly felt that it will not be reasonable for the Anna University to collect the examination fee from the students when the

examinations have not been conducted. That is the reason why this Court directed the Anna University to declare the results irrespective of payment of examination fee. During the course of hearing, this Court also was trying to understand the actual expenditure that will be incurred for each student and for each paper. That is the reason why this Court asked for specific details with regard to the cost incurred under each head. The same was submitted by the University and a careful analysis of the tabular column extracted supra shows that it covers both pre and post examination stages. The cost incurred for each paper for each student works out to Rs.148/-.

19. This Court at one stage wanted to undertake the exercise of segregating the heads which exclusively fell in the pre examination stage and also those heads which deals with preparation of grade sheets etc. However, this Court restrained itself from undertaking such an exercise since it involves appreciation of facts and it will not be proper to undertake such a course while exercising jurisdiction under Article 226 of the Constitution of India. This Court also did not find the examination fees fixed by the Anna University to be illegal or patently erroneous or perverse.

20. As stated above, the State Government itself authorized the Universities and academic Institutions to collect the semester fees as well as the examination fees from the students before publishing their results. Almost all the Universities have followed this instruction and collected the examination fees from the students even though the examination was not actually conducted. In fact, it is stated in the counter affidavit filed by the University that already 378 non autonomous colleges affiliated to Anna University have paid the examination fee collected from the students. It is only after the interim orders were passed by this Court, the students stopped paying the examination fee. Therefore, when the majority of the Institutions and students have already paid the examination fees and got their results published, it will not be in the fitness of things to grant an exception only to those who have approached this Court questioning the collection of the examination fees. Even though the examination was not conducted, the fact that the students are declared as passed from the stage of first year to pre final year, has the effect of writing the examination and clearing the same. Therefore, it cannot be held to be completely illogical to demand payment of examination fees from the students for declaring their results. It is for the same reason that the State Government permitted the Institutions to collect the examination fees from the students. To interfere with this decision at this point of time, will open floodgates and it will result in a chaotic situation more particularly since many colleges affiliated to Anna University have collected the examination fees and paid it to the University and under such circumstances a few others cannot be given any exemption. This Court must be very slow to exercise its judicial review in academic matters since it will set a very

bad precedent and it will give rise to future litigations where students and Institutions will start rushing to this Court questioning the fixation of fees. In any event, this Court finds that the examination fees of Rs.148/- for each paper and for each student is not really exorbitant warranting the interference of this Court.

21. In view of the above discussion, this Court is not inclined to grant the relief sought for in these Writ Petitions and accordingly, all the Writ Petitions stands dismissed. Since the Anna University has already published the results pursuant to the interim orders passed by this Court, there shall be a direction to all the Institutions affiliated to Anna University to collect the examination fees from the students, if not, already paid and in turn, pay the same to the Anna University within a period of four weeks from today. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KP

To

- 1.The Registrar,
Anna University,
Chennai 600 025.
- 2.The Vice-Chancellor,
Anna University,
Guindy,
Chennai 600 025.
- 3.The Controller of Examinations (I/C),
Office of the Controller of Examinations,
Anna University, Guindy,
Chennai-600 025.
- 4.Principal Secretary to Government,
Department of Higher Education,
Government of Tamilnadu,
Secretariat,
Chennai - 600 009.
- 5.1.The Registrar,
Anna University,
Anna University Campus,
Guindy, Chennai 600 025.

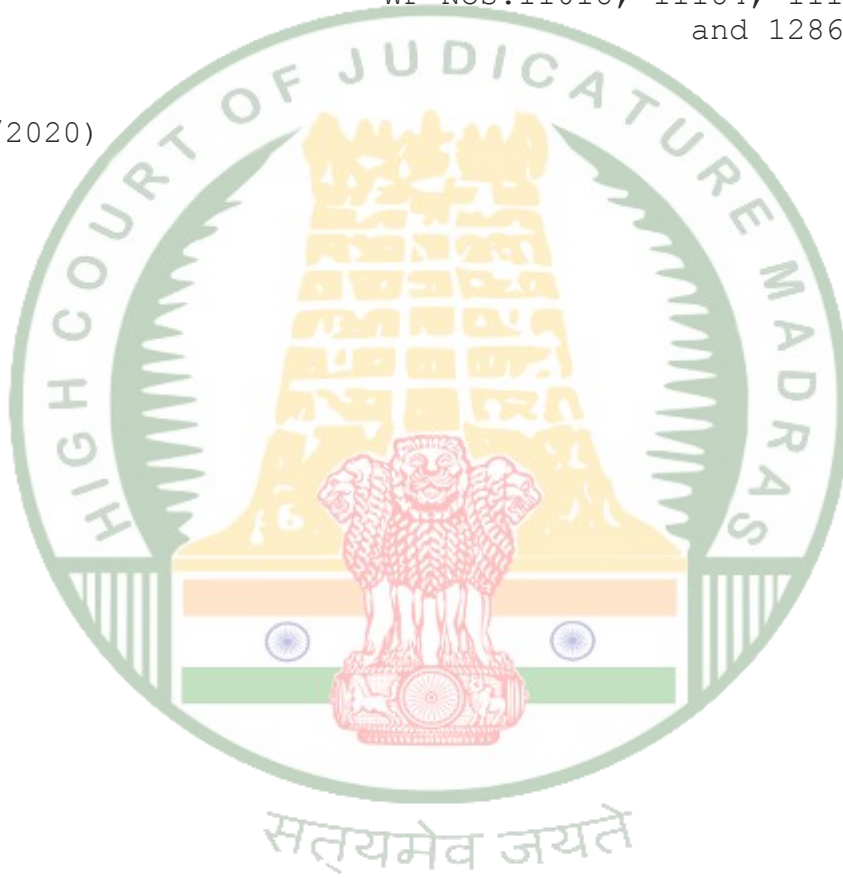
+5cc to Mr.M.Vijayakumar, Advocate,
S.R.No.38302,38303,38304,38305, 38306

+2cc to Mr.Muthumani Doraisamy, Advocate, S.R.No.38080,38081

+1cc to Mr.G.Murugendran, Advocate, S.R.No.38175

Pre Delivery Common Order in
WP Nos.11018, 11184, 11187, 11713
and 12866 of 2020

UM (CO)
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