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(2011) 07 UK CK 0025

In the Uttarakhand High Court

Case No : Writ Petition No. 1326 of 2011 (M/S)

Anmol Sandhu and Another — APPELLANT

Vs

Council for the Indian Certificate of Secondary Education and Others — RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:
Constitution of India, 1950 — Article 12, 14, 21, 226, 30

Citation : (2011) 07 UK CK 0025

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—The Petitioners are students of Sherwood College, Nainital and have filed the present writ petition praying for the quashing of the order dated 4th April, 2011, 13th April, 2011 and 26th May, 2011 by which they have been asked to leave the institution. The Petitioners have also prayed for a writ of mandamus commanding the Respondents to restore their admission in 10th class.

2. The fate of the Petitioners is dangling by a thread. The facts leading to the filing of the present writ petition is, that five students went out of bounds on 22nd March, 2011. These students went to town, had a meal in a restaurant and came back in a taxi. The action of the Petitioners caused a serious breach of discipline maintained by the institution. These Petitioners violated the rules and Regulations of the institution as they left the school premises without seeking prior permission. An action was taken by the institution and the Principal issued a notice on the same date, i.e., 22nd March, 2011 to the parents to kindly assume custody of their wards and counsel the Petitioners till further communication from the institution. In response to the said notice, the parents of the Petitioner No. 2 came to Nainital and took custody of their child on 24.03.2011. The parents of the Petitioner No. 1 were abroad and they came on 1st April, 2011 and took custody of their ward.

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3. On 4th April, 2011, the Principal sent a communication through e-mail to the parents indicating that considering the gravity of the offence committed by the Petitioners, the Management was unable to place the Petitioners under their pastoral care. The brief reason indicated in the e-mail was the "continued behaviour of this pattern despite frequent counselling and repeated warnings" and, therefore, requested the parents to find an alternate institution for their children. In response to the said e-mail, the father of the Petitioner No. 1 replied by an e-mail dated 10th April, 2011 feeling extremely sorry about the incident and intimated the Principal that her daughter has been reprimanded and that he had slapped her which resulted in the perforation of the eardrum and that the daughter was feeling guilty and had admitted her mistake. The father of the Petitioner No. 1 requested forgiveness and further prayed that another chance be given to her daughter to redeem herself. The father of Petitioner No. 2 through an e-mail dated 26th April, 2011 also requested the Principal to give her daughter another chance and also requested for an appointment so that a request could be made personally. The Principal, by an e-mail of 13th April, 2011 intimated the father of the Petitioner No. 1 that he was unable to permit the Petitioner No. 1 to stay further on the campus and requested the parents to comply with the withdrawal procedure. The e-mail further stipulated that no further communication in this respect would be considered. Similar e-mail was also sent to the father of Petitioner No. 2. The Dean of the School sent an e-mail on 26th May, 2011 reiterating that it would not be possible for the institution to accommodate the students in the campus and directed the parents to apply for the transfer certificate.

4. In paragraph 12 of the writ petition, it is alleged that since the parents were out of India, the Petitioner No. 1 remained in the campus till 31st March and during this period, the Petitioner No. 1 was not allowed to attend the classes or to participate in the extra curricular activities organized by the school. In paragraph 18 of the writ petition, it is alleged that the parents came to Nainital on 20th April, 2011 but the Principal refused to meet them and, in fact, threw them out of the campus. When all doors stood closed and repeated requests to meet the Principal fell on deaf ears, the Petitioners, having no other alternate, approached the writ court for the redressal of their grievances.

5. This Court issued notice to the Respondents and, in response thereto, the Principal has filed a counter affidavit. At the outset, the Respondents submitted that the Respondents is a registered society under the Societies Registration Act and is also an unaided minority education and has its own rules and Regulations to administer its institution. The Respondents contended that being a private organization, the institution does not fall within the parameters of the word ''State'' as defined under Article 12 of the Constitution of India and, consequently, no writ could be issued against the Respondents. It was contended that the writ petition was not maintainable and was liable to be dismissed at the threshold itself.

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6. On the merit of the case, the Respondents contended that according to the Rules framed by the Institution, leaving the school campus without permission, leads to a strict disciplinary action resulting in immediate expulsion/withdrawal of the students from the school. In the instant case, the Petitioners alongwith other classmates without prior permission or intimation went out of bounds to town which caused a serious breach of the discipline maintained by the institution and which resulted in their expulsion. In paragraph 2 of the counter affidavit, it has been alleged that in the event the Petitioners are allowed to continue in the institution, it would be highly probable that they might infect the minds of other inmates in the campus which would cause serious implication/repercussion in maintaining discipline in the campus. In paragraph 3 of the counter affidavit, the Respondents contended that the Petitioners deserve no sympathy, inasmuch as, there have been earlier instances where the Petitioners had violated the rules and Regulations and were given regular warnings. It was contended that the Petitioners and their classmates were not mending their attitude in adhering to the rules and Regulations of the institution and they turned their deaf ears to the regular warnings and, consequently, the institution had no alternative and was compelled to take the instant decision since it was necessary to maintain the educational environment of the institution. It was contended in the same paragraph that if the relief is granted to the Petitioners, it would destroy the institutional autonomy. The act of omission and commission on the part of the Petitioners as well as the casual attitude of their respective parents was too severe to be condoned. In the same paragraph, it was also alleged that the father of the Petitioner No. 1 was instigating her daughter to do all sorts of misdeeds and this contention of the Respondents was alleged to have been borne out from the letter written by the father of Petitioner No. 1. It was also alleged that when the parents of Petitioner No. 2 created a nuisance on 2nd June, 2011 when they tried to forcibly enter the campus, a first information report was lodged against them. In the light of the aforesaid averments, the Respondents contended that the misdemeanour of the Petitioners does not entitle them to re-join the institution.

7. The matter was taken up for consideration on 20th July, 2011 on which date the learned Counsel for the institution, Shri Pankaj Miglani submitted that the Respondents will reconsider their decision after having a dialogue with the parents of the Petitioners so that an amicable solution could be arrived at. In the light of this averment, the Court adjourned the proceedings to enable the parties to mediate and come out with a solution. When the matter was taken up on 22nd July, 2011, a supplementary counter affidavit was filed by the Respondents indicating that the revised decision made by the institution has been rejected by the parents of the Petitioners. The Supplementary counter affidavit brings out the revised decision given by the Respondents, namely, that the Respondents would permit the Petitioners to appear in Class-10th ICSE 2012 Board examination from the college subject to the following conditions:

i. The parents are advised to keep their wards under their supervision at home.

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ii. The wards may appear for ICSE 2011-12 Examination in March 2012 from Sherwood College, Nainital.

iii. During this intervening period, that is, up to 8th December, there will be a regular academic update and assessing done of their wards through assignments completed at home.

iv. The parents may bring their wards for rigorous academic coaching w.e.f. 8th December 2011 after the school closes for winter vacation and that they may avail of this coaching effort put forward willingly by the teachers until one week prior to the commencement of the Board Examinations, which are likely to commence from the first week of March, 2012.

v. The parents are requested to make their own boarding and lodging arrangements in town till the completion of the ICSE Board Examination.

The reasons for not keeping the Petitioners in the hostel and allowing them to attend the class rooms was based on the following reasons:

These wards have been through all levels of counselling, mentoring and moulding with the traditional approach of both detentions and privileges.

? That the staff have expressed very strongly their helplessness in mentoring these wards, besides which, they are apprehensive of any adverse remarks in their personal records of service in the course of any future lapse by the wards.

? The staff also raised a concern of the negative impact on the student body of 750 pupils on campus.

? We are aware that the adverse impact and wrong precedent would follow once these two students are permitted to join back the 750 boarders in Sherwood.

? We are also aware of the set-back to the staff morale in carrying out their duties under such circumstance.

8. Since the mediation failed and the Respondents decision to take back the Petitioners was hedged with certain condition, which was not acceptable to the parents of the Petitioners, the matter was heard on merit.

9. Heard Shri Rajendra Dobhal, the learned Senior counsel assisted by Shri Yogesh Pacholia, the learned Counsel for the Petitioners and Shri Pankaj Miglani, the learned Counsel assisted by Shri Pulak Agarwal, the learned Counsel for the Respondents institution.

10. At the very outset, the Respondents raised a preliminary objection with regard to the maintainability of the writ petition. It was urged that the Petitioners is a private unaided minority educational institution being given a constitutional right to establish and administer an educational institution under Article 30 of the Constitution of India. It was contended that the Respondents is neither a State nor an Authority or an Instrumentality of the State as contemplated under Article 12 of the Constitution of India and, therefore, no writ could be issued against a

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private institution where the State or the instrumentality of the State had no pervasive control over them. The learned Counsel submitted that a writ cannot be issued against a private body and, in this regard, placed reliance upon the decisions of the Supreme Court in the case of The Secretary, Malankara Syrian Catholic College Vs. T. Jose and Others, , T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , Army School Vs. Smt. Shilpi Paul, , and a decision of the Allahabad High Court dated 12th July, 2010 in Special Appeal No. 1074 of 2010 in Union of India and Ors. v. Dileep Kumar Pandey in which it was held that the writ petition would not lie if the Respondents is not a State within the meaning of Article 12 of the Constitution of India.

11. On the other hand, the learned Counsel for the Petitioners placed reliance upon various decisions, namely, Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, , Arvind Kumar Sharma (Minor) through his father Govind Ji Sahu v. Central Board of Secondary Education, New Delhi and Anr. (1996) 2 UPLBEC 1331, Sandeep Chauhan and Ors. v. State of U.P. and Ors. (2001) 3 UPLBEC 2259 and a decision of this Court in Ishaan Tyagi v. Committee of Management Sardar Bhagwan Singh Post Graduate Institute of Biomedical Sciences and Research and Ors. 2007 (1) U.D. 625.

12. In order to deal with this preliminary objection, one has to peruse the provision of the Constitution and, upon a combined reading of Articles 21, 38, 39(f), 41 and 45 of the Constitution of India, one would find that the right to education is concomitant to the fundamental rights enshrined in Part III of the Constitution of India. This view of the Court is supported from a decision of the Supreme Court in Miss. Mohini Jain Vs. State of Karnataka and others, .

13. In The Secretary, Malankara Syrian Catholic College Vs. T. Jose and Others, , the Supreme Court held that a minority institution has a right to administer its institution and such right cannot be interfered by a state agency. The decision in T.M.A. Pai Foundation case (Supra) was reiterated by the Supreme Court in P.A. Inamdar and Ors. v. State of Maharashtra and Ors. (2005) 6 SCC 537 where the general principle relating to the establishment and administration of an educational institution by a minority institution was summarized by the Supreme Court as under:

The general principles relating to establishment and dministration of educational institution by minorities may be summarized thus:

(i) The right of minorities to establish and administer educational institutions of their choice comprises the following rights:

a) To choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the institution;

b) To appoint teaching staff (Teachers/Lecturers and Head-masters/Principals) as also non-teaching staff; and to take action if there is dereliction of duty on the

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part of any of its employees;

c) To admit eligible students of their choice and to set up a reasonable fee structure;

d) To use its properties and assets for the benefit of the institution;

(ii) The right conferred on minorities under Article 30 is only to ensure equality with the majority and not intended toplace the minorities in a more advantageous position vis-`-vis the majority. There is no reverse discrimination in favour of minorities. The general laws of the land relating to national interest, national security, social welfare, public order, morality, health, sanitation, taxation etc. applicable to all, will equally apply to minority institutions also.

(iii) The right to establish and administer educational institutions is not absolute. Nor does it include the right to maladminister. There can be regulatory measures for ensuring educational character and standards and maintaining academic excellence. There can be checks on administration as are necessary to ensure that the administration is efficient and sound, so as to serve the academic needs of the institution. Regulations made by the State concerning generally the welfare of students and teachers, Regulations laying down eligibility criteria and qualifications for appointment, as also conditions of service of employees (both teaching and non-teaching), Regulations to prevent exploitation or oppression of employees, and Regulations prescribing syllabus and curriculum of study fall under this category. Such Regulations do not in any manner interfere with the right under Article 30(1).

(iv) Subject to the eligibility conditions/qualifications prescribed by the State being met, the unaided minority educational institutions will have the freedom to appoint teachers/Lecturers by adopting any rational procedure of selection.

14. The Supreme Court held that the right to administer an educational institution is not absolute nor does it include a right to maladministration and that there can be checks on administration to ensure that the administration is sound and efficient.

15. In Arvind Kumar Sharma (Supra), the Court held that if a private body or a private institution has chosen to deal with the right to education, then such private body cannot be allowed to play freely with this important fundamental right directly connected with the development of the human life according to their whims and fancies. The Court held that if the action was pre-judicial to the right to education to any individual in that event a writ could be issued and writ petition could be maintained. The learned Judge held:

The aforesaid view was expressed by Hon''ble Supreme Court before its judgment in case of Miss Mohini Jain. After the judgment of Hon''ble Supreme Court in Mohini Jain case, the complexion and position of law with regard to the educational institutions stands altogether changed. If a private body or private institution has chosen to impact education to the public as large, they have

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chosen to deal with right to education which has been held to be a fundamental right as declared by Hon''ble Supreme Court. Any unfair, arbitrary or illegal act which affects prejudicially the right to education shall be subjected to scrutiny of the Court. The educational institutions on the basis of mere technicalities that they are private bodies, cannot be allowed to play freely with this important fundamental right directly connected with the development of the human life according to their wish and whims. If their action is prejudicial to the right to education of any individual, in my opinion, he may approach this Court for issuing appropriate direction and the writ petition is legally maintainable. I am in respectful agreement with the judgment in case of Purnima Banerjee. The contention of the learned Counsel for Respondents that the cases are distinguishable cannot be accepted.

16. This Court in Ishaan Tyagi (Supra) held that even if an institution does not come within the ambit of the word ''State'' as defined under Article 12 of the Constitution, nonetheless, a mandamus could be issued where the institution was performing a public duty. The Court held:

The cumulative effect of the Apex Court verdict in the aforementioned cases and the principles laid down in the cited cases make it clear that even if an institution does not come within the ambit of the State or it is a person, mandamus may be issued but the duty, required to be enforced, by way of writ should be, public duty, there must be an element of public duty. Imparting education by an Institution, may it be aided or unaided inheres in it a public duty element. Basically, imparting education being essential task of the Government, the aided or unaided schools etc. supplement the task of government function. Having considered the submissions of the learned Counsel for the Respondent Nos. 1 and 2 from all the four corners of the case in the light of the case laws referred to above, it may be safely concluded that even if the Respondent Nos. 1 and 2 are unaided institutions, they impart education, hence the writ petitions are maintainable under Article 226 of the Constitution of India. There is no impediment for issue of mandamus against the Respondent Nos. 1 and 2 if the Petitioners succeed in these writ petitions.

17. In Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, , the Supreme Court held that the word ''State'' defined under Article 12 of the Constitution includes bodies created for the purpose of promoting educational and economic interest of the people.

18. In Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust (Supra), the Supreme Court held that if the rights are purely of a private character, no mandamus could be issued and, if the management of the college was purely a private body with no public duty, in that case, no mandamus could be issued. But if the pubic duty is cast upon a private body or a person, then a mandamus could be issued. The Supreme Court held that the term "authority" under Article 226 of the Constitution should be liberally construed unlike the term used under Article 12 of the Constitution and whereas

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the authority under Article 12 contemplates a statutory authority, the same cannot be interpreted strictly under Article 226 of the Constitution. The Supreme Court held that the words "any person or authority" used in Article 226 of the Constitution was not confined to any statutory authority or instrumentality of the State. The Supreme Court held:

The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of the fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumental of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.

19. In Sandeep Chauhan and Ors. v. State of U.P. and Ors. (2001) 3 UPLBEC 2259, a Division Bench of the Allahabad High Court held that writ petition against a private educational institution is maintainable since it involves general public interest.

20. In Binny Ltd. and Another Vs. V. Sadasivan and Others, , the Supreme Court held:

Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the government to run industries and to carry on trading activities. These have come to be known as Public Sector Undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between the public functions and private functions when it is being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. In a book on Judicial Review of

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Administrative Action (Fifth Edn.) by de Smith, Woolf & Jowell in Chapter 3 para 0.24, it is stated thus:

A body is performing a ''public function'' when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. This may happen in a wide variety of ways. For instance, a body is performing a public function when it provides "public goods" or other collective services, such as health care, education and personal social services, from funds raised by taxation. A body may perform public functions in the form of adjudicatory services (such as those of the criminal and civil courts and tribunal system). They also do so if they regulate commercial and professional activities to ensure compliance with proper standards. For all these purposes, a range of legal and administrative techniques may be deployed, including: rule-making, adjudication (and other forms of dispute resolution); inspection; and licensing.

And further held:

Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel the public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action.

21. In the light of the aforesaid judgments, a writ under Article 226 of the Constitution of India is maintainable against a private body provided such body is discharging a public function or is performing a public duty or is performing a function which has a statutory flavour of a public law element. A mandamus would lie against a private individual or a body under Article 226 of the Constitution as the word "any person or authority" used under Article 226 of the Constitution is not confined to any statutory authority or instrumentality of the State. The power of the High Court under Article 226 of the Constitution, being plenary in nature, is very wide and would cover any other person or body performing a public duty. The form of the body is not relevant but what is

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relevant is the nature of the duty imposed on such body. This duty must be judged in the light of the positive obligation owed by the person or authority to the affected party. If a positive obligation exists, a mandamus cannot be denied.

22. In the light of the aforesaid, the Court is of the view that the Respondents, being a minority institution under Article 30 of the Constitution, has a right to establish and administer its educational institution. Such right is not denied. But such administration of its educational institution must meet the fundamental rights enshrined under Part III of the Constitution. If the action of the Respondents while administering their institution is against the principle enshrined under Article 14 of the Constitution, such action would be arbitrary and amenable in a writ jurisdiction. If the action of the Respondents infringes the right to life which infringes the right to liberty and which includes the right to education envisaged under Article 21 of the Constitution, such action would be amenable in a writ jurisdiction under Article 226 of the Constitution. The right to administer an education institution is not an absolute right and there can be checks and balances on the administration to ensure that the administration is sound and efficient.

23. In the present case, the Petitioners have voiced their grievance of the arbitrary action of the Respondents. Their grievance is not being considered and, consequently, they have approached the writ jurisdiction of the Court. In the light of the discussions held aforesaid, the Court is of the opinion that writ petition is maintainable and the preliminary objection raised by the Respondents is rejected.

24. Coming to the merits of the case, the Petitioners have no doubt contravened the rules and Regulations of the institution and went out of bounds with other classmates without prior permission. This caused a serious breach of discipline. In this regard, the Respondents have annexed the code of rules and Regulations for the students. It would be appropriate to consider these rules which governs the institution as well as the students. Certain extracts of the said rules and Regulations are quoted hereunder:

Absence or leaving the school campus without permission will lead to strict disciplinary action resulting in immediate expulsion/withdrawal from the school.

Disciplinary counselling is undertaken by the entire faculty and referred to the college disciplinary committee.

Parents are taken into confidence/informed/invited to participate in the counselling process as deemed fit by the house masters and deans and Principal.

Consequence for being out of bounds within or out of the college premises will lead to very strict disciplinary action. Depending upon the place and gravity of the escapade, students may be expelled from the college. The absence of girl students will incur immediate involvement of parents and especially stringent measures.

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25. A combined reading of the aforesaid rules indicate that being out of bounds or leaving the school campus without permission would lead to a very strict disciplinary action and depending upon the gravity of the escapade, a student may be expelled from the college.

26. The first letter dated 23rd March, 2011 directed the parents to assume custody of their wards and counsel their daughters. The second e-mail dated 4th April, 2011 indicated that on account of the gravity of the offence and continued behaviour of this pattern despite frequent counselling and repeated warnings left the institution with no choice but to direct the parents to make alternate arrangement for their wards. The tenor in the counter affidavit, namely, paragraph 3 indicates that there had been regular warnings to the students and that the Petitioners were not mending their attitude and that the counselling fell on deaf ears. The Respondents have categorically contended that on account of repeated misdemeanours by the Petitioners, the institution was compelled to take a decision to withdraw the students so that the discipline could be maintained. The Respondents while revising their decision and permitting the Petitioners to appear in the 10th Class examination from their institution, but not allowing them inside the school premises is on account of the reason that the staff had expressed their helplessness in mentoring the Petitioners. The staff was apprehensive of the adverse remarks that may be placed on their personal record and that it would have a set back on the morale of the staff quite apart of being apprehensive that it would have a negative impact on the students who are inside the campus.

27. The Respondents in their counter affidavit have placed on record the past conduct of the Respondents. Before proceeding, it would be appropriate to have a look at the past conduct of the Petitioners. In so far as Petitioner No. 2 is concerned, a perusal of annexure 5 of the supplementary counter affidavit indicates that the Petitioner No. 2 had committed one misdemeanour, namely the misdemeanour of 22.03.2011. Apart from this misconduct, there has been no other violation of any rules and Regulations of the institution committed by the Petitioner No. 2. The Petitioner No. 2 has been in the institution from the year 2008 when she was admitted in Class-8 and no warning or misbehaviour has been reported against the Petitioner No. 2. Consequently, in that light, the notice issued by the Respondents to the parents of the Petitioner No. 2 alleging "continued behaviour of this pattern despite frequent counselling and repeated warnings" as stated in the e-mail dated 4th April, 2011 is patently incorrect and against the record. The Respondents in their offer of 21st July, 2011 stated that the wards have been given all levels of counselling and mentoring is also incorrect.

28. In so far as the record of the Petitioner No. 1 is concerned, the Court finds that the Petitioner No. 1 was admitted in Class-7 in the year 2007 and that she had been counselled for bunking the inspection, for playing in the water in the dormitory, for not changing into a night suit, for arguing during bath time and for

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putting kajol while going out of the campus. Extra work was given while talking to a boy. These incidents and similar other incidents are not a major misdemeanour which could lead by itself to the expulsion of Petitioner No. 1 from the college nor the cumulative effect could also lead to the expulsion of Petitioner No. 1. In the above incidents, the Petitioner was counselled, warned and also given detention and once such detention has been given, the same misdemeanor cannot be taken into further consideration. In any case, these misdemeanours were minor in nature which would not require a second thought for any kind of further consideration.

29. In the light of the aforesaid, the only major misdemeanour for which an action could be taken was the incident of 22nd March, 2011 when the Petitioners went out of bounds without permission. Both the Petitioners committed this misdemeanor for the first time. From the perusal of the e-mail of the Respondents and the contention raised in the counter affidavit, the court finds that the action of the Respondents was very harsh and a rigid approach has been adopted by the Respondents. Their contention that there was "continued behaviour of this pattern" by the Petitioners is far fetched quite apart from the fact that it is incorrect. Their contention that frequent counselling and repeated warnings were given is also incorrect. The Petitioner No. 2 was never warned nor counselled at any stage since there was no misdemeanour. In so far as the Petitioner No. 1 is concerned, the Court has already indicated that the misdemeanours committed earlier by the Petitioner No. 1 was minor in nature.

30. No doubt, the Petitioners broke the rules and Regulations. Going out of bounds is a serious misdemeanour for which the Respondents should have counselled them. Since the Petitioners were in their pastoral care, the Court finds that the Respondents did not chose to counsel the Petitioners for their action and took the ultimate steps straightway to call their parents directing them to take their child and counsel them at their own end. The rules of the Respondents indicates that the parents are required to be taken into confidence and invited to participate in the counselling process. The girl students as per the rules going out of bounds required the immediate involvement of the parents. The Court finds that the Respondents have not adhered to their own rules. There has been no meeting or consultation with the parents on a one to one basis. There has been no joint couselling between the Petitioners, parents and the Respondents. On the other hand, the Respondents straightway called the parents and directed them to take their wards back. A high and mighty attitude has been adopted by the Respondents. The attitude of high handedness on the part of the Respondents is writ large from the counter affidavit and the e-mail sent by the Principal.

31. Taking the students in their pastoral care, does not mean that the institution would get away with anything. It does not mean that they will not meet the parents. It does not mean that they will not give the parents an appointment. It is high time the institute takes a re-look in their dictorial administration and their attitude towards the parents. This holier than thou attitude should be re-looked.

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Merely because it is a reputed institution does not mean that the Principal is only required to worry about its own reputation. On one hand, the Respondents consider themselves to be co-partners with the parents in the pastoral care and, on the other hand, the court finds that the Respondents are not willing to listen to the parents nor willing to give them an appointment. There seems to be a total "I don''t care attitude". The high handedness of the Respondents is writ large and just because the Respondent is a prestigious institution does not give them any right to mistreat the parents which the Court finds in the present case. In the entire incident, the Principal did not try to meet the parents personally. All correspondence was done through e-mail and, in one communication, the Principal said that no further communication in this regard would be considered. The parents sought for an appointment but were not given. One of the parents of the Petitioners tried to meet the Principal on 2nd June, 2011 but was not allowed an entry inside the campus and was stopped by the security guards. When the parents made a ruckus, a first information report was lodged against them. This indicates the high handedness on the part of the Respondents in handling the situation.

32. If a ward has committed a mistake and has also admitted her mistake, the least the Respondent could do is to meet the parents and sort out the matter. But by not meeting the parents and by not giving the Petitioners another chance, indicates the arbitrary action of the Respondents.

33. In paragraph 12 of the writ petition, the Petitioner No. 1 was not allowed to attend the classes or participate in the extra curricular activities from the date of the incident till 31st March, 2011 when her parents took her away. This crucial fact has not been denied by the Principal in paragraph 8 of the Counter affidavit. The court wonders whether this kind of detention was not sufficient by itself and whether this action of the Respondents did not cause sufficient humiliation to the Petitioner. In paragraph 18 of the writ petition, it has been averred that the parents tried to meet the Principal on 20th April, 2011 but the Principal refused to meet them and threw them out of the college premises. A very serious allegation has been made in paragraph 18. This paragraph has been denied in paragraph 14 of the counter affidavit, but the averments in this paragraph is based on record. Such record has neither been annexed to the counter affidavit nor has been produced. Therefore, it leads to an irresistible conclusion that the averments made by the Petitioner in paragraph 18 is true. The Court is pointing out these things to show the arbitrary and high handedness manner on the part of the Respondents in handling the whole affair. The Court is constrained to observe that it was the rigid attitude of the Principal which has led the Petitioners to file the present writ petition.

34. As per the revised decision, the Petitioners were permitted to appear in 10th Class ICSE Board, 2012 examination but were not allowed to reside in the campus nor allowed to attend classes. The reason given is somewhat strange which the Court could not fathom. They are apprehensive about the morale of

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their staff. They are apprehensive about the repercussion it would have with the other students residing inside the campus. The Respondents are basically concerned with their reputation but not once the Respondents have thought about the plight of the Petitioners and their parents. The Petitioners have already suffered humiliation for being kept out of the college for more than three months.

35. In the light of the aforesaid, the Court finds that there has been a violation of the principles of natural justice. Proper opportunity was not given to the parents to explain their stand. No proper opportunity was given to the Petitioners to be given another chance so that they could redeem themselves. The Court finds that no counselling took place. A child''s up-growth is not completed by just studying books and completing the assessment at home. A child''s up-growth is made through the environment provided in the school, through extra curricular activities and interaction with others inmates of the institution. The offer given by the institution directing the Petitioner to remain at home and complete the assessment given to them from time to time is neither appropriate nor strives for the welfare of the Petitioners. Right to education cannot be confined to such methods. Education can only be imparted in a congenial environment and not in the confines of a home. The revised decision given by the Respondents again appears to be arbitrary and one sided.

36. There is another aspect, the notice and the correspondence issued by the Principal and the Dean does not in explicit words expel or rusticate the Petitioners but the tenor is loud and clear, namely that a direction has been issued to the parents to withdraw their child and take appropriate steps for the withdrawal procedure. The session started in March and more than three months have elapsed and getting admission in another college would now not be possible.

37. In the light of the aforesaid, the Court finds that the action of the Respondents was wholly arbitrary, one sided and in gross violation of the principles of natural justice enshrined under Article 14 of the Constitution. The Court is also of the view that for the misdemeanour incurred by the Petitioners, the action taken by the Respondents was too harsh and excessive. Such punishment could have been awarded if there was a repeated misdemeanour on the part of the Petitioners in going out of bounds. On a solitary incident, the action of the institution directing the Petitioners to seek admission in another college was wholly excessive, harsh and does not commensurate with the misconduct.

38. In the light of the aforesaid, the Court issues a mandamus commanding the Respondents, especially, the Principal Respondent No. 2 to take into its pastoral care the Petitioners and permit them to attend the classes and to reside inside the campus and allow them to appear in their 10th Class ICSE Board Examination 2012. For the misdemeanour committed by the Petitioners, it would be open to the Respondents to give a lesser punishment to the Petitioners in accordance with their rules and Regulations after given appropriate counselling to the Petitioners in consultation with the parents and other faculty members of the

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institution. The writ petition stands allowed.

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