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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.01.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.522 of 2020
and C.M.P.No.7635 of 2020**

M.A.M. College of Engineering,
Represented by its Secretary,
Dr.M.A.Mohamed Nizam,
Trichy-Chennai Trunk Road,
Siruganur, Tiruchirapalli – 621 105.

... Appellant

Vs

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

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

... Respondents

PRAYER: Writ Appeal has been filed under Clause 15 of Letter Patent
against the order dated 19.02.2020 made in W.P.No.26823 of 2016.

For Appellant : Mr.V.P.Sengottuvel
Senior Counsel
for Mr.S.P.Ebenezer Paul



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For Respondents : Mr.Avinash Wadwani
Standing Counsel

JUDGMENT

(Order of the Court was made by Mr.K.KUMARESH BABU.,J.)

This Intra-Court Appeal has been preferred as being aggrieved against the order passed by the learned Single Judge in upholding the order of penalty that had been imposed upon the appellant.

2. Heard Mr.V.P.Sengottuvel, learned Senior Counsel for Mr.S.P.Ebenezer Paul, learned counsel for the appellant and Mr.Avinash Wadwani, learned Standing Counsel for the respondents.

3. Mr.V.P.Sengottuvel, learned Senior Counsel for the appellant would submit that the appellant is an Engineering college approved by AICTE and affiliated to the respondent/ University. The appellant offers both the U.G. and P.G. courses in various disciplines. The respondent, on the allegations that certain of the students admitted to the P.G. courses in the appellant/ College were simultaneously working had issued a show cause notice. The appellant had submitted its explanation. Without considering the



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explanation submitted by the appellant, the respondent had passed an order directing the appellant to remit a sum of Rs.62,40,000/- (Rupees Sixty Two Lakhs Forty Thousand only) which represents the sum double the fees collected from the students. The learned Senior Counsel would submit that the respondent under the Statutes or the Regulations framed under its Statutes does not have any authority to levy such penalty. The learned Senior Counsel would submit that this aspect had been wholly over-looked by the learned Single Judge. According to him, the learned Single Judge had traced the power of the respondent to Section 7.9 of the Statutes in such a manner, that when the power to suspend or withdraw an affiliation was vested with the respondents then they would also be entitled to impose a lesser penalty instead of such suspension or withdrawal of an affiliation. The learned Senior Counsel would submit that the approach of the learned Single Judge is wholly erroneous.

4. He would further submit that the students who have been admitted on the allegations were all conferred degree by the University itself which would suggest that there is no illegal admission but, only an irregular



admission. He would reiterate the submissions, that under the Statute the respondent/ University would have no authority to impose such penalty.

Hence, he would seek interference of this Court.

5. Countering his arguments, Mr.Avinash Wadwani, learned Standing Counsel, would submit that the learned Single Judge was right in reading the provisions of Section 7.9 of the Statute with a power to impose a lesser punishment. The learned counsel would rely upon the judgment of the Allahabad High Court. He would submit that even though the said judgment is by a learned Single Judge, he is relying on the same to persuade this Court to support the findings of the learned Single Judge, wherein, in a similar circumstances, the University had imposed a fine of Rs.3,00,000/- (Rupees Three Lakhs) which was upheld by the learned Single Judge of the Allahabad High Court. He would submit that the appellant being a College ought to have maintained a strict discipline and high educational standards. They should not be heard to say that condoning the malpractice by not taking a stringent action namely the withdrawal or suspension of affiliation or granting of degrees to the concerned students would waive the right of the



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University to impose a lesser punishment as imposed in this case. He would further submit that the imposition of the penalty is a deterrent to ensure that the College does not commit any such malpractice in future. Therefore, he would pray this Court to dismiss the Writ Appeal and direct the appellant to pay the penalty forthwith.

6. We have heard the submissions made by the respective counsels appearing on either side and perused the materials available on record.

7. The only *lis* before us is as to the power/ authority of the respondent/ University to impose a penalty. It is noted that at the time of the admission, by order dated 06.10.2020, this Court had *prima facie* found that the plenary power of punishment of imposition of fine needs to be specified in a Statute for a Quasi-Judicial or Administrative Authorities to take such action. Having *prima facie* found, had directed the respective counsels to make submissions on that aspect. For better appreciation, the earlier orders of the Division Bench of this Court is extracted hereunder:-



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order of this Court dated 14.07.2020

“6. Apart from the above, prima facie, we do not find any such powers being specifically spelt out for imposition of penalty of the nature that finds place in the order that was impugned before the learned Single Judge. In such a situation, the University will have to substantiate as to whether it is possessed of any such power either in the shape of Rules, Ordinances or otherwise legally framed Rules empowering the University to impose an alternate punishment in the event any terms and conditions of affiliation had been violated by the Colleges.

7. As observed above, since prima facie we have not been able to decide or lay our hands on any Rules, Ordinances or Circular to have been discussed apart from what has been said in the impugned judgment, we find that the appellant Institution is entitled for an interim relief.”

Order of this Court dated 06.10.2020

“4. Prima facie, a plenary power of punishment or imposition of fine needs to be specified in a Statute for a Quasi-Judicial or Administrative Authority to



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take such action. Even if it is incidental, then it is to be related to an express provision and cannot be assumed to be inherently available without there being any such indication in the Statute. Thus, the argument that such powers can be exercised administratively in order to supervise and monitor institutions has to be construed if there is an available power which can be related to the exercise of authority by the University as in the present case by imposition of a fine of the nature as described in the impugned order.

5.The question as to whether in the name of administration or supervision or even monitoring control over the institutions or the students, can the University claim to be possessed of such a plenary or incidental power, as the case may be, which can be traced to any statutory provision under the 1978 Act ?

6. Any decision to that effect where such a power exercised may have been judicially upheld may also be pressed into service and for that, the learned Additional Advocate General prays for more time. Learned counsel for both the parties may assist the Court on this issue.”

8. When this Writ Appeal was taken up for hearing, we had



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requested the learned Standing Counsel appearing on behalf of the respondent to produce the Statutes and Regulations regarding the said issue.

Pursuant to which the learned counsel appearing for the respondent had placed before us the same. He would rely upon the provisions of Section 5P to claim that the respondent/ University can demand and receive payment of fees under the charges. This according to him would be supplemental to the power vested with the University under Section 7.

9. We have thoroughly perused the Statutes and Regulations framed by the University. As rightly contended by the learned Senior counsel for the appellant that there is no provision under the Statute of the University by which it was created had empowered the respondent/ University to impose such a penalty. The respondent/ University being a creature of a Statute would be only entitled to exercise its power, functions and duties flowing from the Statute. Any other Act beyond the powers conferred under the Statute would only mean it had traversed beyond its jurisdiction which had been vested with it. The reliance placed upon by the learned counsel appearing for the respondents to Section 5P, in our considered view would



also not authorise the respondents to impose such a penalty. For better appreciation, the provision of Section 5P is extracted hereunder:-

Section 5 – Powers and functions of the University:

The University shall have the following powers and functions namely:-

.....

(P) to demand and receive payment of such fees and other charges as may be prescribed from time to time;

Similarly, the provision of Section 5 (ab) provides as under:-

“(ab) to do all such acts and things, whether incidental to the powers and functions aforesaid or not, as may be necessary or desirable, to further the objects of the University.”

10. The provisions of Section 5P, even though empowers the respondent/ University to demand and receive the payment of such fees and other charges, the same is qualified by making it mandatory that such payment of fees and other charges should have been prescribed from time to time. There is no prescription of any penalty that has been levied by the respondent/ University in this case. In such a view of the matter, without



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any prescription of authority to levy the fine, the said provision cannot be invoked by the University. Similarly, the Clause (ab) of Section 5 empowers the University to do all such acts or things incidental to the powers and functions as may be necessary or desirable to further the objects of the Act. Objective of the Act has been given under Section 4 of the Statute. A combined reading of Section 5 (ab) and 4 of the Statute also do not clothe the respondent/ University with a power to impose any penalty. The reliance placed upon the learned Single Judge decision of the Allahabad High Court, even though had been relied upon only to persuade us to uphold the finding of the learned Single Judge, in our considered view, the same may not be the correct proposition of law for the simple reason that the respondents being the creature of the Statute cannot act beyond the powers conferred under the Statute. As already we have expressed our view that under the Statute or the Regulations no powers had been vested with the respondent/ University to impose a punishment of penalty.

11. At this juncture, the learned Standing Counsel for the respondents had placed a letter of the 1st respondent addressed to him. From



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a perusal of the aforesaid letter, the respondent had sought to reserve the right to suspend the affiliation of the appellant/ College for a period of one year as per Section 7.9 of the Affiliation Statutes of the University. This entire episode upon which the appellate college had been proceeded with had taken place in the year 2010. After nearly a decade, the respondents seek to reserve their right to initiate action against the appellant as per the Statute. We do not propose to grant such liberty to the respondents to initiate action against the appellant. But, however, as a word of caution, we make it clear that the appellant shall not indulge itself in any such activities. We also direct the appellant to execute an undertaking that it shall not indulge in any activity whatsoever contrary to the permission granted by the AICTE as well as affiliation granted by the Anna University. Such an undertaking shall be given by the appellant to the respondent within a period of two weeks from the date of receipt of a copy of this order.

12. For the reasons stated above, we are of the considered opinion that the order of the learned Single Judge would have to be interfered with.



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13. In fine, this Writ Petition is allowed and the order passed in the Writ Petition is set aside, as a sequel the order of the respondent impugned in this Writ Petition is also set aside. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(R.S.K.,J.) (K.B., J.)
22.01.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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To

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R.SURESH KUMAR., J.
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K.KUMARESH BABU.,J.

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