
(2008) 12 MAD CK 0162

In the Madras High Court

Case No : Writ Petition (MD) No's. 9401, 7844 and 9760 of 2008 and M.P. (MD) No's. 1, 1, 2, 3, 4, 1, 2 and 3 of 2008

Dr. Chinnaraj Joseph Jaikumar

APPELLANT

Vs

The Director of Collegiate Education and Others
The Governing Council of American College Vs The Director of Collegiate Education, The Joint Director of Collegiate Education and Dr. Chinnaraj Joseph Jaikumar
The Governing Council of American College Vs The Director of Collegiate Education, The Joint Director of Collegiate Education, The Bishop and Chairman, The Governing Council of American College and Dr. Chinnaraj Joseph Jaikumar

RESPONDENT

Date of Decision : 11-12-2008

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 145
Tamil Nadu Private Colleges (Regulation) Act, 1976 — Section 11, 12, 18(2), 19, 19

Citation : (2008) 12 MAD CK 0162

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : Isaac Mohanlal, in W.P. MD. No. 9401 of 2008, T.R. Rajagopalan for N. Krishnaveni, in W.P. MD. No. 7844 of 2008 and A.L. Somaiyaji for N. Krishnaveni, for the Appellant; Anitha, Additional Government Pleader for Respondents 1 and 2, A.L. Somaiyaji, for N. Krishnaveni, Adv for Respondents 4 to 6, Thiagarajan for T. Shelly Subakumar, for Respondent 3 and V.R. Venkatesan, for Respondent 7 in W.P. (MD). No. 9401 of 2008, K.M. Vijaiyakumar, Additional Government Pleader for Respondents 1 and 2, Isaac Mohanlal, for Respondent 3 in W.P. (MD). No.7844 of 2008 and Anitha, Additional Government Pleader for Respondents 1 and 2, Isaac Mohanlal, for Respondent 4 in W.P. (MD). No. 9760 of 2008, for the Respondent

Judgement

S. Nagamuthu, J.

W.P. (MD) No. 9401 of 2008:

1. The American College Madurai is a Minority Educational Institution. It is run by

a Society known as "the Governing Council of the American College, Madura" registered on 27.6.1934 under the Societies Registration Act. The petitioner herein became the Principal/Secretary of the College, on 22.05.2006. The fourth respondent is the Bishop, Church of South India, Madurai and Ramnad Diocese, and a member of the College Governing Council. The fifth respondent is the Vice-Principal of the College.

2. Admittedly, the petitioner applied to the Director of Collegiate Education, Chennai for permission for 24 days to go abroad on a private visit commencing from 09.04.2008. The said application was made as early as on 14.03.2008. The Director, in turn, by means of his proceedings dated 11.04.2008, granted such permission to him with effect from 09.04.2008. Admittedly, the said order was signed by the Director on 17.04.2008 and the same was allegedly served on the petitioner only on 19.04.2008. In the meanwhile, according to the petitioner, he sent a letter on 12.04.2008 itself to the Joint Director of the Collegiate Education, thereby withdrawing his request for permission as he could not undertake the tour as per the programme on 09.04.2008 as permission was not granted in time. Since, he did not receive any intimation from the authorities concerned granting him permission till 08.04.2008, he put up in the notice board of the College on 08.04.2008 itself informing the cancellation of the tour.

3. While so, it is stated by the fourth respondent that on 10.04.2008 itself, a letter was given to the then Vice-Principal of the College who is the fifth respondent herein, as the petitioner was on leave, to take additional charge as Principal of the College with effect from 09.04.2008. It is alleged by the respondents 4 and 5 that accordingly, the fifth respondent took charge forthwith. The petitioner alleges that on 12.04.2008, the fifth respondent locked the office of the Principal and tried to prevent him from entering into the office and to discharge his functions as Principal. As a result, there was a commotion in the College premises. However, according to the petitioner, he managed to remove the lock, opened the door and returned to his office. He further claims that he continued to act as Principal of the College.

4. However, it is contended by the respondents 4 and 5 that from 09.04.2008 onwards, the fifth respondent was acting as the Principal in-charge of the College. Though allegations and counter allegations are made against each other regarding the administration of the College from 10.04.2008 onwards, at this stage, I do not propose to narrate all those events which happened inside the College, as, it would be only unnecessary at this stage.

5. The petitioner further claims that as the Principal of the College, he placed the fifth respondent under suspension as Vice-Principal of the College with effect from 12.04.2008 which was ratified by the Governing Council in the meeting convened by him and held on 28.05.2008. But, the respondents 4 and 5 dispute the authority of the petitioner to place the fifth respondent under suspension, since the petitioner was on leave during the said period and that there was no Governing Council Meeting.

6. Subsequently, the fifth respondent, who claims to be the Principal in-charge of the College, convened a meeting of the Governing Council on 19.04.2008. The same was attended to by eight members including the respondents 4 and 5. Admittedly, the petitioner did not participate in the said meeting. A resolution was passed in the said meeting thereby placing the petitioner under suspension with effect from 19.04.2008. Consequential order of suspension was issued by the fourth respondent on the same day. The petitioner questions the very authority of the fifth respondent to convene the said meeting and he also disputes the validity of the meeting said to have been held on 19.04.2008.

7. As per the Bye-laws of the Society, the Principal of the College shall be the Secretary of the Governing Council. Since there was a change in the Secretary of the Governing Council on account of the alleged suspension of the petitioner, according to the respondents 4 and 5, they thought it fit to intimate the same to the Director of School Education, Chennai. Similarly, the petitioner sent a communication to the Director of School Education intimating the suspension of the fifth respondent. But, the Director of School Education, by his proceedings in Rc. No. 18902/G4/2008, dated 14.08.2008, has rejected the said communication sent by the fourth respondent and held that the suspension of the petitioner from the post of Principal/Secretary is arbitrary and illegal and consequently, set aside the proceedings of the Council. The Director further declared that the petitioner continues to hold the post of Principal of the College. Challenging the said Order of the Director of Collegiate Education, the fourth respondent has filed W.P. (MD) No.7844 of 2008 and challenging the very same Order, the fifth respondent has filed W.P. (MD). No. 9760 of 2008. This Court, by order dated 28.08.2008, in W.P. (MD) No. 7844 of 2008, has granted interim stay and interim injunction against the petitioner herein.

8. When the said Writ Petitions are pending, the respondents 4 and 5 proceeded further. In a meeting of the Governing Council convened by the fifth respondent and presided over by the fourth respondent on 13.08.2008, it was resolved to initiate disciplinary proceedings against the petitioner and in pursuance of the same, on 17.06.2008, the fourth respondent issued a charge memorandum to the petitioner containing as many as three charges. It is stated in the charge memorandum that the Governing Council of the College has initiated disciplinary action against the petitioner for having failed to discharge his duties efficiently and diligently; for having indulged in acts of insubordination and for having attempted to bring other kinds of influence on the superior authorities in respect of his individual service interest and thereby violating Rule 1 and Rule 9 of the Code of Conduct set out in Annexure 1 of the Tamil Nadu Private Colleges (Regulation) Rules, 1976. There are four annexures to the said charge memorandum which contains a list of 12 documents and a list of 18 witnesses.

9. The petitioner questions the very authority of the fourth respondent to issue the charge memorandum. However, the fourth respondent appointed one K. Ponnusamy, a retired District Judge, to hold enquiry into the charges. Admittedly,

a notice of enquiry was sent on 02.09.2008 by the Enquiry Officer intimating that the enquiry would be held on 10.09.2008 at 10.30 a.m., at the Auditorium Hall in the American College and the said notice was served on the petitioner on 06.09.2008.

10. On 09.09.2008, the petitioner sent a letter to the fourth respondent requesting him to furnish the copies of the following documents:

(i). Copy of any such resolution authorizing him to initiate disciplinary proceeding with the signatures of members subscribed to the resolution.

(ii). Copy of the notice for convening such a meeting.

(iii). Copies of the complaint, charges and the statements which formed the basis for the disciplinary action.

(iv). Copies of the proceedings of the Director of Collegiate Education approving any one other than the petitioner as Principal and Secretary of the American College.

In the very same letter, he also stated that disciplinary proceedings and the alleged suspension are without any authority and wholly illegal. He has further stated that he need not submit any explanation to the fourth respondent or attend any enquiry arranged by him. At the concluding portion of the letter, he has also stated that he will be able to give appropriate reply only after receiving the above documents.

11. It is stated by the Enquiry Officer that enquiry was held as per the schedule on 10.09.2008. But, the petitioner did not participate in the said enquiry. However, the Enquiry Officer proceeded with the enquiry, *ex parte*, and submitted a report to the fourth respondent on 12.09.2008 itself holding that all the four charges framed against the petitioner were duly proved. In his Report, the Enquiry Officer has further stated that the enquiry was held on 10.09.2008 at 10.30 a.m as per the schedule and the same was concluded at 12.30 in the noon. He has further stated that when he returned to his residence after 12.30 p.m, he was served with a copy of the letter dated 09.09.2008 and since the validity of the proceeding was challenged by the petitioner, he did not take the letter into account.

12. Based on the said Enquiry Officer's Report, the fourth respondent, by means of a letter dated 13.09.2008, called upon the petitioner to show cause as to why appropriate punishment should not be imposed on him. Admittedly, a copy of the Enquiry Officer's Report was also served on the petitioner. Having received the same, the petitioner sent a letter on 22.09.2008, wherein once again he questioned the very authority of the Enquiry Officer to hold enquiry. He has further stated that no such enquiry was ever conducted by the Enquiry Officer; no witness was examined and no document was marked at all. He has also stated that the statement of the Enquiry Officer that he conducted enquiry is wholly untrue. He has further stated that the copies of the alleged proof

affidavits and alleged exhibits were never served on him. In the said letter, in conclusion, he would say "Again, I wish to reiterate that you do not have any authority to initiate any such disciplinary proceedings as above. My statements above in this letter are not in any way submitting myself to your authority and the same shall not be treated as my explanation to the proceedings. Letter follows through messenger and by registered post."

13. Thereafter, it is alleged by the respondents 4 and 5 that on 22.09.2008, at 3.00 p.m, the Governing Council Meeting was held under the Chairmanship of the fourth respondent, in which it was unanimously resolved to dismiss the petitioner from service with effect from 22.09.2008 and the fourth respondent was authorized to issue the order of dismissal. Accordingly, the fourth respondent, by letter dated 22.09.2008, communicated the dismissal order. Challenging the said Order of dismissal, the petitioner has come forward with W.P. (MD). No. 9401 of 2008.

14. In this Writ Petition, the third respondent has been described as "the Governing Council of American College, Represented by its Principal and Secretary, Dr. P.R. Anbudurai (in-charge)". Dr. P.R. Anbudurai has filed a detailed counter, wherein he has inter alia stated that the fifth respondent, who was the Vice-Principal, was placed under suspension by the petitioner on 12.04.2008 and the same was later on ratified by the Governing Council in the meeting convened by the petitioner on 28.05.2008. According to him, the term of the office of the fifth respondent as Vice-Principal as per the Bye-law expired on 31.05.2008 and in his place, the Governing Council, held on 28.05.2008, appointed him as Vice-Principal and one Professor C. Premkumar Immanuel as the Bursar. He would further state that in view of the interim stay and interim injunction granted by this Court in W.P. (MD) No.7844 of 2008, he took charge as the Principal in-charge and Secretary of the College and he is taking care of its administration from 01.06.2008. It is further contended that by virtue of the Bye-laws of the Society, since the petitioner herein could not discharge his duties as Principal in view of the interim stay and interim injunction granted by this Court, he took charge as Principal with immediate effect. Making these claims, he supports the case of the petitioner as if the petitioner continued to be the Principal of the College till 28.08.2008 and he has joined hands with the petitioner to question the authority of the fourth respondent to issue the Order of dismissal against the petitioner.

15. But, the respondents 4 to 6 question the authority of the third respondent to claim to be the Principal in-charge and Secretary. According to them, though it is true that the original term of office of the fifth respondent as Vice-Principal expired on 31.05.2008, in the Governing Council Meeting, the term of office was further extended and by virtue of the same, he still continues to be the Vice-Principal of the College, and therefore, there is no question of the third respondent becoming the Vice-Principal and in turn discharging functions of Principal/Secretary of the College. According to the fifth respondent, he is now in-

charge Principal of the College and the suspension order issued by the petitioner against him is without any authority, and so, the same is void under law.

16. The fourth respondent has filed a separate counter, wherein he has inter alia stated that the meeting held on 19.04.2008 was validly convened; resolution suspending the petitioner from service was validly made and by virtue of the said suspension order, the petitioner was not functioning as the Principal of the College. He has further stated that in his place, the fifth respondent was asked to discharge the functions of the Principal and in that capacity, he is now the Secretary of the College Governing Council. Since, as per the Bye-law, the Secretary of the College Governing Council is the competent authority to convene the meeting, the fifth respondent convened the meeting in consultation with the fourth respondent, in which it was decided to issue charge memorandum to the petitioner. He would further state that the petitioner questioned the authority of the fourth respondent to issue charge memorandum and he did not participate in the said proceedings. It is further contended that enquiry was held fairly and properly and after affording sufficient opportunity to him, finally, the petitioner was dismissed from service by passing a resolution in the Governing Council meeting held on 22.09.2008 and consequentially, the impugned order was issued.

17. It is further contended that the Writ Petition is not at all maintainable, as, there are lot of disputed questions of fact, which cannot be resolved in this Writ Petition. As far as the other contention regarding non-furnishing of copies of documents and non-affording of sufficient opportunity to the petitioner is concerned, it is contended that the claim of the petitioner is not genuine, as, he never expressed his intention to participate in the enquiry. Thus, according to the fourth respondent, the dismissal order is perfectly valid which does not require any interference at all.

18. The seventh respondent, who is the Enquiry Officer, has filed a separate counter, wherein he has stated that he held the enquiry in accordance with law and submitted the report. According to him, there is no infirmity at all in the report. He would further submit that his nomination was duly made by the College Governing Council, and therefore, his report cannot be challenged as invalid.

19. I have heard Mr. Isaac Mohanlal, the learned Counsel appearing for the petitioner, Mrs. R. Anitha, the learned Additional Government Pleader appearing for the respondents 1 and 2, Mr. R. Thiagarajan, the learned Senior Counsel appearing for the third respondent, Mr. T.R. Rajagopalan, the learned Senior Counsel appearing for the fourth respondent, Mr. A.L. Somiayaji, learned Senior Counsel appearing for the respondents 5 and 6 and Mr. V.R. Venkatesan, learned Counsel appearing for the seventh respondent and also perused the records carefully.

20. Though several grounds have been raised in the Writ Petition, Mr. Isaac Mohanlal, the learned Counsel for the petitioner would confine his arguments

only in respect of the following grounds:

(i). The entire disciplinary proceedings initiated by the fourth respondent culminating in the impugned Order of dismissal is without jurisdiction, and therefore, the same is void under law.

(ii). The enquiry was not held fairly and properly, inasmuch as, the principles of natural justice was not at all followed by the Enquiry Officer; copies of the documents relied on in support of the charges were not furnished to the petitioner despite request made by him.

(iii). The respondents 5 and 6, who were cited as witnesses in the charge sheet and allegedly examined during the enquiry on whose complaints, the charges were framed, participated in the alleged Governing Council Meeting, which would establish a deep rooted bias against the petitioner, and therefore, the decision taken in the alleged meeting of the Governing Council held on 22.09.2008 is not valid.

21. Though several other grounds have been raised in the Writ Petition, to a specific query made by this Court to the learned Counsel Mr. Isaac Mohanlal, he submitted that the petitioner does not press for any finding in respect of those grounds other than the three grounds enumerated supra. Thus, he has withdrawn the other grounds raised in the Writ Petition. Therefore, I do not propose to consider the other grounds than the three grounds extracted above.

22. On the side of the respondents 4 to 6, arguments were advanced at length in respect of the above three grounds about which I would discuss later.

Maintainability:

23. At the outset, Mr. T.R. Rajagopalan, and Mr. A.L. Somaiyaji, the learned Senior Counsel, raised a preliminary objection regarding the maintainability of the Writ Petition. According to them, the decision to dismiss an employee of a private unaided minority College cannot be challenged in a Writ Proceeding, as, the action of such a private Minority College is not amenable to Writ jurisdiction. It is further contended that since many of the issues involved are based on disputed questions of fact, they cannot be resolved by this Court, as, it could be done only based on evidence. As the very jurisdiction of this Court to entertain this Writ Petition is under challenge, I deem it appropriate to decide the said question first.

24. The learned Counsel for the petitioner would submit that the American College, being a Society registered under the Societies Registration Act, is an instrumentality of the State and so the same would fall within the ambit of Article 12 of the Constitution of India. He would rely on a Judgment of the Constitution Bench of the Hon'ble Supreme Court in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, wherein, while dealing with a similar society running an Engineering College, which was registered under the Jammu and Kashmir Registration of Societies Act, the Constitution Bench has held as follows:

The test for determining if an authority falls within the definition of State in Article 12 is whether it is an instrumentality or agency of the Government. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. It is, therefore, immaterial whether the corporation is created by a statute or under a statute. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute, but is equally applicable to a company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" in Article 12. The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government, given in International Airport Authority case, are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities" it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the government within the sweep of the expression.

Applying the above principles to the present case, it is clear that the Society registered under the J&K Registration of Societies Act, which established and carried on the administration and management of the Regional Engineering College, Srinagar, is an instrumentality or agency of the State and the Central Governments and is an "authority" within the meaning of Article 12. The State Government and by reason of the provision for approval, the Central Government also, have full control of the working of the society and the society is merely a projection of the State and the Central Governments and, the voice is that of the State and the Central Governments and the hands are also that of the State and the Central Governments.

25. A close reading of the above Judgment of the Constitution Bench would keep things beyond pale of any doubt that a society, which is registered under the Societies Registration Act and also imparting education, is certainly a State instrumentality amenable to the Writ jurisdiction of the High Court.

26. The said Judgment of the Hon''ble Supreme Court again came up for consideration in Manmohan Singh Jaitla Vs. Commissioner, Union Territory of Chandigarh and Others, , wherein the Hon''ble Supreme Court had to deal with a question as to whether an aided school receiving 95% of expenses by way of grant from the Government is a State Instrumentality falling within the expression "other authorities" so as to fall within the ambit of Article 12 of the Constitution of India or not. Referring to Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, , while holding that an aided school receiving 95% of expenses by way of grant from the Government falls within the expression "other authorities" as found in Article 12 of the Constitution of India, the Hon''ble Supreme Court has held as follows:

The matter can be viewed from a slightly different angle as well. After the

decision of the Constitution Bench of this Court in *Ajay Hasia v. Khalid Mujib Sehravardi*, the aided school receiving 95% of expenses by way of grant from the public exchequer and whose employees have received the statutory protection under the 1969 Act and who is subject to the regulations made by the Education Department of the Union Territory of Chandigarh as also the appointment of headmaster to be valid must be approved by the Director of Public Instructions, would certainly be amenable to the Writ jurisdiction of the High Court. The High Court unfortunately, did not even refer to the decision of the Constitution Bench in *Ajay Hasia* case rendered on November 13, 1980 while disposing of the Writ Petition in 1983. In *Ajay Hasia* case, Bhagwati, J, speaking for the Constitution Bench inter alia observed that where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character". Add to this "the existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality". Substituting the words "public trust" in place of the "corporation" and the reasons will mutatis mutandis.

27. Again a similar question arose in respect of non-teaching staff working in an unaided school. The question there was, whether the power of judicial review under Article 226 of the Constitution of India can be stretched to cover the cases of the non-teaching staff working in un-aided school who claim parity with the Government Servants. The Hon"ble Supreme Court in *K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another*, has held as follows:

When there is an interest created by Government in an institution to impart education, which is a fundamental right of the citizens, the teachers who impart the education, get an element of public interest in the performance of their duties. The element of public interest requires to regulate conditions of service of those employees on par with government employees. Such employees are entitled to parity of pay scales as per executive instructions of Government. State has obligation to provide facilities and opportunities to people to avail of right to education. Private institutions cater to the needs of educational opportunities. A teacher duly appointed to a post in a private institution is entitled to seek enforcement of orders issued by Government. When an element of public interest is created and the institution is catering to that element, the teacher the arm of the institution is also entitled to avail of remedy provided under Article 226; the jurisdiction part is very wide. It would be a different position if the remedy is a private law remedy. They cannot be denied the same benefit which is available to others. It is therefore held that Writ Petition is maintainable.

28. In respect of a minority aided educational institution, similar question came to be considered by this Court in *"Casmir and Ors. v. The Joint Director of School Education"* reported in 1996 WLR 470, wherein, his Lordship Justice Mr. A.R.

Lakshmanan [later a Judge of the Hon"ble Supreme Court] has held as follows:

Admittedly, in the instant case, the institution is receiving teaching grant from the Government. Therefore, the teachers of this institution are entitled to protection afforded by the provisions of the Act. Therefore, a minority school receiving aid from the Government is amenable to the writ jurisdiction of this Court and therefore, the writ petitions are maintainable.

In *M. Magudapathi v. The Manager and Correspondent Savariyappa Udayar Memorial Higher Secondary School* reported in 1997 2 MLJ 499, his Lordship Hon"ble Justice P. Sathasivam [presently a Hon"ble Judge of the Supreme Court], while dealing with an identical situation has held as follows:

It is admitted that the first respondent school is getting aide (building aid) from the Government. Inasmuch as the first respondent institution is getting assistance from the Government either for building or maintenance, the fact remains the first respondent school is being run with the assistance of the Government. In these circumstances, in view of the law laid down in *A. Casmir and Ors. v. The Joint Director of Schools (Education Higher Secondary)* and Ors. 1996 WLR 470, *N. Sampathu v. The Chief Educational Officer, Vellore* and Ors. (1989) 2 MLJ 263 and *David v. The Correspondent St. Gabriels Higher Secondary School* (1995) 2 MLJ 291, the school is amenable to the writ jurisdiction of this Court.

29. A survey of the above Judgments would answer the question raised by the learned Senior counsel appearing for the respondents 4 and 5, in respect of the maintainability of the Writ Petition against the American College, which is a registered Society. Not only it is a registered Society, but also an institution imparting education which creates an absolute public interest, and thus, I am of the firm view that as per the law laid down by the Hon"ble Supreme Court in the above Judgments, the respondent College is amenable to Writ jurisdiction, and so, this Writ Petition is maintainable.

First Ground:

30. Now, let me turn to the grounds raised by the learned Counsel for the petitioner to assail the impugned order of dismissal. The first ground is that the entire proceeding culminating in the order of dismissal is vitiated for want of jurisdiction. The main thrust of the argument of the learned Counsel is that the meetings of the Governing Council were not convened validly by the authority competent; the meetings lacked quorum and the fourth respondent did not have power to initiate disciplinary proceedings. To find a solution to this ground, it is necessary to see the background of the issues involved.

31. As I have already narrated, the American College is a Society registered under the Societies Registration Act. As per Clause 4 of the Constitution of the Governing Council, the officers of the College shall be the Principal, the Vice-Principal and the Bursar. The appointing authority of Principal, Vice-Principal and

Bursar shall be the Governing Council. The Governing Council will consist of the following Members:

- (i). The Principal (Ex-officio).
- (ii). The Vice-Principal (Ex-officio).
- (iii). The Bursar (Ex-officio).
- (iv). Two permanent members of the Faculty elected by the permanent members of the Faculty.
- (v). The Bishop in Madurai and Ramnad of the Church of South India (Ex-officio).
- (vi). One person appointed by the Executive Committee of the Diocesan Council of Madurai and Ramnad.
- (vii) One person appointed by the Synod of the Church of South India.
- (viii). Two persons appointed by the All India Association for Christian Higher Education from the Tamil Nadu region.
- (ix). Three members, co-opted by the Council.
- (x) One member nominated by Madurai University.

The Bishop in Madurai and Ramnad shall be the President of the Governing Council who shall preside over all the meetings of the Governing Council and in his absence, the members present in the meeting shall elect a non-Faculty member from among those persons to occupy the Chair and conduct the proceedings of that meeting. The quorum for the meeting is eight. The Principal shall be the Secretary of the Governing Council. In Clause 5(ii) of the Constitution of the Governing Council, the Secretary, who shall be the Principal, shall call all meetings, prepare the agenda, keep a record of all proceedings of the Council and perform such other duties as may from time to time devolve on him in connection with his office. He shall remind bodies appointing members to the Council at the proper time when appointments are to be made, vide Clause 4(B). He shall perform the duties as may be delegated by the Principal subject to the approval of the Governing Council. As per clause IV (B)(a), "in the absence of or inability of the Principal, the Vice Principal shall perform the duties of the Principal".

32. Keeping in mind the above important provisions of the Constitution of the Governing Council, let me now proceed to analyze the facts of the case.

33. Admittedly, the petitioner was duly appointed as the Principal of the College on 22.05.2006; by virtue of the said office, he was the secretary of the Governing Council; on 14.03.2008, the petitioner made an application to the Director of Collegiate Education, Chennai, seeking permission to go abroad on an educational tour from 09.04.2008 for a period of 24 days; till 08.04.2008, there was no such leave granted by the Director; and on 12.04.2008, the petitioner

sent a letter to the Director informing him that he had postponed his visit to USA and UK, thereby requesting to cancel the leave application. He would further submit that on 08.04.2008 itself, he affixed a notice in this regard in the College Notice Board. But, the said notice is disputed by the respondents.

34. The fourth respondent claims that since the petitioner was on leave from 09.04.2008 onwards, he gave a letter to the fifth respondent, who was the then Vice-Principal to take charge as the Principal of the College with effect from 09.04.2008. Admittedly, as per the Constitution of the Governing Council, the Vice-Principal shall discharge the functions of the Principal in his absence and in such capacity, he will automatically become the Secretary of the Governing Council so long as he holds the post of the Principal. According to the petitioner, since he did not go on leave with effect from 09.04.2008, there was neither any occasion nor any necessity for the Vice-Principal to discharge the functions of the Principal with effect from 09.04.2008.

35. According to the respondents 4 and 5, the fifth respondent, being the Principal in-charge and the Secretary of the Governing Council, convened the Governing Council meeting on 19.04.2008 at 11.00 a.m. The said meeting was attended to by as many as eight members of the Governing Council. The fourth respondent being the President of the Constitution of the Governing Council presided over the meeting. In the said meeting, a resolution was passed placing the petitioner under suspension for certain irregularities. According to the petitioner, the convening of the said meeting itself is not at all in accordance with the Constitution of the Governing Council, and therefore, the entire proceeding is void. He would further submit that since the competent authority to convene the said meeting is the Principal and since the fifth respondent was not then acting as the Principal, he had no authority to convene the meeting, and therefore, the entire proceeding is not valid under law. He would also submit that there was no proper prior notice issued to all the members of the Constitution of the Governing Council and fake records have been created as if the meeting of the Governing Council was held on 19.04.2008 resolving to suspend the petitioner.

36. In respect of the status of the fifth respondent, the petitioner has got his own stand. According to him, the term of the office of the Vice-Principal and the Bursar is one year from the date of assumption of office. The term of the office of the fifth respondent expired on 31.05.2008. In the meanwhile, as the Principal/Secretary of the Governing Council, the petitioner claims that he suspended the fifth respondent as Vice-Principal from service with effect from 12.04.2008. Hence, according to the petitioner, on 19.04.2008, the fifth respondent was neither the Vice-Principal nor the Principal/Secretary, and therefore, he had no authority either to convene the meeting or to participate in the so called Governing Council Meeting said to have been held on 19.04.2008. But, the contention of the respondents 4 and 5 is that the Principal/Secretary, without there being a resolution passed in the Governing Council Meeting, is not competent to issue any such suspension order, and therefore, the suspension

order issued by the petitioner against the fifth respondent is void and without jurisdiction. Therefore, according to them, the fifth respondent continue to be the Vice-Principal, and so, the meeting convened by him on 19.04.2008 and the resolution passed therein suspending the petitioner from service are unassailable.

37. From the facts narrated above, it could be seen that there are lot of disputed questions of fact. Whether the petitioner cancelled his leave on 08.04.2008, as it is claimed by him; whether really the fifth respondent took charge as the Principal of the College on 09.04.2008 or not; whether the fifth respondent was really suspended by the petitioner on 12.04.2008 or not; whether the Governing Council Meeting was really held as it is claimed by the respondents 4 and 5 or not and whether the resolution suspending the petitioner from service was validly passed or not are all facts seriously disputed by the rival parties. Can these disputed questions of fact be decided in this Writ Petition?.

38. The learned Counsel for the petitioner would submit that though there are disputed questions of fact, on that ground alone, the prayer of the petitioner need not be rejected. He would further submit that from all the materials placed before this Court, even in the absence of any oral evidence, the above disputed questions of fact could be resolved by this Court. To substantiate his contention, he relies on the following Judgments of the Hon''ble Supreme Court;-

In L.G.Chaudhari v. SECY., L.S.G. Department reported in 1980 SCc 374; the Hon''ble Supreme Court has held as follows:

To refuse to decide the question when the entire material was before the Court - it is not suggested that there was any other material - and to direct the appellant to go to a Civil Court would only be to shirk our responsibility.

In S. Sethuraman Vs. R. Venkataraman and Others, , in paragraph 22, it is held as follows:

22. Such a decision keeping in view the scope and ambit of the power of judicial review vested in the High Court under Article 226 of the Constitution of India could have been interfered with on the ground that the order impugned before it contained errors apparent on the face of the record. Whereas the learned Single Judge of the High Court in passing its order took the said principle into consideration, the Division Bench in our opinion failed to do so. Not only despite its attention having been drawn to a number of grounds leading to passing of the order impugned before it became vitiated, the High Court applied the principle of estoppel against the appellant and opined that having submitted himself to the jurisdiction of the appellate authority, he could not be permitted to question the legality of the same. The approach of the High Court in our opinion was wholly erroneous. Principle of estoppel has no application in a case of this nature. The appellant did not and in fact could not confer upon an authority a jurisdiction which he did not derive under the statute. If jurisdiction cannot be conferred by consent, it cannot clothe the authority to exercise the same in an illegal manner. The jurisdiction of the appellate authority pursuant to the order of the Division

Bench, which it will bear repetition to state, was passed on consent of the parties is not in dispute but only because the appellant consented to re-examination of the matter by the appellate authority, which it was otherwise entitled to, the same by itself could not have been found to be a ground for his becoming ineligible to challenge the final order passed by the appellate authority when a large number of jurisdictional errors were committed by it and were otherwise apparent on the face of the record. The Division Bench of the High Court in our opinion, therefore, was not correct in taking the aforementioned view.

In *Qudrat Ullah Vs. Municipal Board, Bareilly*, , in paragraph 27, it is held as follows:

It is appropriate for a court to do justice between parties to the litigation and in moulding the relief in the light of the subsequent developments, to take note of legislative changes. A Court of justice should, if it could, adjudicate finally and not leave the door ajar for parties to litigate again. In the present case, it is not seriously disputed that if the plaintiff were to sue for recovery of possession today, the Rent Control Law does not stand in the way. Therefore, it is manifestly a measure of doing justice between the parties and ending litigation, which has seen two decades pass, to conclude it here by taking cognizance and adjusting the relief in the light of the later Act and repeal of the earlier Act.

39. On going through the above Judgments, one could understand that as per the law laid down, simply because there are certain disputed questions of fact, the Writ Court need not be hesitant to resolve the real issues involved in the Writ Petition thereby driving the parties again to litigate before some other forum. That is, even without resolving these disputed questions of fact, if the basic substantial issues in the Writ Petition could be resolved on the admitted facts, the Writ Court can further proceed to decide those substantial issues and to grant the relief.

40. Keeping the above principles in mind, if the facts are analyzed, for the reasons stated *infra*, I am sure, the disputed questions in this case are so vitally important and without resolving these disputed questions of fact, it is not at all possible for this Court to give any finding regarding the vital issues involved in this case.

41. Now, again turning to the facts, after the suspension order against the petitioner, several incidents have obviously happened inside the college campus. At times, the help of the police had to be sought to quell the commotion in the College premises. There were two warring groups in the College; One headed by the fourth respondent and the other headed by the petitioner. Shockingly students were also divided. There were protests and counter protests. From the materials placed before me, I could see that on 29.08.2008, there was a clash inside the College Campus; stones were pelted injuring many; police had to resort to lathi charge on the students and staff; two lecturers sustained bleeding injuries; and there was tension in the College Campus. Proceedings u/s 145 Cr.Pc

were also initiated and criminal cases were registered. The above events do not require any more elaboration. At this stage, this Court is constrained to observe that the reputation and prestige of the ancient College, which was established several decades ago by service minded, public spirited and philanthropists with laudable objects were brought down to perils.

42. In the midst of the several litigations, the fourth respondent issued a charge memorandum on 17.06.2008 calling upon the petitioner to submit his explanation within a period of 15 days from the date of receipt of the charge memorandum. The authority of the fourth respondent to issue the charge memorandum is again disputed by the petitioner. According to the learned Counsel for the petitioner, the Governing Council never decided to initiate disciplinary proceedings against the petitioner, but records have been created as if there was a Governing Council Meeting resolving to issue charge memorandum to the petitioner. That is the reason why, the petitioner, without submitting any explanation to the charge memorandum, called upon the fourth respondent to send copy of the resolution, by which he was authorized to issue charge memorandum, it is contended. Now, records have been produced by the fourth respondent as if there was a decision taken in the Governing Council Meeting authorizing the fourth respondent to issue charge memorandum. In view of the serious dispute regarding this, as I have already stated, it is very difficult for this Court to resolve this disputed question of fact also.

43. Admittedly, the petitioner did not submit any explanation to the charges. According to him, as narrated above, he sent a letter calling upon the fourth respondent as well as the Enquiry Officer to send copies of the documents. In the enquiry also, he did not participate. Even for the enquiry report, he did not submit any explanation. The learned Counsel for the petitioner would dispute all the above. He would submit that he not only questioned the authority of the fourth respondent to issue the charge memorandum, but also, he disputed the very correctness of the enquiry held by the Enquiry Officer. To put it otherwise, the stand of the petitioner is that there was no enquiry held at all in the College on the appointed date and no witness was examined, whereas records have been produced as though there was an enquiry held by the Enquiry Officer, in which number of witnesses have filed proof affidavits and number of documents were also marked. This is also a very serious disputed question of fact which cannot be gone into under Article 226 of the Constitution of India, because it is very difficult for this Court to resolve this dispute for want of evidence.

44. Next comes the final meeting of the Governing Council held on 22.09.2008. The meeting was called by the fifth respondent and headed by the fourth respondent. Including the respondents 4 and 5, a total number of nine members participated in the said meeting. Among other resolutions, a resolution, dismissing the petitioner from service, was passed. Based on the said resolution passed, the fourth respondent issued the order of dismissal on 22.09.2008. Here again, the petitioner seriously disputes the authority of the fifth respondent to

convene the meeting. He would further submit that the meeting was not conducted properly and two of the members, who participated in the meeting were not actually the members of the Governing Council. This fact is also seriously disputed by the respondents. According to the respondents, since the petitioner was under suspension with effect from 19.04.2008, the fifth respondent validly convened the meeting in the capacity of the Principal/Secretary and the meeting was duly chaired by the fourth respondent, as the President of the Governing Council. According to them, all the members, who participated in the Governing Council Meeting, are the existing members of the Governing Council, and therefore, there is no illegality in the order placing him under suspension or in the resolution passed dismissing him from service.

45. As I have already stated in the earlier paragraphs, to resolve this question also, evidence is required. In the absence of any such oral evidence of the persons, who participated in the meeting, it is not at all possible for this Court to resolve this disputed question of fact also.

46. The story of the petitioner in respect of the status of the fifth respondent goes differently. According to him, he continued to act as Principal of the College and the Secretary of the Governing Council. He placed the fifth respondent under suspension with effect from 12.04.2008. Therefore, according to him, the fourth respondent was not at all the Vice-Principal after 12.04.2008, and so, there was no occasion for him to act as Principal. He further states that the petitioner convened the Governing Council Meeting on 28.05.2008 which was chaired by a senior member and attended to by a total number of eight members. In the said meeting, it is stated that a resolution was passed to initiate disciplinary proceedings against the fifth respondent. It is further stated that the fifth respondent was never appointed as the Vice-Principal with effect from 01.06.2008 for a period of one year. The petitioner has produced a copy of the Governing Council Meeting held on 28.05.2008. The said meeting is disputed by the respondents 4 and 5.

47. It is also not known as to whether the other members, who participated in the meeting, continued to be the members of the Governing Council or not. By virtue of the said resolution passed, a letter was sent by the petitioner informing the third respondent about his appointment as Vice-Principal. If this meeting said to have been convened on 28.05.2008 should be construed as a valid meeting, then it has to be held that the meeting held on 19.04.2008 and the subsequent meeting held on 22.09.2008 said to have been chaired by the fourth respondent and convened by the fifth respondent are not valid. These questions also cannot be decided by this Court for want of evidence.

48. From all the above narrations, it could be seen that one group headed by the petitioner claims that the petitioner is in office supported by a group of Governing Council Members and the said group claims that the fifth respondent was placed under suspension and the third respondent was appointed as Vice-Principal in his place. But, the other group, which is headed by the fourth

respondent, which has also the support of some of the Governing Council Members, claims that the said group placed the petitioner under suspension and in his place, put the fifth respondent in-charge as Principal and ultimately dismissed the petitioner from service.

49. As narrated above, the group headed by the petitioner claims that the college meeting of the Governing Council headed by him, there was quorum, whereas, the fourth respondent also claims that in both the meetings held on 19.04.2008 and 22.09.2008, there was quorum. Admittedly, the minimum quorum required is participation of eight members of the Governing Council. In the said Governing Council Meeting said to have been chaired by the fourth respondent on 19.04.2008 including the fourth respondent the quorum was eight members. One Dr. Professor Paul Prabahar Appasamy, Rev. Mohan Larbeer and Dr. John Mahendran had attended the said meeting. It is contended by the petitioner that these three members had already resigned from their membership earlier. According to him, Mr. John Mahendran was not appointed by CSI Synod and instead one Mr. Vijayakumkar Dandin was appointed by CSI Synod. Similarly, on the resignation of Dr. Professor Paul Prabahar Appasamy, on 31.03.2008, the All India Association for Christian Higher Education appointed one Mr. V. Saminathan with effect from 02.04.2008. Thus, according to the petitioner, the meeting held on 19.04.2008, as well as the meeting held on 22.09.2008 headed by the fourth respondent lacked quorum, and therefore, the decision taken in these two meetings are void.

50. It is the further case of the petitioner that the meeting held on 28.05.2008 chaired by a senior member viz., Mr. Franklyn James, had required quorum. The members, who participated in the said meeting, according to the petitioner, are the petitioner, Mr. Franklyn James, Mr. Rajendran Pandian, Dr. K. Navaneetha Kannan, Dr. V. Swaminathan, Mr. Ratnasamy Sathiamoorthy, Mr. Vijayakumar V. Dandin and Dr. A.K. Kumaraguru. Further, according to the petitioner, the members absent were Rt. Rev. Dr. A. Christopher Asir - the fourth respondent herein, Dr. V. George Selvakumar - the fifth respondent herein, Dr. M. Davamani Christoher, Dr. Jeyachandra Gabriel and Rev. P. Jeyachandran. Thus, according to the petitioner, the total number of members including the Principal/Secretary and the Bishop Chairman during the relevant point of time was only 13, out of which, the meeting held on 28.05.2008 was attended to by eight members. The said statement is seriously disputed by the respondents 4 and 5. As per the meeting held under the chairmanship of the fourth respondent, there were eight members who are the fourth and fifth respondents, Dr. M. Davamani Christoher, Rev. P. Jeyachandran, Er. John Mahendran, Dr. Prof. Paul Prabahar Appasamy, Rev. Mohan Larbeer and Dr. Gabriel Jeyachandran. According to the respondents 4 and 5, Er. John Mahendran, Rev. Mohan Larbeer and Dr. Prof. Paul Prabahar Appasamy continued to be the members of the Governing Council. It is contended by the petitioner that Dr. Professor Paul Prabahar Appasamy, Rev. Mohan Larbeer and Dr. John Mahendran had already resigned from their membership, and therefore, the meeting cannot be held to be a validly convened

meeting for want of quoram. The learned Counsel for the petitioner would rely on a communication dated 02.04.2008 from the General Secretary of Tamil Nadu Association for Christian Higher Education addressed to the petitioner to the effect that in the vacancy caused on the resignation of Dr. Ridling Margaret Waller, one Mr. Ratnaswamy Sathiamoorthy was appointed. Similarly, in another letter dated 02.04.2008, the General Secretary of Tamil Nadu Association for Christian Higher Education has communicated to the petitioner that in the vacancy caused by the resignation of Dr. V. Paul Appasamy, Vice Chancellor, Karunya University, Coimbatore, one Dr. V. Swaminathan, Vice Principal retired, American College was appointed.

51. From the above two letters, the learned Counsel for the petitioner would contend that Dr. V. Paul Appasamy was not a member of the Governing Council. But, on the side of the respondents 4 and 5, a similar letter dated 18.06.2008 has been produced. In the said letter, the very same General Secretary of Tamil Nadu Association for Christian Higher Education has stated that AIACHE had changed its nominees to the Council with effect from 18.06.2008. Dr. Peter Jeyapandian, former Principal of the American College, Madurai, and Dr. D. Daniel Ezhilarasu, Principal, Voorherse College, Vellore have been appointed in the place of Dr. V. Paul Appasamy and Dr. Ridling Margaret Waller. In the said letter, there is no mention about the appointment of Dr. Swaminathan and Dr. Ratnasamy Sathiyamoorthy. Admittedly, as per the Constitution, there can be only two persons appointed by the General Secretary of Tamil Nadu Association for Christian Higher Education from Tamil Nadu Region as members of the Governing Council.

52. Here, the letters dated 02.04.2008 show that in the place of Dr. V. Paul Appasamy and Dr. Ridling Margaret Waller, Dr. V. Swaminathan and Mr. Ratnaswamy Sathiamoorthy have been nominated, whereas the letter dated 18.06.2008 of the General Secretary of Tamil Nadu Association for Christian Higher Education shows that Dr. Peter Jeyapandian and Dr. D. Daniel Ezhilarasu have been appointed in the place of Dr. V. Paul Appasamy and Dr. Ridling Margaret Waller. The letter dated 18.06.2008 indicates as if Dr. V. Paul Appasamy and Dr. Ridling Margaret Waller continued to be in office till 18.06.2008 until Dr. Peter Jeyapandian and Dr. D. Daniel Ezhilarasu were appointed, whereas, the letter dated 02.04.2008 gives an indication as though Dr. V. Paul Appasamy and Dr. Ridling Margaret Waller did not continue to be the Members of the Governing Council beyond 02.04.2008. Thus, the above letters only create confusion and there is no clear proof as to who are all the nominated members by the General Secretary of Tamil Nadu Association for Christian Higher Education on the relevant dates i.e., 19.04.2008, 28.05.2008 and 22.09.2008. Therefore, this Court is not in a position to decide whether the meetings held under the Chairmanship of the fourth respondent on 19.04.2008 and 22.09.2008 were validly convened meetings and attended to by the real members constituting the quoram or not. Similarly, whether the meeting held on 28.05.2008 and convened by the petitioner was attended to by the real members constituting quoram or

not also could not be decided by this Court. Apart from the above, the petitioner claims that Dr. Mohan Larbeer resigned and the same was accepted in a meeting held on 28.05.2008. The said fact is disputed by the respondents 4 and 5. According to them, the meeting held on 28.05.2008, and convened by the petitioner itself was not validly convened and the same was not attended to by the real members, and therefore, the so called acceptance of the resignation of Rev. Mohan Larbeer is not valid. This disputed question of fact could not be resolved by this Court.

53. For the foregoing discussions, I have to hold that this Court is not in a position to give any finding as to whether the suspension of the petitioner made pursuant to the so called meeting held on 19.04.2008 under the Chairmanship of the fourth respondent is valid or not. Similarly, this Court is not in a position to give any finding as to whether the so called meeting held on 22.09.2008 resolving to dismiss the petitioner from service is valid or not.

54. In the same way, this Court is not in a position to give any finding as to whether the suspension of the fifth respondent by the petitioner is valid or not and whether the proceedings of the meeting held on 28.05.2008 resolving to accept the resignation of Rev. Mohan Larbeer and ratifying the suspension of the fifth respondent is valid or not.

55. Likewise, this Court is not in a position to give any finding as to who are all the real members of the Governing Council either on 19.04.2008 or on 28.05.2008 or on 22.09.2008, on which dates, the rival parties claim to have convened the meetings. The letters given by the General Secretary of Tamil Nadu Association for Christian Higher Education on 02.04.2008 and 18.06.2008 are highly contradictory, and so, on the basis of the said letters, no definite finding could be given in respect of the actual nominees of the Tamil Nadu Association for Christian Higher Education.

56. All the above disputed questions of fact could be resolved only on evidence by examining the persons concerned and by proving the disputed documents. The said course is not at all possible for the Writ Court under Article 226 of the Constitution of India.

57. The contention of the learned Counsel for the petitioner that though there are disputed questions of fact, still, it is incumbent on the part of this Court to grant the relief in favour of the petitioner in the present Writ Petition accepting his contentions cannot be countenanced at all. It is not as though the disputed questions of fact are either minor or not much relevant to decide the main issues in the Writ Petition, I am of the firm view that without resolving the above disputed questions of facts, which are very vitally important, it is absolutely impossible for this Court to give any definite finding either in favour of the petitioner or in favour of the respondents 4 and 5 or in favour of the third respondent. As a result, the first contention of the learned Counsel for the petitioner that entire disciplinary proceedings starting from suspension

culminating in dismissal is void for want of authority cannot be either countenanced or discountenanced by this Court. The said question is left open, as, it is for the aggrieved parties to approach the appropriate Civil Court to establish the case. 58. In the typed set of papers submitted by the petitioner, a letter from the petitioner addressed to the Director of Collegiate Education on 27.05.2008 has been produced. In the said letter, the petitioner has stated as follows:

It is reliably learned that Rt. Rev. A. Christopher Asir and Dr. V. George Selvakumar, Reader in History in the American College (presently under suspension) are in the process of appealing to the Directorate for the change of Secretaryship of the College by filing false documents. They also allegedly held a fake Governing council Meeting on 19.0.2008 and prepared false documents which they filed with the Joint Director of the Collegiate Education which were promptly rejected by the JDCE through the letter in item No. 7 above. The legality of this meeting is being challenged in Civil Suit in I.A. No. 76/2008 in O.S. No. 57/2008 posted for hearing on 3 June 2008. Any claim of membership or change of membership using ministerial instrument like Form 7 is subjudice.

59. From this, I could perceive that already a Civil Suit has been filed by a party to the Writ Petition in O.S. No. 57 of 2008 before the Civil Court. But, no party has advanced any argument regarding the pendency of the said Civil Suit. This Court, only from the typed set of papers, could cull out the above fact. If it is so, the parties can establish the rival claims in the said Suit in respect of the meeting held on 19.04.2008 as well as they can institute a separate suit in respect of the meeting held on 28.05.2008 and 22.09.2008.

Second and Third Grounds:

60. Let me now proceed to the second ground raised by the learned Counsel for the petitioner that the enquiry was not held fairly and properly by the Enquiry Officer and the impugned order has been passed in gross violation of principles of natural justice.

61. The learned Counsel for the petitioner would submit that though it is the settled law that copies of the documents relied on in support of the charges should be furnished to the delinquent well in advance so as to afford him a fair opportunity to defend the charges, in this case, despite request made by the petitioner to furnish the vital documents, they were not so furnished to him. Admittedly, the petitioner did not submit any reply statement as soon as the receipt of charge memorandum within the time frame of 15 days given to him, and instead, from the materials produced before me, I am able to see that the petitioner only questioned the very authority of the fourth respondent to issue charge memorandum. As soon as the Enquiry Officer was appointed, the Enquiry Officer sent notice on 02.09.2008 to the petitioner calling upon him to participate in the enquiry to be held on 10.09.2008 at 10.30 a.m in the College. Even after the receipt of said notice, admittedly, the petitioner did not submit any

explanation denying the charges, and instead, by means of a letter dated 09.09.2008, the petitioner once again questioned the authority of the Enquiry Officer to hold the enquiry, as, according to him, the fourth respondent had neither power to issue charge memorandum nor to appoint the Enquiry Officer. In the very same letter, he had inter alia asked for copies of certain documents which includes two complaints furnished by the fifth respondent and another person and the statements. A copy of the said letter was also marked to the Enquiry Officer. The Enquiry Officer in his report itself makes a mention about the receipt of the said letter. Even after the receipt of the said letter, it is not incontrovertible that copies of the required documents were not furnished to the petitioner. The Enquiry Officer states that the enquiry was completed on 10.09.2008 at 12.30 p.m, and thereafter, when he returned to his residence, he received the letter of the petitioner dated 09.09.2008 asking for certain copies of documents. Therefore, according to him, there was no occasion for him to furnish the copies of the documents. The Enquiry Officer has further stated in the counter that since the petitioner questioned the very authority of the Enquiry Officer to proceed with the enquiry, he ignored the letter of the petitioner dated 09.09.2008.

62. From the facts narrated above, it is clear that though the petitioner wanted copies of certain documents, for their own reasons, which are unacceptable to the Court, the respondents 4 and 7 did not furnish the required copies of the documents. The explanation offered by the Enquiry Officer that he ignored the letter of the petitioner dated 09.09.2008 cannot be accepted. As per the established procedure, in respect of the disciplinary proceedings, though the delinquent officer either fails or boycotts to participate in the enquiry proceedings, and the Enquiry Officer decides to proceed ex-parte, even then, after the completion of the evidence on the side of the management witnesses, it is incumbent on the part of the Enquiry Officer to issue yet another notice to the delinquent calling upon him to produce evidence, if any, on his side. Obviously, the said procedure has also not been followed by the Enquiry Officer. Apart from that, had it been in the mind of the respondents 4 and 7 to afford sufficient opportunity and to have a fair enquiry, they would have forwarded copies of the documents which were requested by the petitioner by means of the letter dated 09.09.2008. After furnishing the copies of the documents, they would have given yet another chance to the petitioner to participate in the enquiry.

63. It is an admitted fact that one and the only notice from the Enquiry Officer was dated 02.09.2008 calling upon the petitioner to participate in the enquiry to be held on 10.09.2008. I do not understand as what was the force behind the Enquiry Officer to hurriedly conclude the enquiry without even affording sufficient opportunity to the petitioner. Had it been the fact that the letter dated 09.09.2008 was received before the enquiry proceeding started, then there would have been a slight justification on the part of the Enquiry Officer not to wait for the petitioner to participate in the enquiry, because of the stand taken by the petitioner in his letter dated 09.09.2008 that the enquiry itself is without

jurisdiction. But, that is not case here. Admittedly, there was no word from the petitioner till the enquiry was commenced on 10.09.2008. In normal course, one would expect a fair Enquiry Officer to afford one more opportunity to the delinquent so as to enable him to participate in the enquiry. But, the seventh respondent did not do so. This itself would only give an impression that the seventh respondent would have been under mounting pressure from some quarters to complete the enquiry in a hurried manner within a few hours. That is why, in his counter, he has stated that even after the receipt of the letter, he simply ignored the same. It is the well settled law that non-furnishing of vital documents to the delinquent would vitiate the entire proceedings, as the same would be a violence to the principles of natural justice.

64. The object of enquiry is to find out the truth after affording sufficient opportunity to the delinquent against whom allegations are levelled. But, from the facts submitted before me, I am fully convinced that the seventh respondent had not kept in mind the fairness required from him while involving himself in the task of finding the truth as an Enquiry Officer. As I have already stated, probably because of the mounting pressure upon him, he had to complete the enquiry and submit a report on 12.09.2008 itself. Therefore, I have to conclude that the enquiry into the charges was not held fairly and properly in accordance with the established procedure.

65. Admittedly, as soon as the receipt of the Enquiry Officer's Report dated 12.09.2008, the fourth respondent sent a copy of the Enquiry Officer's Report to the petitioner calling upon him to submit his explanation in person on 22.09.2008 at 3.00 p.m. In response to the said report, the petitioner had sent a telegram to the fourth respondent. In the said telegram, once again the petitioner had reiterated his dispute regarding the authority of the fourth respondent to initiate disciplinary proceedings. He has further stated that neither his letter dated 09.09.2008 nor telegram should be treated as an explanation, as, according to him, the same would amount to submission to the authority of the fourth respondent. He has further stated that neither enquiry was held on 10.09.2008 nor any witness was examined before him. Curiously, in the telegram, though the petitioner has stated that the copies of the proof affidavits and alleged exhibits produced during enquiry were not furnished to him, he did not ask for copies of those documents. He did not even make any whisper that he was highly prejudiced because of the conduct of the Enquiry Officer in not furnishing the copies of the vital documents or in not affording sufficient opportunity to the petitioner. His concentration was only in questioning the very authority of the fourth respondent and the Enquiry Officer.

66. The learned Counsel for the petitioner would submit that it is the well settled law that along with the Enquiry Officer's Report, copies of the exhibits should be furnished to the delinquent so that he can submit his explanation. In State of Uttaranchal and Others Vs. Kharak Singh, , the Hon''ble Supreme Court has held as follows;-

The following are some of the basic principles regarding conducting of departmental enquiries; (i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities; (ii) If an officer is a witness to any of the incidents which is the subject matter of enquiry or if enquiry was initiated on a report of an Officer, then in all fairness he should not be the enquiry officer. If the said position becomes known after appointment of enquiry officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer; (iii) In an enquiry, the employer/department should take steps first to lead evidence against workman/delinquent charged and give an opportunity to him to cross-examine witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give an explanation about the evidence led against him; (iv) On receipt of enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.

67. The learned Counsel for the petitioner relies Judgment of the Hon'ble Supreme Court in D.K. Yadav Vs. J.M.A. Industries Ltd., , wherein, in paragraph 12, it is held as follows:

Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable.

68. Admittedly, in this case, the copies of the documents, the exhibits and the depositions were not furnished to the petitioner. On this ground, the learned Counsel for the petitioner would contend that further proceedings culminating in the dismissal of the petitioner is illegal, as, the same could be termed as an act of violation of principles of natural justice.

69. The contention of the learned Senior Counsel for the respondents 4 and 5, at this juncture, needs to be considered. They would contend that it was not the case of the petitioner that since non-furnishing of the copies of the documents and non-furnishing of the affidavits, the petitioner was prejudiced in his defence. When that is not the specific stand taken in the telegram, according to the learned Senior Counsel for the respondents 4 and 5, furnishing of copies of the

documents would have been only an empty formality. But, I find it some what difficult to agree with the said argument. When the law says that the copies of the documents are to be served, it is incumbent on the part of the Enquiry Officer to furnish the copies of the documents. On receiving such documents, the petitioner might have taken a different kind of stand. For example, he could have even pleaded for mercy in the matter of punishment. Therefore, when there is a demand made by the delinquent asking for certain copies of the documents, it is necessary on the part of the authorities to furnish the copies of the required documents. This has not been followed in this case.

70. The meeting of the Governing Council was again convened on 22.09.2008 by the fifth respondent. Here again, the petitioner would question the authority of the fifth respondent to convene the meeting, as, he was neither the Vice-Principal nor the Principal in-charge during the relevant point of time, as, his term of the office expired long before and the third respondent was appointed in his place. As I have already discussed, it is once again a disputed question of fact about which I cannot give any finding without recording any evidence.

71. In the meeting held on 22.09.2008, it was resolved to dismiss the petitioner from service and pursuant to the same, by means of the impugned communication dated 22.09.2008, the petitioner was dismissed from service by the fourth respondent. Regarding the said meeting and the decision taken, it is the contention of the learned Counsel for the petitioner that there is a deep routed bias on the part of two participants in the meeting. According to him, the fifth respondent Dr. V. George Selvakumar and one Dr. M. Devamani Christopher also participated in the said meeting. But, Dr. V. George Selvakumar and Dr. M. Devamani Christopher were examined, according to the Enquiry Officer's Report, as witnesses in support of the charges. It is only on their complaints which have been exhibited before the Enquiry Officer, the disciplinary proceedings were initiated. In this backdrop, the learned Counsel would submit that in the decision taken in the meeting, bias is to be inferred and as a result, the decision of the meeting should be held to be void. The learned Counsel for the petitioner to substantiate his contention relies on the following Judgments of the Hon''ble Supreme Court:

In Ashok Kumar Yadav and Others Vs. State of Haryana and Others, , the Hon''ble Supreme Court has held as follows:

One of the fundamental principles of our jurisprudence is that no man can be a judge in his own cause. The question is not whether the judge is actually biased or in fact decides partially but whether the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. If there is a reasonable likelihood of bias it is "in accordance with natural justice and common sense that the justice likely to be so biased should be incapacitated from sitting.

In Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education)

Higher Secondary School and others, , the Hon"ble Supreme Court has held as follows:

For appreciating a case of personal bias or bias to the subject-matter the test is whether there was a real likelihood of a bias even though such bias has not in fact taken place. A real likelihood of bias means at least substantial possibility of bias. Answer to the question whether there was a real likelihood of bias depends not upon what actually was done but upon what might appear to be done. The test of bias is whether a reasonable intelligent man, fully apprised of all the circumstances, would feel a serious apprehension of bias. The test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done.

In Administrative Law, rules of natural justice are foundational and fundamental concepts and law is now well settled that the principles of natural justice are part of the legal and judicial procedures and are also applicable to the administrative bodies, in its decision-making process having civil consequences.

In Tilak Chand Magatram Obhan v. Kamala Prasad Shukla reported in 1995 SC 1 SCC 21, the Hon"ble Supreme Court has held as follows:

There is a distinction between a defect in the enquiry and a lapse which almost destroys the enquiry. Where the lapse is of the enquiry being conducted by an officer deeply biased against the delinquent or one of them being so biased that the entire enquiry proceedings are rendered void, the appellate authority cannot repair the damage done to the enquiry. Where one of the members of the Enquiry Committee has a strong hatred or bias against the delinquent of which the other members know not or the said member is in a position to influence the decision making, the entire record of the enquiry will be slanted and any independent decision taken by the appellate authority on such tainted record cannot undo the damage done. Besides where a delinquent is asked to appear before a committee of which one member is deeply hostile towards him, the delinquent would be greatly handicapped in conducting his defence as he would be inhibited by the atmosphere prevailing in the enquiry room. Justice must not only be done, but must also appear to be done. It would not so appear to the delinquent if one of the members of the Enquiry Committee has a strong bias against him. However, the bias must be strong and hostile and not a mere allegation of bias of a superior having rebuked him in the past or the like.

In K.M. Valliapan Vs. Joint Director of School Education, (Higher Education) and Appellate Authority and Madras Seva Sadhan Higher Secondary School, , a Full Bench of this Court has held as follows:

It is apparent that initially an enquiry was held by the School Committee as a whole, but subsequently before finalization it was decided to entrust the enquiry

to a Sub-Committee. Some of the members belonging to the School Committee deposed at such enquiry held by the Sub-Committee and ultimately some of those members also sat in the School Committee while deciding about the guilt of the concerned employee and while considering the question of punishment. It is thus obvious that such proceedings of the School Committee became vitiated because some of the witnesses sat as members of the School Committee and took the decision and participated in the ultimate decision whereunder it was decided to punish the concerned employee. Therefore, the principles of natural justice stood violated and the Order passed cannot be upheld.

72. The contention of the learned Senior Counsel for the respondents is that though it is true that two of the members, who participated in the Governing Council Meeting, figured as witnesses before the Enquiry Officer, on that score alone, bias cannot be inferred. According to them, the decision was taken in a democratic way. Dr. V. George Selvakumar and Dr. M. Devamani Christopher would not have had any occasion to influence the other members. They would further submit that the said decision was not an individual decision of these two members, but the collective decision of all the members. Therefore, according to them, there was no bias at all as established by the petitioner.

73. In respect of this contention, I find every force in the argument of the learned Counsel for the petitioner. May be true that Dr. V. George Selvakumar and Dr. M. Devamani Christopher were minorities in the Governing Council Meeting. But, still they are part of the decision making process. One cannot rule out the possibility of these two, influencing the rest of the members to resolve to dismiss the petitioner from service. So, bias has to be inferred.

74. A cursory glance through the above Judgments, in Paragraph 71 above, extracted above, would make it clear that if a witness, before the Enquiry Officer, happens to be a member in the Committee which takes a decision, certainly, bias could be inferred. Therefore, based on the views expressed in the above said Judgments and having regard to the entire facts and circumstances of the case, I have to necessarily hold that the decision taken by the Governing Council on 22.09.2008 dismissing the petitioner from service is actuated by bias.

75. The learned Counsel for the petitioner would term the bias as a deep routed bias. He would submit that it is quite natural for Dr. V. George Selvakumar and Dr. M. Devamani Christopher to have such a deep routed bias. As pointed out by him, from the facts placed before me, I am able to see that the term of these two persons expired on 31.05.2008. Though it is claimed that they were re-nominated for yet another term of one year, the petitioner disputes the same. Apart from the above, according to the petitioner, Dr. V. George Selvakumar was placed under suspension by the petitioner as claimed by him. Therefore, there cannot be any doubt that these two members are members of one group which is waging war against the other group. So, I am of the considered view that there is nothing wrong in concluding that the bias alleged can certainly be termed as a deep routed bias.

76. Having held that the Order of dismissal of the petitioner from service suffers from serious infirmity like violation of principles of natural justice and deep rooted bias, this Court would have, in normal course, proceeded to declare that the impugned order of dismissal is void. But, the learned Senior Counsel would submit that still there is a legal impediment for this Court to declare that the dismissal order as void.

77. The learned Senior Counsel Mr. A.L. Somaiyaji would submit that the principles of natural justice is not a one way traffic to be always in favour of the delinquent. It cannot be either farcical or as an empty formality. According to him, violation of principles of natural justice can be urged only by a person, who has participated in the disciplinary proceedings. But, in this case, according to him, since the petitioner did not participate in the disciplinary proceedings at all, as, he was questioning the initiation of disciplinary proceedings and the authority of the Enquiry Officer, the benefit of principles of natural justice is no longer available to the petitioner.

78. I have considered the rival submissions. As narrated above, in all his letters and telegrams, the petitioner never expressed his willingness to participate in the enquiry proceedings. Further, it is not the case of the petitioner in any of the communications that due to non-supply of the copies of documents, he was prevented from participating in the enquiry proceedings. Even in the letter written to Enquiry Officer, the petitioner has not stated that he would participate in the enquiry proceedings provided, the copies of documents are furnished. Similarly, after the receipt of second show cause notice along with the Enquiry Officer's Report, had it been the case of the petitioner that he had defence to establish the case, he would have certainly said so in his letter seeking an opportunity to participate in the enquiry proceedings to cross-examine the witnesses and produce his documents. But, he has not done so. It is, for the first time, before this Court, it is alleged that the enquiry was not held in accordance with the principles of natural justice. In *Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja*, , while dealing with an identical issue, the Hon'ble Supreme Court has held as follows:

From the ratio laid down in *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, , it is explicitly clear that the doctrine of natural justice requires supply of a copy of inquiry officer's report to the delinquent if the inquiry officer is other than the disciplinary authority. It is also clear that non-supply of the report of inquiry officer is in breach of natural justice. But, it is also clear that non-supply of the report of inquiry officer is in breach of natural justice. But, it is equally clear that failure to supply report of the inquiry officer to the delinquent employee would not ipso facto result in proceedings being declared null and void and order of punishment non est ineffective. It is for the delinquent employee to plead and prove that non-supply of such report has caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the Court on that point, the order of punishment cannot automatically be set aside.

79. In the case on hand also, the petitioner neither pleaded nor proved that non-supply of the copies of the documents had caused prejudice to him resulting in miscarriage of justice.

80. A Division Bench of this Court in *Dr. C. Chendroyaperumal v. National Institute of Port Management and Anr.* reported in 2006 WLR 820 has held as follows:

Therefore, it is clear from the above sequence of events that the appellant was never willing to rejoin duty and an enquiry would not have changed the scenario. As observed by the Supreme Court in para 26 of the afore said Judgment in *Aligarh Muslim University* case, the appellant was put on notice that his leave was sanctioned only upto a particular date and that he would be discharged from service if he did not join duty. Despite such repeated warnings, the appellant chose to prioritize his "domestic problems" over his "professional commitments to the Institute. Therefore, his case fell under the exception pointed out in *Mansoor Ali Khan's* case.

81. Similarly, the petitioner in the present Writ Petition, who is a Ph.D., Holder, is expected to know the consequences of failure to participate in the disciplinary proceedings, has deliberately failed to participate in the proceedings. May be that he had justification not to participate in the proceedings, since according to him, the entire exercise was without jurisdiction. Having taken such a stand, now, it is not open for him to say that there is violation of principles of natural justice.

82. In *Sanjay Kumar Vs. The State of Bihar and Others*, , the Hon"ble Supreme Court, after analyzing various Judgments of the Hon"ble Supreme Court, has approved the view taken in 1984 4 SCC 379, wherein the Hon"ble Supreme Court has evolved two exceptions to the breach of principles of natural justice i.e., (i). "if upon admitted or indisputable facts only one conclusion was possible", then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. "In other words, if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice". (ii). The principle that in addition to breach of natural justice, prejudice must also be proved". Thus, in the absence of any prejudice, failure to follow the principles of natural justice, cannot be a sufficient ground to quash the Order".

83. Applying the above principles to the facts of the present case, if ultimate analysis is made, it would emerge that in this case, the petitioner has nowhere pleaded any prejudice to him due to non-supply of the copies of documents. Further, as held by the Hon"ble Supreme Court, the principles of natural justice need not be expected to be followed as an empty formality. It is not the case of the petitioner at all that he would have participated in the enquiry had the copies of documents been furnished to him. Even if the copies of the documents had been furnished to him, he would not have participated in the enquiry proceedings, and therefore, the question of prejudice does not arise. Therefore, I

am of the firm view that on the ground of violation of principles of natural justice, the impugned order of dismissal cannot be set aside.

84. At the same time, as I have concluded in the earlier paragraphs, there is every force in the argument of the learned Counsel for the petitioner that there was a deep rooted bias with the members who ultimately decided to dismiss the petitioner from service. From the facts narrated above, it could be seen that many of the members who participated in the meeting said to have been convened on 19.04.2008 and 22.09.2008 are in one group headed by the fourth respondent which was virtually waging a war against the other group. As I have narrated in the earlier parts of this Order, there was not only commotion, but also clash between two groups injuring many including the students and Professors. In the meeting held on 22.09.2008, witnesses who filed proof affidavits during the enquiry before the Enquiry Officer, participated in the meeting. Apart from that, the Bursar of the College is the son in law of the fourth respondent. So, on the ground that there is bias, the resolution dated 22.09.2008 dismissing the petitioner can be found fault with and on that ground, it can be quashed.

85. If the said resolution dated 22.09.2008 is so quashed, then, as a corollary, this Court will have to direct the petitioner to appear before the Governing Council to be headed by the petitioner for further proceedings to submit his explanation etc. If the said course is to be adopted, this Court has to be first of all sure of the actual members of the Governing Council. As I have already held, since it is not at all within vicinity of this Court to give any definite finding about the real members of the Governing Council, this Court cannot issue any such direction to the petitioner to appear before the Governing Council which has initiated the disciplinary proceedings. Therefore, the only course, which could be adopted, is simply declare that the impugned order is bad in law on the ground of bias alone and leaving the option to the petitioner to submit to the jurisdiction of the Governing Council which has initiated the proceedings, if he is willing to do so by giving up his dispute regarding the authority of the said council by submitting his explanation. But, at the same time, it should not be construed that this Court has given any approval regarding the authority of the fourth respondent to initiate disciplinary proceedings regarding the validity of the resolutions passed on 19.04.2008 and 22.09.2008.

86. At this juncture, I deem it appropriate to refer the report submitted by the Tamil Nadu State Commission For Women, Chennai dated 11.11.2008. A copy of a report has been filed by way of typed set of papers. On a Memorandum received from few women faculty members of American College on 02.09.2008, the Tamil Nadu commission for Women headed by its Chairperson Dr. K.M. Ramathal and Member Dr. Qudsia Ganthi, I.A.S., had held enquiry regarding the happenings on 29.08.2008 in the college premises. The report is very elaborate and it runs to several pages. The commission had the benefit of examining 26 persons which includes students, staff and others. It also had the benefit of

examining the Police Officers and the other authorities. It is really heartening to know the events which happened inside the College Campus as recorded by the Commission. The important observations and findings of the Commission are as follows:

(i). It emerged from the various versions presented before us during the enquiry that there are several allegations regarding the constitution of the Governing Council and the Management of the College before several Fora.

(ii). It is also clearly proved us through the oral statements and the documents produced to the Commission that after the above mentioned ad interim injunction of the Madurai Bench of the Madras High Court dated 27th August, Dr. Chinnaraj Joseph who had since then being functioning continuously as the Principal of the College in deference to the Order of the High Court, handed over charge of the day to day affairs of the College to the Vice Principal, Dr. Anbudurai. Dr. Anbudurai had in turn also appeared before the Commissioner of Police and apprehending that the Bishop may illegally force himself into the College presented a memorandum to the Commissioner of Police asking for police protection to the College. All these facts are also borne out by records that were duly submitted to the Commission by the parties and agreed to by the Commissioner of Police who also appeared before the Commission.

(iii). Therefore, from the above mentioned facts that have been borne out to the commission by witnesses who appeared as well as the documents that we have had the privilege of perusing, we have no hesitation in unhesitatingly concluding that as until the afternoon of the 29th August, it was Dr. Anbudurai who was in control of all matters relating to the College and that prior to him until the 28th till the Order of the Madras High Court, it was Dr. Chinnaraj Joseph who was in control of the day to day affairs of the College.

(iv). Taking advantage of the Ad Interim Injunction order of the High Court dated 27th August referred above, the Bishop entered the American College premises with the help of the Police and his supporters, mostly pastors, wearing their Cassocks. There is sufficient evidence to show that the Bishop and his team were carefully escorted by the Police on duty at the College premises. It was further evident to the commission that two responsible persons were pleading an illegal act with the help of persons "claimed by one side to be rowdy elements" and in the presence of faculty members and students. It was therefore categorically clear to the Commission after hearing both parties as well as the Police officers who appeared before us that it was the Police on duty in the Campus who were then under the direct control of the Deputy Commissioner of Police, Mr. Prabhakaran who were responsible for allowing the Bishop and his men not only to enter the campus with Police protection, but also stand as mute witnesses to their breaking open the lock of the Principal's room. It was also justified by the Police that they were only implementing the Order of the Madurai Bench of Madras High Court referred above.

(iv). The Commissioner of Police in his Statement had admitted that he received intelligence report that nearly 40 cars and 50,000 (sic) people are organized in a church and planned to enter the College forcefully. It is his admission in his statement that he called the Bishop and warned him severely. From the above statements, it is clear that he had definite information about who were getting ready to create law and order problems and it is therefore also clear that he had not cared to take any stringent action against them. It is also admitted by the Commissioner of Police that the lock of the Principal's chamber was broke opened by the Bishop's people and his force was giving protection to the students, faculty and particularly girl students. The Commissioner of Police has mentioned about the deployment of women police inside the College at the time of this action especially when he had the knowledge about 5,000 people gathering inside the church and also in front of the College afterwards.

We heard continuous evidence being tendered before us to the effect that after the "takeover" of the campus by the Bishop and his men, there was the continuous presence of "rowdy" elements inside the campus until the day prior to our visit to Madurai for the enquiry. We would also like to view this seriousness and have also discussed this with the Commissioner of Police and received his assurance that all such elements would henceforth not be allowed to enter the College campus.

We would also hasten to add that while the police were "allowing" the Bishop and his men to enter the campus that they were hitherto unable to do, classes were going on inside the campus and it was seeing this mob enter that a large number of students started offering support to their teachers by opposing the police who by then were also ready for a show down with the students inside the College Campus.

Having come to clear conclusions on this issues before us, we would like to make the following recommendations:

We would appreciate that the Government of Tamil Nadu requests the District Collector of Madurai to ensure that all the students and teaching faculty members who were injured in the lathi charge inside the American College Campus on the afternoon of the 29th August are provided quality medical care and that they are further provided compensation after their making claims for the same formally to the District Collector.

Since the Commission has categorically come to the conclusion that the Assistant Commissioner of Police, Tallakulam is openly supporting the Bishop and his men and he has also been responsible for the illegal entry of the Bishop and his men to the college on the 29th afternoon, we strongly recommend to the Government of Tamilnadu that he may be immediately transferred outside Madurai City jurisdiction without any further delay.

The Government of Tamilnadu is recommended in the interest of justice to ensure that there is a detailed enquiry ordered into the responsibility of the

Commissioner of Police, Madurai City as to what precautions he had taken to ensure that there was no breakdown of law and order as he had been previously informed through his intelligence services. The said enquiry may also dwell upon why no adequate proper strength of women police force was not deployed when there are so many women faculty members and girl students in the American College. He may also be asked to explain the reason for the continuous presence of outsiders in the American College Campus - including the sons of the Bishop, namely, Joel and Jeba - all while a large posse of police men and women were posted inside the campus from the 29th August till the previous day to our arrival.

We would strongly further recommend that the Government of Tamilnadu requests the District Collector of Madurai to ensure that all the women students and teaching faculty members who deposed before the Commission and who had made allegations of vulgar and sexual verbal abuse by the police in their depositions to us may be adequately compensated with a payment of Rs. 5000/- to each of them by the Government after a proper statement is recorded from each of them.

The Commission further recommends that the Government of Tamilnadu orders a proper enquiry into the illegal entry of the Bishop and his men into the American College premises, the breaking open of the locks on the door of the Principal's office in the presence of the Bishop, his men and the onlooking policemen headed by a senior officer of not less than the rank of Inspector General of Police of the Crime Branch CID. The enquiry shall specifically look into the breach of official responsibility of the Assistant Commissioner of Police, Tallakulam, Mr. Prabakaran (DC, Madurai City) and Mr. Nandagopalan, the Commissioner of Police, Madurai City.

The District Collector Madurai, the Commissioner of Police, Madurai City and the Joint Director of College Education shall ensure that all pending complaints that have so far been brought to their notice by the students, teachers and representatives or the Management of American College are dealt with justly as per the provisions of law as well as disposed off speedily. This will also apply to all further complaints that may arise.

87. The Tamil Nadu State Commission for Women is an independent body, which has acted swiftly on receiving complaint from the faculty members. I hardly find any reason to disregard the findings of the Commission. On the basis of the said findings of the State Commission, it is not the endeavour of this Court to declare that the fourth respondent Bishop had engaged rowdy elements and gooligans and forcibly took possession of the College and the administration. It has become necessary for this Court to refer to the above Commission's Report only for the purpose of making an arrangement in respect of the running of the administration of the College. If this Writ Petition is simply disposed of without making any interim arrangement, I am sure, it will once again lead to law and order problems inside the College Campus. During the course of argument, Mr.

T.R. Rajagopalan, learned Senior Counsel, has submitted that 600 students were prevented from writing the examinations during the current semester examination, which was conducted recently. It is really very shocking to know this fact. Mr. Isaac Mohanlal would submit that the students were not prevented from writing the examination by the petitioner, but, there was no conducive atmosphere for the students to go inside the College Campus to write their examinations. This argument of the learned Counsel for the petitioner cannot be lightly brushed aside. Anyhow, the fact remains that as of now the atmosphere is not conducive for the students to peacefully do their studies.

88. Having regard to all the above, I am of the considered view that the Writ Petition needs to be disposed of on certain terms in respect of the management of the College by way of an interim arrangement. Since this Court is not in a position to declare whether the disciplinary proceedings initiated against the petitioner is valid or not and since this Court is not in a position to give any finding as to whether the meeting held on 28.05.2008 is valid and whether resolutions passed thereon are valid or not, this Court is not in a position either to allow the Writ Petition or dismiss the same either upholding the disciplinary proceedings against the petitioner or setting aside the same.

89. From the Report of the Tamil Nadu State Commission for Women, it could be seen that until the interim order granted by this Court Dr. P.R. Anbudurai - the third respondent - was acting as the Principal/Secretary of the College and he was managing the affairs. Therefore, I am of the considered view that as an interim measure, Dr. P.R. Anbudurai may be allowed to function as the Principal/Secretary of the College until the question as to whether the petitioner is the Principal/Secretary or the fifth respondent is the Principal in-charge Secretary is resolved before the Civil Court on appropriate proceedings to be initiated by the parties. It should be mentioned at this stage that for the months of September and October 2008, no salary was paid to both the teaching and non-teaching staff in time. It is by interim order passed by this Court, salary had to be disbursed after two months by the Joint Director of Collegiate Education. To avoid any more law and problems inside the College Campus, to run the hostel and to avoid any difficulty in the payment of salary and monetary benefits to the staff working in the College and to pay other charges, I feel that while disposing of the Writ Petition, the following interim measure is to be necessarily made.

90. In the result, the Writ Petition is disposed of in the following terms:

(i). Dr. P.R. Anbudurai - the third respondent who was acting as the Principal/Secretary of the College until 29.08.2008 as stated in the Tamil Nadu State Commission for Womens" report shall continue to function as the Principal in-charge Secretary of the College. The Joint Director of Collegiate Education shall periodically monitor the administration of the College and give suitable advices to Dr. P.R. Anbudurai in the matter of administration of the College. Dr. P.R. Anbudurai is directed to seek appropriate assistance and advices from the Joint Director of Collegiate Education in the matter of administration of the College.

(ii). The District Collector, Madurai and the Commissioner of Police, Madurai City are directed to give adequate security for the administration of the College by Dr. P.R. Anbudurai and to ensure the safety of the students, staff and peaceful atmosphere in the College premises to enable the students to pursue their studies.

(iii). The petitioner and the respondents 4 and 5 are directed to approach the Civil Court to get their disputes resolved as to whether the disciplinary proceeding initiated against the petitioner is true and valid; whether the suspension of the fifth respondent is true and valid" whether he was re-appointed as Vice-Principal for a further term of one year from 01.06.2008 who the Bursar is as of now and who are all the members of the Governing Council. If any such Civil Suit/Suits is/are filed, the Civil Court concerned is directed to hear all the parties and to dispose of the same as expeditiously as possible by listing the suit/suits on day to day basis.

(iv). The above interim arrangement shall be in force until any interim order is passed by the Civil Court or a final verdict is given by the Civil Court. So long as the above arrangement headed by Dr. P.R. Anbudurai is in-charge of the College, neither the petitioner nor the respondents 4, 5 and 6 shall in any manner interfere with the said administration.

(v). The salary to the staff both teaching and non-teaching shall be directly made by the Joint Director of Collegiate Education Madurai on the bills to be submitted by Dr. P.R. Anbudurai. Similarly, the Electricity charges, telephone charges, other taxes etc shall be paid by Dr. P.R. Anbudurai directly after getting necessary approval from the Joint Director of Collegiate Education until either an interim order is passed in this regard by the Civil Court or a final verdict is given.

(vi). It is made clear that this Court has not given any finding as to whether the disciplinary proceedings initiated against the petitioner culminating in the Order of dismissal is valid or not, excepting declaring that the resolution dated 22.09.2008 dismissing the petitioner is bad in law on the ground of bias. Consequently, the said resolution dated 22.09.2008 dismissing the petitioner alone is quashed leaving the option to the petitioner to work out his further remedies in accordance with law. It is made further clear that this Court has not expressed any opinion as to whether the suspension of the petitioner by resolution dated 19.04.2008 is valid or not. Similarly, this Court has not given any finding as to whether the suspension of the fifth respondent is valid or not. Likewise, this Court has not given any finding as to who are all the real members of the Governing Council and whether the meeting held on 19.04.2008, 28.05.2008 and 22.09.2008 are validly convened meetings or not. All these questions are to be decided only in an appropriate civil suit.

W.P. (MD). No. 7844 of 2008:

91. This Writ Petition has been filed by the Governing Council of the American College represented by its Bishop and Chairman, challenging the Order of the

first respondent in his proceedings in Rc. No. 18902/G4/2008, dated 14.08.2008, wherein, as narrated at the beginning of this Order, the first respondent has declined to record the suspension of Dr. Chinnaraj Joseph Jaikumar from the post of Principal and Secretary alleging that the said order of dismissal is arbitrary and illegal. The Director has set aside the action of the Governing Council and has declared that Dr. Chinnaraj Joseph Jaikumar continues to hold the post of Principal and Secretary of the College Governing Council.

92. In this Writ Petition, this Court, by order dated 28.08.2008, granted interim stay as well as interim injunction. On appearance, Dr. Chinnaraj Joseph Jaikumar, who is the third respondent herein, has raised preliminary objection regarding the maintainability of the Writ Petition filed by the Bishop and Chairman. According to him, as per the Constitution of the Governing Council, it is only the Secretary, who is the competent authority to initiate any disciplinary proceeding on behalf of the College Governing Council. Probably, because of the said objection raised by the third respondent, as stated above, the other Writ Petition in W.P. (MD). No. 9760 of 2008 has been filed by the Governing Council, but, represented by Dr. V. George Selvakumar claiming to be the Principal of the College and Secretary of the Governing Council. On appearance, in Writ Petition No. 9760 of 2008, Dr. Chinnaraj Joseph Jaikumar, who is the fourth respondent herein, has raised preliminary objection regarding the maintainability of the Writ Petition. Since, according to him, Dr. George Selvakumar is neither the Vice-Principal nor the Principal in-charge, he is not the Secretary of the Governing Council, and so, he cannot maintain the Writ Petition. In both the Writ Petitions, several other common grounds have been raised about which I would refer to later.

93. In respect of the first and foremost question in W.P. (MD). No. 7844 of 2008 regarding the maintainability of the Writ Petition by the College Governing Council represented by the Chairman of the College Governing Council, I am of the considered view that the objection raised by the third respondent in the said Writ Petition is sustainable, for the reason that as per Clause IV (iii)(b) of the Constitution of the Governing Council, the Principal/Secretary shall act as the Official representative of the Council in legal and other capacities except where the Council specifically determines otherwise. It is not the case of the Bishop/Chairman that he has been authorized by the Governing Council to file the Writ Petition or to defend the Governing Council in any other legal proceedings. So, as of now, it is only the Principal, who shall be the Secretary of the College Governing Council who shall be competent to maintain any legal proceeding on behalf of the Governing Council. On this ground alone, W.P. (MD). No. 7844 of 2008 is liable to be dismissed.

94. However, the learned Senior Counsel for the respondents would submit that since the impugned order came to be passed on the proposal submitted by the Bishop/Chairman of the Governing Council of American College, and since the Order was communicated to him, he can very well maintain the Writ Petition.

95. It may be true that the proposal was submitted by the Bishop/Chairman of the Governing Council, but it cannot be construed that it is his proposal. It is the consistent case of the Bishop/Chairman that disciplinary proceeding was initiated only by the Governing Council in the meeting held under his chairmanship and the decision to dismiss the third respondent was taken only in the Governing Council. When the Governing Council is the authority concerned either to appoint or to remove the Principal of the College, it is only the Governing Council which is competent to challenge the Order of the Director. Simply because, the proposal of the Governing Council, dismissing the third respondent, was forwarded by the Bishop/Chairman, and simply because, the impugned order in turn was communicated to him, the same would not over ride the specific provision contained in the Constitution of the Governing Council. Even now, it is not the case of the Bishop/Chairman that he has filed the Writ Petition in the capacity of the Bishop/Chairman or in his individual name, as the Writ Petition has been filed only by the Governing Council. Therefore, I am of the firm view that the College Council cannot be represented by the Bishop/Chairman of the Governing Council in any legal proceeding. As I have already stated, simply because the proposal was submitted by the Bishop/Chairman, and the impugned order was communicated to him, this Court cannot hold that he can represent the Governing Council in this Writ Petition. Thus, accepting the preliminary objection raised by the third respondent, W.P. (MD). No. 7844 of 2008 is dismissed.

W.P. (MD). No. 9760 of 2008:

96. Challenging the very same order of the Director of Collegiate Education, as stated supra, this Writ Petition has been filed by the Governing Council of the American College. But, here, it is represented by Dr. V. George Selvakumar, as the Principal and Secretary of the College.

97. There can be no doubt that the College Council can be represented only by the Principal and Secretary in any legal proceeding. But, the question is whether Dr. V. George Selvakumar is the Principal and Secretary of the College. There may not be any difficulty to hold that this Writ Petition is maintainable by him, provided, this Court is in a position to hold that he is the Principal and Secretary of the College. While dealing with W.P (MD). No. 9401 of 2008, I have dealt with in extensio about the disputed questions of facts involved. Admittedly, his term of office expired on 31.05.2008. As per the Constitution of the Governing Council, the Vice-Principal is to be appointed by the Governing Council. It is stated that in the Governing Council meeting held on 19.04.2008, Dr. V. George Selvakumar was appointed as Principal in-charge and Secretary of the College. As I have already held, the validity of the meeting held on 19.04.2008 is under challenge and no decision regarding the said question could be arrived at by this Court. If at all, this Court is in a position to hold that the suspension of Dr. Chinnaraj Joseph Jaikumar with effect from 19.04.2008 is valid, then this Court can hold that V. George Selvakumar was the Principal in-charge of the College with effect from 19.04.2008. But, the said course is not possible, as, the said

disputed question of fact could not be resolved in the absence of any positive evidence. As I have already held in W.P. (MD). No. 9401 of 2008, this question is to be resolved only by a Civil Court in an appropriate civil proceeding to be initiated by either or both of the rival parties. In these circumstances, I am not in a position either to uphold the objection raised by the fourth respondent or that of the contention of the petitioner that he is the Principal in-charge and Secretary of the College.

98. The next contention is that the Order under challenge, according to the petitioner, is not sustainable, as the first respondent has got no jurisdiction to adjudicate upon the disputed questions of fact and to pass an order. According to the learned Counsel, it is only by way of intimation that the decision suspending the fourth respondent was submitted and as per the provisions of the Tamil Nadu Private College (Regulation) Act, 1976, the first respondent is not empowered to adjudicate upon the said disputed questions of fact and to set aside the suspension order. The learned Counsel for the fourth respondent would submit that since, subsequent to the order of suspension, an order of dismissal from service itself has been passed and the same is under challenge in W.P. (MD). No. 9401 of 2008, this Writ Petition has become infructuous, and therefore, this Writ Petition is liable to be dismissed.

99. In my considered opinion, any more endeavour in this Writ Petition to find as to whether the first respondent has got authority to adjudicate upon the disputed questions of fact concerning the order of suspension of the petitioner will be only academic in view of the conclusion which I have arrived at supra in W.P. (MD). No. 9401 of 2008, wherein, I have held that the question of validity of the meeting held on 19.04.2008, the authority of the petitioner herein to convene the said meeting and the question whether the petitioner's term of office as Vice-Principal was extended beyond 31.05.2008 cannot be adjudicated upon in this Writ Petition, as, they are all disputed questions of fact. Though this Court is not obliged to make such an academic exercise to declare the authority of the Director of Collegiate Education to pass the impugned order, Mr. T.R. Rajagopalan as well as Mr. A.L. Somiayaji, the learned Senior Counsel, would vehemently submit that unless the said question is decided, it will be a perennial problem in future with the first respondent whenever any such intimation is given to him.

100. Having regard to the said submission made, I proceed further to decide as to whether the impugned order is without jurisdiction or not, as it is claimed by the learned Senior Counsel Mr. T.R. Rajagopalan and Mr. A.L. Somiayaji.

101. At this juncture, it is absolutely necessary to have a glance through the provisions of the Tamil Nadu Private College (Regulation) Act, 1976 [hereinafter referred to as "the Act"]. Section 11 of the Act provides, "every private college, not being a minority college, shall have a college committee which shall include the following persons employed in the private college, namely:

(a). the Principal

- (b). the senior-most Selection Grade Lecturer or Reader
- (c). One other Selection Grade Lecturer; and
- (d). the senior-most Superintendent;"

102. It is obvious from the above provision that it has got no application to a minority college. Therefore, insofar as the minority colleges are concerned, there is no legal requirement at all that the College should have a College Committee.

103. Section 12 of the Act provides that every College committee shall have a secretary who shall exercise such powers and perform such functions as may be prescribed. Here, it should be kept in mind that the Secretary of the American College is not the Secretary of the College Committee as provided u/s 12 of the Act. As per the Constitution of the Governing Council of the American College, the Secretary means, the Secretary of the College Governing Council who is the Principal of the College. Simply because the same terminology is employed in Section 12 of the Act, the Principal of the American College cannot be construed as a Secretary of the College Committee, as, in respect of the American College, there is no College Committee at all.

104. u/s 19 of the Act, "no teacher or other person employed in any private college shall be dismissed, removed or reduced in rank nor shall his appointment be otherwise terminated except with the prior approval of the competent authority".

105. In the case on hand, after the order of suspension passed as per the decision taken in the so called Governing Council, the same was sent to the first respondent through the Joint Director for getting approval alone. Since there was a dispute regarding the authority of the so called council to suspend the fourth respondent, the first respondent has gone deep into the matter and has finally declined to approve the suspension of the fourth respondent. It is the case of the petitioner that though in the letter, approval was sought for by the petitioner, it should not be construed as an approval as defined in Section 19 of the Act. The learned Senior Counsel would submit that the first respondent ought to have treated the same only as an intimation for record purposes, such as, for correspondence etc., and the same should not have been treated as a letter seeking for approval as required u/s 12 of the Act.

106. u/s 24 of the Act, Section 19 of the Act has been made in applicable to the minority colleges. Section 24((3) of the Act reads as follows:

The provisions of Sub-section (2) of Section 18 and of Sections 19 to 22 (both inclusive) of this chapter or any rule providing for all or any of the matters specified therein or any order made in relation to any such matter shall not apply to a minority college.

107. As rightly pointed by the learned Senior Counsel for the petitioner, a plain reading of the above provisions would make it manifestly clear that the power of

the Director of Collegiate Education either to approve or to disapprove the suspension of an employee of a College is not available to him in respect of a minority college.

108. In view of the above position, I hold that the first respondent has got no adjudicatory power to decide the question as to whether the suspension or dismissal of the Principal or any staff of a minority college has been validly made or not. It is for the aggrieved party to workout his remedy in the manner known to law. In that view of the matter, I have to necessarily hold that the impugned order is without jurisdiction, and so, the impugned order is void ab initio, as per the law laid down in *Kiran Singh and Others Vs. Chaman Paswan and Others*, , followed in *Deepak Agro Foods Vs. State of Rajasthan and Others*, , wherein in paragraph 17, the Hon''ble Supreme Court has held as follows:

An irregular or erroneous or even illegal orders cannot be held to be null and void as there is a find distinction between the Orders which are null an void, and orders which are irregular, wrong or illegal. Where an authority making order lacks inherent jurisdiction, such order would be without jurisdiction, null non est and void ab initio as defect of jurisdiction of an authority goes to the root of the matter and strikes at its very authority to pass any order and such a defect cannot be cured even by consent of the parties.

109. But, at the same time, in view of the other findings, which I have already made that unless the question whether Dr. V. George Selvakumar is the Principal of the College is decided, it cannot be held that the Writ Petition is maintainable by him. In the absence of the same, the Writ Petition cannot be allowed.

110. In the result, this Writ Petition stands disposed of quashing the impugned order, as without jurisdiction. Consequently, all connected MPs are closed.

Direction to the Registry:

111. The Registry is directed to communicate this Order to the Joint Director of Collegiate Education, Madurai, Director of Collegiate Education, Chennai, Secretary to Government, Higher Education, Chennai, the Commissioner of Police City, Madurai and the District Collector, Madurai.

112. Before parting with this case, I would like to remind, when Lord Jesus was preparing to leave this World, he made specific promise to his gathered disciples:

Peace I leave with you; my peace I give to you; not as the world gives do I give to you. Let not your hearts be troubled, neither let them be afraid [John:14:27].

Carry no purse, no bag, no sandals; and salute no one on the road. Whatever house you enter, first say, "peace be to this house!" And if a son of peace is there, your peace shall rest upon him; but if not, it shall return to you. [Luke 10:4-6].

Let this Court express its hope that all those involved in this litigation do possess the peace left by Lord Jesus so that the College can function smoothly.