



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.06.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP (MD) No.7203 of 2022
and
WMP (MD) Nos.5438 & 5439 of 2022

S.Surya

... Petitioner

Vs.

1. The Director,
Directorate of Collegiate Education,
9th Floor, EVK Sampath Maligai,
DPI Campus College Road,
Nungambakkam, Chennai

2. The Principal, St. John's College,
Palayamkottai, Tirunelveli.

3. The Registrar,
Manonmaniyam Sundaranar University,
Tirunelveli District.

... Respondents

(R-3 was suo motu impleaded vide
Order dated 13.06.2022)

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 by the second respondent dated 24.02.2022 and quash the same and consequently direct the respondents to allow the petitioner to continue his course.

For Petitioner	: Mr.M.Karthikeya Venkitachalapathy
For R-1	: Mr.V.Om Prakash, Government Advocate.
For R-2	: Mr.Alwin Balan
For R-3	: Ms.Jasima Yasmin, for M/s.Ajmal Associates.

ORDER

Heard the learned counsel on either side.

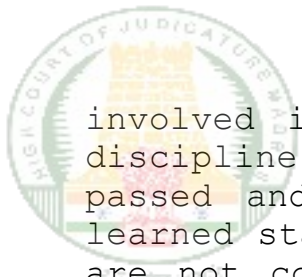


2.The petitioner is studying B.A (History) in the second respondent college. He is in the final semester. He is a Tamil Medium student. His father is a mason. On completion of the course, he will be the first graduate in the family. He belongs to Backward Class category. In February 2022, an incident involving suicide of a school girl hit the headlines. Demands were made that investigation must be handed over to CBI. Akhil Bharatiya Vidyarthi Parishad is a well known student organisation. It took up the said cause. According to the petitioner, he was led to believe that a memorandum was to be handed over to the Hon'ble Chief Minister in this regard. The petitioner was part of the group of students. The petitioner asserts that he was not really aware that the move was in breach of the prohibitory regulations imposed by the Chennai police. Be that as it may, Crime No.53 of 2022 was registered on the file of the Teynampet Police Station. The petitioner was also arrested. He was enlarged on bail only on 22.02.2022. Based on the communication sent by the jurisdictional police, the impugned suspension order dated 24.02.2022 was issued. Questioning the same, this writ petition came to be filed.

3.It is beyond dispute that a similarly placed student studying in another college in Thirunelveli was granted relief by a learned Single Judge of this Court in WP(MD)No.7212 of 2022. Vide order dated 01.06.2022, the said writ petition was disposed of in the following terms:-

"A perusal of the communication of the second respondent, which is impugned in this writ petition, indicates that due to the misconduct of the petitioner herein outside the college campus, he has been placed under suspension between 03.03.2022 and 21.03.2022. The FIR is an open FIR against 35 persons belonging to Akhil Bharatiya Vidyarthi Parishad (ABVP), a students organisation. This FIR has been registered pursuant to the march of the members of the students union towards the Chief Minister's residence. The petitioner has already suffered interim suspension for a period of 19 days and he cannot be further punished by restraining him from attending his course. Hence, the second respondent is directed to permit the petitioner herein to pursue his academic activities including both practical and theory. Since the alleged activity has taken place outside the college campus and it is not of any grave in nature, no further action against the petitioner is required, since he has already suffered interim suspension for a period of 19 days. "

4.The learned counsel appearing for the college management submitted that since the petitioner was found to have been



involved in a criminal case and was also arrested, to maintain discipline among the students, the suspension order came to be passed and that it does not call for any interference. The learned standing counsel for the university states that while they are not concerned with the merits of the matter, they are clear that since the attendance of the student is below the condonable limit, he cannot be permitted to write the examinations.

5.I carefully considered the rival contentions and went through the materials on record. The suspension order merely informs the petitioner's father that his son stood suspended with effect from 24.02.2022. The power of the college management to suspend a student for good reasons can never be questioned. But the case on hand does not involve the jurisdiction of the second respondent to issue the impugned order. It raises certain fundamental questions regarding proportionality. The college management is obviously aware that a student cannot write examinations if his attendance falls below a particular percentage. Therefore, when a suspension order is issued, the college management is also obliged to initiate disciplinary action and also conclude the proceedings as early as possible so that the attendance requirements are met. If of course the gravity of the allegations is such that the student has to face a harsher punishment, then such an order ought to be passed at the earliest so that the student can work out his remedy in the manner known to law.

6.The arrow of time moves only forward. The clock can never be put back. By not concluding the proceedings within a time frame and by keeping the suspension order alive, the right of the student to write the examination will stand lost since he will not have the requisite attendance. The consequence is irreversible. If the management of the institution is not imposed with such a duty, the so called delinquent student will suffer double jeopardy. He has to face the consequences of the disciplinary action and he will also be barred from writing the examination.

7.The right to education is a human right.Article 41 of the Constitution of India mandates that the State shall, within the limits of its economic capacity and development make effective provision for securing the right to education. This right can be interfered with only in the manner known to law. By keeping the suspension order alive beyond a reasonable period, the second respondent college has violated the right of the petitioner. Of course, the question of initiating any action afresh does not arise since a similarly placed student like the student in WP(MD) No.7212 of 2022 was given relief by a learned Judge of this Court.



8.The power to take disciplinary action that is necessarily rested in the management of any educational institution is coupled with the duty to conclude the same within a time frame so that the issue of attendance does not crop up. Of course, matters involving violence, commission of serious crimes or cases involving safety of girl students would stand on a different footing altogether and they will not be covered within the sweep of the aforesaid proposition.

9.The petitioner hails from a very ordinary background. He is in the final semester. He is not having any arrears. He is having 78% of marks. He has been an NCC cadet. He has even obtained the rank of sergeant. A Tamil medium student belonging to Backward Class whose father is a Mason and who is going to be the first graduate in the family, deserves to be treated with sympathy, greater consideration and sensitivity. If the petitioner has abstained from the classes on his own volition, or on account of personal reasons such as ill health, he cannot be shown any indulgence. In this case, the petitioner could not attend the classes only because the second respondent did not allow him to attend. Taking inspiration from the maxim, "Actus curiae neminem gravabit", I hold that the petitioner cannot suffer for the act of the college management. Since the petitioner's future is at stake, in view of the special facts and circumstances obtaining in this case, I direct the respondents to permit the petitioner to write the forthcoming examinations. He will be issued with the hall ticket.

10.One can take judicial notice of the fact that student activism is not alien to the politics of Tamil Nadu. Students taking up public causes ought not to be viewed harshly. Of course, there is a lakshman rekha and students should never cross it. In this case, I am more than satisfied that the students concerned stayed well within the line. They did not indulge in any act of violence. It was a small group. The jurisdictional police were justified in formally arresting them. But they were absolutely unjustified in producing them for remand. Even more shocking is the act of the concerned judicial magistrate in having passed an order of remand. A learned Judge of this Court (Hon'ble Mr.Justice N.Anand Venkatesh) has passed a detailed order in **State v. Nakeeran Gopal (2019 SCC OnLine Mad 42)** setting out the guidelines to be borne in mind while passing an order of remand. In this case, the concerned judicial magistrate appears to have lost sight of the aforesaid guidelines. I wish he carefully goes through the entire judgment of the Hon'ble Supreme Court in **Arnesh Kumar vs. State of Bihar [(2014) 8 SCC 273]**. An order of remand can be judicially tested even after grant of bail and if found

<https://hccasesonline.gov.in/hccases/> The police can be directed to pay compensation to the



arrestee. Of course, in these collateral proceedings, I cannot go beyond making the aforesaid observations.

11. This writ petition stands allowed. No costs. Connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (C.O.)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

skm

To:

The Director, Directorate Collegiate Education,
9th Floor, EVK Sampath Maligai,
DPI Campus College Road, Nungambakkam,
Chennai.

+1 CC to M/s.M. KARTHIKEYAVENITACHALAPATHY, Advocate (SR-26774[F] dated 20/06/2022)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-26903[F] dated 20/06/2022)

+1 CC to M/s.P.P. ALWIN BALAN, Advocate (SR-26933[F] dated 20/06/2022)

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USK/20.06.2022/5P/5C