



W.P. No.28759/2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
29.10.2024	18.11.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**W.P. NO.28759 OF 2024
AND
W.M.P. NO.31371 & 34081 OF 2024**

1. S.Saran
2. S.Vishaal Adithya
3. B.Vijay

.. Petitioners

- Vs -

1. Hindustan Institute of Technology
& Science (Deemed University estd.
u/s 3 of UGC Act, 1956)
rep. By its Registrar
1, Rajiv Gandhi Salai (OMR)
Padur, Kelambakkam
Kancheepuram District
Chennai 603 103.

2. University Grants Commission (UGC)
Rep. By its Chairman
Bahadur Shah Zafar Marg
New Delhi 110 002.

.. Respondents



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Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings HITS/VD/SO/2024/043 dated 23.04.2024 and quash the same as illegal and consequently directing the 1st respondent to allow the petitioners to appear in 4th semester exams, internal exams and to attend 5th lectures.

For Petitioners : Mr. Krishnaswamy Chinnasamy

For Respondents : Mr. P.Wilson, SC, for
M/s.Surana & Surana for R-1
No representation for R-2

ORDER

The present writ petition has been filed by the petitioners challenging the impugned order of expulsion of the petitioners from the rolls of the 1st respondent college alleging that they had assaulted an Assistant Professor, thereby breaching the code of ethics of the college.



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2. It is the case of the petitioners that they are studying 5th semester (3 years LLB degree course) in the 1st respondent University. It is the further case of the petitioners that they hold top ranks in the college and are attending regularly and that they are first graduates in their family and that law is not just a career choice, but a passion for the petitioners.

3. It is the further case of the petitioners that one Assistant Professor, Bensha Shaji, who has been working in the College for the past two years, has been harassing female students sexually, which resulted in restricting his activities by barring him from training students for Moot Court competition. In spite of many complaints against him, the management did not take any action against the said individual. Whiles, the said individual initiated an industrial visit on 21.03.2024 and interested students were asked to participate in the same.

4. It is the further case of the petitioner that on 26.3.2024, the 2nd petitioner's mother, who knew of the nature of the Assistant Professor had called on the HOD of the Law Department and requested for change of professor



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for the industrial visit, which was initially acceded by the Management, but, thereafter, the management did not consider the request and allowed the said Assistant Professor to accompany the students on the industrial visit.

5. It is the further case of the petitioners that though the above action resulted in the non-permitting of the 2nd petitioner to accompany in the industrial visit by utilising his ticket for another student, however, later, the 2nd petitioner was permitted to accompany by the HOD upon booking a new ticket.

6. It is the further case of the petitioners that on 2.4.2024, the petitioner went to the State of Kerala along with Assistant Professors, Bensha Shaji and Asha Paul and on 4.4.2024, the said Bensha Shaji invited the students to his house and offered liquor. Again on 5.4.2024, the students were taken to the liquor shop by the said Bensha Shaji, who induced the students to consume liquor and both the Assistant Professors had liquor with the students.

7. It is the further case of the petitioners that on 5.4.2024, the said Bensha Shaji misbehaved with female students by attempting to touch them



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inappropriately, passing lewd comments and verbally abused and breaching their privacy. On 6.4.2024, two female students called on the 3rd petitioner and conveyed the sexual assault of the Assistant Professor during the trip. Based on the request of the victim students, on 10.4.2024, the petitioners collectively complained about the sexual harassment against the said Bensha Shaji to the Dean.

8. It is the further case of the petitioners that upon coming to know about the above complaints, the Assistant Professor abused the 1st and 3rd petitioner using community name in front of the class and since no action was taken against the Assistant Professor inspite of the complaint, a formal complaint was filed. Based on the complaint, an informal inquiry was conducted on the incident, but the same did not yield any results and the Assistant Professor was merely waned without taking any further action.

9. It is the further case of the petitioner that on 12.4.2024, the petitioners came to be informed about their suspension and, thereafter, on 13.4.2024, the petitioners were informed by the Class in-charge about their dismissal. It is the



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WEB COPY further averment of the petitioners that on 15.4.2024, the parents approached the 1st respondent with regard to the dismissal of the petitioners and they were informed that it would be revoked. The 1st respondent further promised to form a committee committed to enquire into the issue and advised the petitioners to maintain silence and threatened the petitioners not to disclose the same outside. It is the further averment of the petitioners that thereafter, inspite of the mail sent to the 1st respondent there was no reply forthcoming and out of blue, on 30.5.2024, without issuance of notice, the order of expulsion dated 23.04.2024 came to be passed through mail. The victim girls were also issued with the order of suspension on 30.5.2024.

10. It is the further averment of the petitioners that aggrieved against the order of the 1st respondent, the petitioner sent representation to the 2nd respondent on 22.6.2024, but till date no action has been taken on the same. It is the further averment of the petitioners that insofar as the suspension of the female students, the same was revoked by imposing a fine of Rs.10,000/-.



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11. It is the further averment of the petitioners that in view of the inaction, the 2nd petitioner had lodged a complaint on 19.7.2024 against the Assistant Professor, Bensha Shaji at Kelambakkam Police Station with regard to the sexual assault, but the police officials did not acted diligently and returned the complaint, which prompted the petitioner to send the representation dated 16.7.2024 to the Commissioner of Police, which also did not evoke any response. It is the further averment of the petitioners that representation dated 31.8.2024 to the SC/ST Commission pointing out the atrocities committed by Assistant Professor Bensha Shaji after which first information report has been registered by Kelambakkam Police against the said Bensha Shaji and University Management in Crime No.237 of 2024 for the offences u/s 294 (b), 506 (1) IPC and 3 (1)(r) and 3 (1)(s) of the Scheduled Castes and Scheduled Tribes (PoA) Amendment Act, 2015 and Bensha Shaji was arrested on 30.08.2024.

12. It is the further averment of the petitioners that the learned Judicial Magistrate, Thiruporur recorded the statement of the petitioners and the victim girls and inspite of criminal action initiated against the said Bensha Shaji, the 1st respondent failed to consider the grievances of the petitioners and the victim



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girls and instead of taking stringent action against the Assistant Professor, the petitioners were expelled from the college and the petitioners have not been allowed to write the 4th semester exams and have not been allowed to attend the 5th semester lectures. Therefore, left with no other efficacious remedy, the petitioners have filed the present petition.

13. Learned counsel appearing for the petitioners submitted that the order passed by the 1st respondent clearly reveals the colourable exercise and misuse of power by the said authority. It is the further submission of the learned counsel that the 1st respondent failed to take disciplinary action against the said Bensha Shaji, who misbehaved with the victim girls, inspite of the complaint given by the petitioners. It is the submission of the learned counsel that the action of the 1st respondent clearly reveals that even jeopardizing the career of the petitioners, the 1st respondent wants to save the name of its institution.

14. It is the further submission of the learned counsel that the expulsion of the students in the middle of the academic year creates serious consequences in the career of the petitioners and that the petitioners have been victimised by the



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1st respondent due to personal animosity and without any notice, the petitioners have been expelled from the college. It is the further submission of the learned counsel that the girl victims have clearly spoken about the sexual assault on them by the said Assistant Professor Bensha Shaji, which is also evident from the enquiry and without taking action against the said Assistant Professor, the petitioners have been victimised by expelling them from the college, which grossly affects their right to life and liberty as protected under Article 21 of the Constitution.

15. It is the further submission of the learned counsel that the enquiry conducted by the 1st respondent is wholly farce, as it was not conducted in a proper manner and the order of expulsion has been passed without following the procedure contemplated and is in gross violation of principles of natural justice.

16. It is the further submission of the learned counsel that the order of expulsion is dated 23.4.2024, which was served on 30.5.2024. However, in the said expulsion order, it has clearly been mentioned that the report has been submitted to the 1st respondent on 9.5.2024 and the petitioners had attended



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the enquiry on 29.4.2024, which clearly reveals that the expulsion order has been prepared much anterior in point of time which clearly shows the prejudicial attitude of the 1st respondent towards the petitioners. Therefore, in the interest of justice and in the interest of the welfare and right of livelihood of the petitioners, this Court may set aside the expulsion order and permit the petitioners to continue their studies by imposing any conditions, which the petitioners would abide.

17. Per contra, learned senior counsel appearing for the 1st respondent, at the very outset, submitted that the present writ petition is not maintainable against the 1st respondent as a writ of mandamus is limited to enforcement of a public duty. However, the 1st respondent, being a private body, discharging a public function and there being no denial of any right in connection with the public duty, the public law remedy cannot be enforced. It is the further submission of the learned senior counsel that even if it is to be assumed that the educational institution is imparting a public duty, the public law action, which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction of this Court for a prerogative writ, however, individual wrongs or breach of



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mutual contract without the same having any semblance of public element involved as its integral part cannot fall within the contours of Article 226 of the Constitution.

18. It is the further submission of the learned senior counsel that the petitioners had engaged in a violent incident of attacking the Assistant Professor of the 1st respondent, which was forcefully stopped by the other faculty members. The altercation between the Assistant Professor and the petitioners is evident from the written report of the Adjunct and the injuries suffered by Bensha Shaji is also evidenced from the hospital records.

19. It is the further submission of the learned senior counsel that the 1st petitioner assaulted the professor with a big wood, which clearly shows that it is a pre-planned attack and but for the intervention of the other staff members, the said teaching faculty would have suffered even more grievous injuries. Learned senior counsel also submitted that the above said attack is even captured in the CCTV footage.



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20. It is the further submission of the learned senior counsel that the whole problem arose after the organising of the industrial visit. Though the industrial visit was organised for the 4th semester students, however, the petitioners voluntarily joined the visit without any compulsion from any quarters. It is the further submission of the learned senior counsel that throughout the entire period of industrial visit, Bensha Shaji had recovered some unauthorised substances from one of the students. Only to counter the same and to wriggle out of it, the students have attacked the Assistant Professor.

21. It is the further submission of the learned senior counsel that an enquiry was conducted on 17.4.24 and 18.4.24 and report was submitted to the Registrar on 22.4.24 which report revealed that there was no evidence of sexual harassment by the Assistant Professor. It is the further submission of the learned senior counsel that from the time of joining the college, the 2nd petitioner had been creating issues for industrial visit, though majority of the students were not interested in industrial visits, more particularly, they did not want the 2nd petitioner to be part of the industrial visits and only after



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discussions with the students and faculty, the 2nd petitioner was permitted to join the industrial visit.

22. It is the further submission of the learned senior counsel that the enquiry was conducted on 29.4.2024 in which the students, staff and eye witnesses were examined and following the guidelines issued by the apex Court, detailed enquiry on sexual harassment was conducted by having a third party advocate as external member. It is the further submission of the learned senior counsel that in the enquiry, the petitioners admitted to their attack on the Assistant Professor and had also given written letters and based on the materials, the report was submitted on 9.5.2024.

23. It is the further submission of the learned senior counsel that the act of the students being clearly in violation of the rules and regulations of the 1st respondent, the enquiry committee recommended disciplinary action against the petitioners and since the action of the petitioners unmindful of the consequences and with a premeditation in attacking the Assistant Professor, with a clear intention to tarnish the image of the institution and further the



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petitioners directly and indirectly threatened the college authorities and instigating the other students to go on strike, the 1st respondent, keeping in mind the interest of the other students, had expelled the petitioners from the institution.

24. It is the further submission of the learned senior counsel that during the industrial visit, during routine rounds, the Assistant Professor found substance/marijuana in the room of the petitioners and warned them and left them and that the 2nd petitioner was also warned for entering into the girls room. It is the further submission of the learned senior counsel that neither the girl students made any complaint till date nor any complaint was made by the said victim girls before the lady professor, who had also accompanied them on the industrial visit and, therefore, this clearly shows that the happening has been cooked up by the petitioners and the victim girls only for the purpose of wriggling out of the present case.

25. It is the further submission of the learned senior counsel that erroneously the order dated in the expulsion order has been shown as



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23.4.2024, though it had been passed on 24.5.2024 in and by which the petitioners were expelled from the 1st respondent from 23.5.2024. Further, the Assistant Professor was also relieved from the services with effect from 17.4.2024.

26. It is the further submission of the learned senior counsel that the petitioners are not students of the 5th semester, but were students only of 4th semester, as before their enrolment into the 5th semester, they were terminated from the college and, therefore, the act of the petitioners suppressing material particulars and coming before this Court with unclean hands by not divulging the exact details requires dismissal of this writ petition by this Court.

27. It is the further submission of the learned senior counsel that the cancellation of the industrial visit trip of the 2nd petitioner at the instance of his mother had nothing to do with the professor, but only relatable to her son, viz., the 2nd petitioner and acceding to her request, the 1st respondent had cancelled his trip. However, thereafter, at the request of the 2nd petitioner for



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participation in the industrial visit, he was permitted to attend the industrial visit.

28. In fine, it is the submission of the learned senior counsel that the act of the petitioners coupled with the enquiry report and the non-intimation of the alleged sexual assault on the victim girls by the victim girls by the professor to the other lady professor, who had accompanied them and also not intimating about the said act even thereafter, but had come belatedly and filed the complaint only goes to show that to conceal the act of the petitioners, which was unearthed by the Assistant Professor, which was brought to the notice of the Management, the petitioners have indulged in attacking the Assistant Professor, which act, is wholly against the interests of the student community and rightly appreciating the enquiry report and the act of the petitioners, they were expelled from the college, which is based on prudent reasoning and materials and the same does not require any interference at the hands of this Court.

29. An additional affidavit has also been filed on behalf of the 1st respondent, wherein it has been submitted that the professors in the college are



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scared to attend the college and teach the students in view of the present mindset of the students and the misconduct committed by the petitioners, if let off without any action, the career of the other students would be left in jeopardy. In this background, it is submitted on behalf of the 1st respondent that considering the future of the students, the 1st respondent is willing to given them TC without any bad remarks and permit them to join any other institution to continue their education, which may also be taken into consideration before this Court passes any order.

30. In support of the aforesaid submissions, learned senior counsel placed reliance on the following decisions :-

i) Narendar Singh – Vs – University of Delhi & Ors. (MANU/DE/0602/1997);

ii) Chander Jeet Singh – Vs – Vice Chancellor, Chowdhury Charan Singh University & Ors. (MANU/UP/0745/1997);

iii) Ashutosh Bharti & Ors. – Vs – The Ritnand Balved Education Foundation & Ors. (MANU/DE/0024/2005);

iv) St. Mary's Education Society & Anr. – Vs – Rajendra Prasad Bhargava & Ors. (2023 (4) SCC 498);



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- v) *Headmasster, Poilkav High School, PO, Edakkulam Quilandy – Vs – Murali A. & Ors. (MANU/KE/0004/1995); and*
- vi) *V.S.Babaramesh – Vs – CBSE, Ministry of Human Resources Management & Ors. (MANU/TN/1879/2015)*

31. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record, as also the decisions relied on, on behalf of the respondents.

32. The first and foremost contention advanced on behalf of the 1st respondent is that the 1st respondent is a private institution and the action against the petitioners does not involve any public element and, therefore, the present writ petition is not maintainable. Towards the aforesaid submission, the decisions, as referred supra, have been pressed into service.

33. In *Rajendra Prasad Bhargava case (supra)*, the Supreme Court had culled out the instances where a writ against a private institution is maintainable, though it be not a “State” and the Supreme Court has also



explained that the converse is also applicable and in this context, the Supreme Court held as under:-

“34. In Km. Anita Verma v. D.A.V. College Management Committee, Unchahar, Rai Bareilly, (1992) 1 UPLBEC 30:

“....30 where the services of a teacher were terminated, the Court held that the writ petition Under Article 226 is not maintainable as the institution cannot be treated as the instrumentality of the State. The matter was considered in detail in M/s. Habans Kaur v. Committee of Management, Guru Teghbahadur Public School, Meerut and Anr., MANU/UP/0653/1992 : 1992 Labour and Industrial Cases 2070 (All), wherein the services of the Petitioner were terminated by the Managing Committee of the institution recognised by the C.B.S.E. It was held that the Affiliation Bye-laws framed by the C.B.S.E. has no statutory force. The Court Under Article 226 of the Constitution of India can enforce compliance of statutory provision against a Committee of Management as held in a Full Bench decision of this Court in Aley Ahmad Abdi v. District Inspector of Schools, Allahabad and Ors. MANU/UP/0141/1977 : AIR 1977 All. 539. The Affiliation Bye-laws of C.B.S.E. having no statutory force, the only remedy against the aggrieved person is to approach C.B.S.E. putting his grievances in relation to the violation of the Affiliation Bye-laws by the institution.



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33. Thus, where a teacher or non-teaching staff challenges action of Committee of Management that it has violated the terms of contract or the Rules of the Affiliation Byelaws, the appropriate remedy of such teacher or employee is to approach the CBSE or to take such other legal remedy available under law. It is open to the CBSE to take appropriate action against the Committee of Management of the institution for withdrawal of recognition in case it finds that the Committee of Management has not performed its duties in accordance with the Affiliation Byelaws.”

* * * * *

37. This Court in the case of *K.K. Saksena v. International Commission on Irrigation and Drainage and Ors.* MANU/SC/1213/2014 : (2015) 4 SCC 670, after an exhaustive review of its earlier decisions on the subject, held as follows:

“43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is a 'State' within the meaning of Article 12 of the Constitution, admittedly a writ petition Under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action



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under the administrative law. Reason is obvious. Private law is that part of a legal system which is a part of Common Law that involves relationships between individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is 'State' Under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law.

xxxx

52. It is trite that contract of personal service cannot be enforced. There are three exceptions to this rule, namely:

(i) when the employee is a public servant working under the Union of India or State;

(ii) when such an employee is employed by an authority/body which is a State within the meaning of Article 12 of the Constitution of India; and

(ii) when such an employee is 'workmen' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and raises a dispute regarding his termination by invoking the machinery under the said Act.

In the first two cases, the employment ceases to have private law character and 'status' to such an employment is attached. In the third category of cases, it is the Industrial



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Disputes Act which confers jurisdiction on the labour court/industrial tribunal to grant reinstatement in case termination is found to be illegal.”

* * * * *

42. In the penultimate para, this Court ruled as under:

“32. Applying these principles, it can very well be said that a writ of mandamus can be issued against a private body which is not a State within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction Under Article 226 of the Constitution and the High Court Under Article 226 of the Constitution can exercise judicial review of the action challenged by a party. But there must be a public law element and it cannot be exercised to enforce purely private contracts entered into between the parties.”

(Emphasis supplied)

43. In the background of the above legal position, it can be safely concluded that power of judicial review Under Article 226 of the Constitution of India can be exercised by the High Court even if the body against which an action is sought is not State or an Authority or an Instrumentality of the State but there must be a public element in the action complained of.”

34. From the above it is clear that merely because the entity is a private institution, it does not automatically release itself from the clutches of the writ



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jurisdiction of this Court. Therefore, the private institution is also amenable to the writ jurisdiction of this Court so long as there is a public element is involved.

35. Therefore, in the aforesaid backdrop, it is imperative for this Court to find out if there is an element of public activity is involved, which alone would make the petition maintainable.

36. The present case is one of expulsion of the petitioners from the college for certain acts, alleged to have been committed by the petitioners. It is in the course of the education of the petitioners and within the precincts of the educational institution. The acts of the petitioners, though, as alleged, is not in the best spirits of education, nevertheless, it is also a composite part of education, as the petitioners being students, are inculcated with discipline and behaviour, which is the substratum of education.

37. The main grievance espoused on behalf of the petitioners is that the act of the Assistant Professor towards the girl students and the questioning done by them of the Assistant Professor had led to the scenario. Necessarily the act of



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an Assistant Professor, who is to inculcate discipline amongst the students has resulted in the act of alleged attack committed by the students. In fact, the attack is vouched for by the Management, as witnesses have been examined to show that such an act has happened. However, it should not be lost sight of that the attack was the consequence of certain happenings, which is portrayed in two different ways, one by the petitioners and the other by the 1st respondent, which happened during the industrial visit. Therefore, the said attack cannot be seen in isolation to hold that it is an attack between two persons within the institution, which does not have any public element involved and, therefore, cannot bring the 1st respondent within the scope of the writ jurisdiction of this Court.

38. The public element involved in the present writ petition also stems from the fact that it pertains to the education and career of the students, which needs to be kept in mind. Further, the appellate control is with the 2nd respondent and the petitioners have gone before the 2nd respondent with a representation, which has not been considered and no orders have been passed till date. In such a scenario, the students of the present day, being the nation builders of the next generation, necessarily, their career needs to be kept in



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mind by this Court while entertaining the writ petition and merely because the 1st respondent is a private entity cannot be a ground to negate the claim of the petitioners under the writ jurisdiction. This Court has to necessarily take a holistic approach and it cannot be confined to the mere dictionary meaning of public entity and private entity and that is the sole reason the Apex Court has extended the amplitude of the framework for entertaining a writ petition by defining public element as the basis for deciding the maintainability of a writ petition even in case of a private entity.

39. Though the decision of this Court in *Babaramesh case (supra)* has been relied on by the respondents, however, the facts of the said case stand on a totally different footing as in the said case, disciplinary proceedings resulting in the issuance of Transfer Certificate was taken on a proven indiscipline of the students. There could be no quarrel with the fact the indiscipline in any form by the students should, of necessity, be considered important and imperative for deciding the continuance of the students in the educational institution. However, in the present case, it is not mere indiscipline of the students alone, which requires consideration, but the act of an Assistant Professor towards the



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girl students has been pressed into service by the petitioners and the girl students have also raised a complaint. Therefore, the mere indiscipline of the students cannot be gauged on the touchstone of the ratio laid down in the aforesaid decision and, therefore, the said decision cannot be imported to the facts of the present case.

40. In view of the above factual matrix in issue, this Court is of the considered view that the present case is of such a nature that it is squarely determinable/appreciable under the writ jurisdiction of this Court, as a public element, viz., the education of the students is involved, which requires this Court to treat the same as an extraordinary situation necessitating the invocation of the extraordinary jurisdiction of this Court and, therefore, on the facts of the present case, the present writ petition is maintainable.

41. Now coming to the issue proper, while the petitioners have raised the issue of misbehaviour and sexual assault of the victim girls by the Assistant Professor, the 1st respondents, based on the enquiry report has fully fastened the



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blame on the students by coming to the conclusion that no such incident, as alleged by the victim girls and the petitioners had taken place.

42. To appreciate the same, certain facts, at the risk of repetition, needs to be traversed into.

43. The petitioners along with the Assistant Professor, one Bensha Shaji and Asha Paul, had accompanied the students on an industrial visit on 2.4.2024 to the State of Kerala. On 4.4.2024, the students had gone to the house of the Assistant Professor, viz., Bensha Shaji, though it is alleged by the 1st respondent that it was at the instance of the students, while it is countered otherwise by the petitioners. However, this Court is not going into the same but only to the limited extent that on the said date, the students as also the Assistant Professor had partaken liquor. It is the specific case of the petitioners that consumption of liquor was induced at the instance of the Assistant Professor and that, thereafter, Bensha Shaji misbehaved with female students by attempting to touch them inappropriately, passing lewd comments using filthy language and verbally abused and breached their privacy.



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44. Thereafter, on 6.4.2024, it is the case of the petitioners, that one of the girl students informed about the incident and asked the students to make a complaint to the 1st respondent, which has resulted in the complaint on 10.4.2024.

45. However, it is the case of the 1st respondent that during routine checkup in the course of the industrial visit, the Assistant Professor, Bensha Shaji, had unearthed the usage of marijuana in the room of the petitioners and warned them. Thereafter, the said Bensha Shaji had also warned the 2nd petitioner from going into the girls room during the industrial visit and also rebuked the 2nd petitioner from sitting in the girls room and chatting. It is the specific case of the 1st respondent, as evidenced from the initial enquiry report dated 22.4.2024, which was submitted to the Registrar, which has been placed on behalf of the 1st respondent, some unauthorised substances was found in the boys room leading to an argument with the male students of that room with Bensha Shaji. However, the report does not reveal that it was from the room of



the petitioners, but only says that it is from the boys room. In this regard, the relevant portions of the enquiry report is quoted hereunder :-

“Observation from Mr.Bensha C.Shaji statement

..... However, the committed noted that there is no evidence such a previous chat or call history to substantiate the claim against the faculty member. Additionally, there were no eye witnesses to the conversation that reportedly occurred on the last day of the industrial visit. Nevertheless, the committee has inferred the possible reason for the complaint letter from the statements provided by Mr.Bensha and Ms.Asha, faculty members who accompanies the students on the industrial visit. These statements have also been confirmed by the female students who filed the complaints.

The committee highlights the following points :

- 1. Mr.Bensha warned student C.Monika for entering a boys’ room, which Monika herself acknowledged in her statement.*
- 2. During night rounds, Mr.Bensha discovered some unauthorised substances in a boys’ room leading to an argument with the male students of that room. This incident was reported to co-faculty member Ms.Asha on the same day and subsequent to the deal with photo evidence the following morning. Moreover, Mr.Bensha witnessed two male students leaving Monika’s room late at night. ...”*



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46. Thereafter, a full-fledged enquiry had taken place on 29.04.2024 and 2.5.2024 in which the petitioners, the victim girls, the Assistant Professor and the Dean of the University were examined. In the enquiry, the victim girls have deposed that there were certain lewd statements made by Bensha Shaji. Further, it would not be out of place to point out here that to specific questions as to why the victim girls had not given complaint to the other Assistant Professor or else to the college management, the victim girls have kept silent. However, it is to be noted that the silence of the victim girls cannot be taken to mean that nothing had taken place. In the Indian cultural background, even though there is a vast extent of westernisation, which had taken place, however, when it comes to instances as these, the victim girls initially move into a shell and seldom come out and speak about the same, except for divulging the same to their trusted friends. The victims do not freely speak of the same to the elders, including the parents. Therefore, in the said backdrop, the non-informing of the instance either to the accompanying Assistant Professor or to the College Management or to their parents cannot be put against the victim girls.



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47. It is further to be noted from the enquiry report that when the petitioners were questioned, they had singularly spoken that they had confronted Bensha Shaji with regard to the allegations levelled against him by the victim girls and when he was questioned, Bensha Shaji did not answer, but he pushed the 2nd petitioner aside, which prompted the petitioners to push the said Bensha Shaji. Nowhere the petitioners have refrained from saying that they did not push the Assistant Professor Bensha Shaji.

48. However, the whole occurrence is questioned to be doubtful by the 1st respondent on the ground that the victim girls did not inform of the allegation against Bensha Shaji till 10.4.2024, more specifically till the manhandling of Bensha Shaji by the petitioners and, therefore, the incident had been framed only for getting the petitioners absolved from the incident of attacking Bensha Shaji.

49. When the 1st respondent has questioned the act of the victim girls and also the petitioners in not informing the act of the Assistant Professor Bensha Shaji with the victim girls to the accompanying Assistant Professor or to he



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College Management and had branded the said allegation, which was given on 10.4.2024 after the manhandling incident as an afterthought to cover up the manhandling incident, there is no material to vouch for the act of Bensha Shaji with regard to finding narcotic substance in the boys room, except for the statement of Ms.Asha Paul, the accompanying Assistant Professor.

50. It is the specific case of the 1st respondent that on routine rounds, he found narcotic substance in the boys room and, accordingly informed of the same to his accompanying Assistant Professor and along with photographs, a complaint was also laid before the Dean, yet, during the enquiry of the Dean, the Dean has not spoken anything about the complaint, alleged to have been given by Bensha Shaji along with the photographs with regard to finding narcotic substances in the boys room.

51. The 1st respondent cannot blow hot and cold over the same. While on the one hand the 1st respondent claims that no complaint was given by the victim girls till 10.4.2024 and more specifically after the manhandling incident and, therefore, the truthfulness of the complaint is questionable, however, at the



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same stretch, it is claimed by the 1st respondent that a complaint along with photographs of the narcotic substance recovered from the boys room by Bensha Shaji had been given before the Dean and in fact in his statement, he has specifically stated that as per the instructions of the Dean, he had destroyed the narcotic substance. Though such a statement has been made at the time of enquiry by Bensha Shaji, however, in the statement of the Dean, a report of the nature, which is alleged to have emanated from Bensha Shaji, has not been spoken to by the Dean. Further, if really the boys were in possession of narcotic substance, necessarily, the college management ought to have taken action against the said students and the parents of the students also ought to have been informed. However, there is no material evidencing such an act on the part of the 1st respondent. The whole episode seems to have started only after the manhandling by the petitioners and raising of the complaint against Bensha Shaji by the victim girls.

52. One other curious fact, which stares on the face of the record is that the enquiry had been conducted on 29.4.2024 and 2.5.2024 and Bensha Shaji is stated to have participated in the enquiry and given his statement. Yet, the said



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Bensha Shaji had been relieved from the services of the institution from the closing of the hours on 17.4.2024. Such being the case, this Court is at a loss to understand as to how a person, who had been relieved from the office on 17.4.2024 was enquired into on 29.4.2024. Further, the enquiry report dated 9.5.2024, which had resulted in the dismissal of the petitioners reveal that a finding has been recorded on the basis of the enquiry proceedings that the victim girls had acted with malicious intent and complained about Bensha Shaji's behaviour during the industrial visit. This Court has surfed through the entire enquiry proceedings and no where any malicious intent has been seen with regard to the complaint of the victim girls.

53. The whole enquiry proceedings reveal that the issue considered seems to be only manhandling and not related to sexual assault on the victim girls. The victim girls have been questioned with regard to the behaviour as to why they had not complained about the said act at the earliest point of time and the reason for rejection of their complaint is that it was belated. However, for the petitioners manhandling Bensha Shaji, no circumstance has been placed, which had triggered them to carry the attack. However, it is the specific case of the



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petitioners that when they questioned Bensha Shaji, since he did not answer properly and had pushed the 2nd petitioner aside, they had pushed the Assistant Professor down.

54. Though the enquiry committee had given its view that the entire episode during the industrial visit was a falsely created one against the Assistant Professor, however, there is no elicitation by the enquiry committee the reason for manhandling of Bensha Shaji. To come to a definite conclusion that the episode was falsely created, there arises a necessity for the enquiry committee to spell out the reason for manhandling of the Assistant Professor. Further, neither Bensha Shaji nor any of the witnesses have spoken about the reason for manhandling of the Assistant Professor. Such being the case, there being no material which necessitated the petitioners to have got agitated and attack Bensha Shaji, the findings recorded by the enquiry committee could only be termed to be perverse and arbitrary and is not based on relevant material.

55. Further, the victim girls have spoken about the manner in which Bensha Shaji had talked with the girls of which certain queries are sexually



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flavoured. However, there is no finding with regard to the same. The only finding given by the enquiry committee is that the victim girls have not come out at the earliest point of time and reported the incident and, therefore, it has to be presumed as false. When there is no material to show that narcotic substance was found in the boys room and there is no complaint on that aspect placed before the enquiry committee, a necessity arises for the enquiry committee to find out the reason for the manhandling of the Assistant Professor. When the statement of the victim girls are brushed aside as false, as they have not acted diligently, necessarily, the complaint of Bensha Shaji also requires to be brushed away as it is not supported by any materials.

56. The whole enquiry seems to have been orchestrated for saving the face of the institution in the light of the manner in which Bensha Shaji had behaved with the victim girls, which has resulted in the attack on the Assistant Professor at a later point of time. If not, what was the reason for Bensha Shaji to tender his resignation with effect from 17.4.2024 and the same to be accepted by the 1st respondent and relieve him from the said post. No man of normal and



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prudent intelligence would act upon the report of the enquiry committee to transfer the guilt upon the shoulders of the petitioners.

57. It is to be pointed out that it is the ardent duty of the teachers to mould the students so that they are able to guide the future generations, but acts such as the one, which is alleged in the present case, paint a gloomy picture of the fate of the educational institutions in which the students are sacrificed for the safety of the teachers. This Court is not giving any clean chit to the petitioners, who had manhandled the Assistant Professor, but when the Assistant Professor had not conducted himself in the manner as is required of a teacher, a student, that too, in the present generation, rises up and takes the law into the own hands and act in such a manner.

58. The act of both the Assistant Professor as also the petitioners are deprecatable. However, when the students have been punished, the Assistant Professor, Bensha Shaji has been allowed to go scot-free giving a clean chit, including his behaviour. Such an action on the part of the 1st respondent is unbecoming of the stature of the 1st respondent. The 1st respondent is to mould



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the career and future of the students through its faculties and not demolish them. The additional affidavit of the 1st respondent suggesting that it is ready and willing to give transfer certificate to the petitioners without any black mark itself speaks volumes about the manner in which the institution wants to save itself from being besmirched in public view.

59. Equally, it is also to be pointed out that the petitioners, being students and more particularly law learning students, ought to conduct themselves in the manner as prescribed under law. The petitioners cannot take law on to their own hands and manhandle the teaching faculty and necessarily they ought to have brought it to the notice of the 1st respondent at the earliest available opportunity. However, when the Assistant Professor, who is experienced and had seen life, had acted in a prejudicial manner and had not brought acts to the knowledge of the 1st respondent, the student community, which is in the tendency of boiling water, as is seen nowadays, had acted in haste and had committed the act, which can neither be said to be wilful nor wanton. Therefore, infliction of punishment on the petitioners alone, while relieving the Assistant Professor with grace and honour is unbecoming of an institution, which



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imparts education. When the 1st respondent had thought it fit to impose fine on the victim girls, for reasons best known to it, inspite of there being no material, which points to their guilt, ought to have passed similar order on the students as well, at best, and ought not have expelled the students from the rolls of the college, which is nothing but an act wielding the career of the petitioners.

60. Considering all the aforesaid factors, which have been pointed above, this Court is of the considered view that the expulsion of the petitioners from the college vide the impugned order is grossly arbitrary, perverse and unreasonable and there is no tenable and tangible material on which such an order could be made to survive and, therefore, the said impugned order deserves to be set aside.

61. Accordingly, for the reasons aforesaid, the order impugned herein is set aside and the writ petition is allowed and prayer as sought for by the petitioners is granted with a direction to the 1st respondent to permit the petitioners to attend the 5th semester classes and also to permit the petitioners to write the examinations. However, at the same time, this Court also wants the



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petitioners that the leniency shown by this Court above should not be construed as a clean chit given to the petitioners but it is an act of any benevolence so as to safeguard the future life and career of the petitioners and it is made clear that if the petitioners come to any adverse notice of the 1st respondent during the balance period of their education, it is open to the 1st respondent to take appropriate action against them in accordance with law. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

18.11.2024

Index : Yes / No

GLN

To

The Chairman
University Grants Commission (UGC)
Bahadur Shah Zafar Marg
New Delhi 110 002.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NO.28759 OF 2024**

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18.11.2024