
(2015) 07 MAD CK 0280

In the Madras High Court

Case No : Writ Appeal (MD) No. 492 of 2015 and M.P. (MD) Nos. 1 and 2 of 2015

J. Jeswin Samuel

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 294(b), 506(i)

Citation : (2015) 7 MLJ 198

Hon'ble Judges : S. Manikumar, J;G. Chockalingam, J

Bench : Division Bench

Advocate : P. Senthurpandian, for the Appellant

Final Decision : Allowed

Judgement

S. Manikumar, J—Being aggrieved by the dismissal of the writ petition filed for a Writ of Certiorari, to quash the order dated 27.03.2015, in so far as not allowing the appellant to attend the classes in the 5th respondent college and consequently, denying the prayer to permit him, to write 6th semester examination, present appeal has been filed.

2. Case of the appellant as deduced from the material on record and the supporting affidavit, is that the appellant is a student, studying B.E. Mechanical Engineering in Holycross Engineering College, No. 7/131, Vagaikulam, Srivaikuntam Express Road, Sri Mulakarai, Thannoothu Village, Srivaikundam Taluk, Thoothukudi. While he was undergoing 3rd year, students of the 5th respondent college resorted to road blockade, demanding action against few teachers, responsible for the suicide attempt of a girl student, who fell down from the third floor of the college. Students boycotted the classes. Police and revenue officials intervened and compromised the matter, between the students and management. Subsequently, the 5th respondent college remained closed.

3. The appellant has further contended that pursuant to the police complaint by

the father of the victim girl and hunger strike conducted by the parents of the girl, the Registrar, Anna University, Guindy, Chennai, the 3rd respondent herein, constituted a committee and conducted an inspection in the 5th respondent college to find out the truth. Report of the inspection was not disclosed, either to the victim or to the representative of the students. The college was opened on 26.03.2015. The appellant was not allowed to enter the college. He was directed to come with his father. When he went to the college along with his father on 27.03.2015, his father alone was allowed to go inside the college and the gate keeper prevented the appellant, at the entrance.

4. The appellant has further contended that on 27.03.2015, a notice was issued to him, alleging that he had violated the college rules and Clause 21 of Anna University Regulation, destroyed the reputation of the 5th respondent college, created unrest among students and also damaged the college properties.

5. The appellant has further contended that thereafter, he was not allowed to attend the classes. It is his further case that though the appellant and his father submitted individual representations on 29.03.2015, to the college, to withdraw the disciplinary proceedings, the college did not pass any order. Copy of the representations dated 29.03.2015 were also forwarded to the 3rd respondent/ Anna University, Chennai, which has the overall control, regarding disciplinary action taken by a private management against the students. Anna University, Chennai, also did not take a decision. Thus, the appellant was constrained to challenge the impugned notice dated 27.03.2015, for the relief stated supra.

6. Perusal of the impugned order made in W.P(MD)No.5161 of 2015 dated 22.04.2015 shows that the respondents have not filed any counter affidavit. However, objection has been made that writ against private institution is not maintainable. Submissions have been made that the college had not restricted the appellant from attending the classes. At the end of every month, attendance register has been periodically forwarded by the College to the University.

7. Before the Writ Court, further contention has been made by the appellant that in the peace committee meeting, it was unanimously decided to conduct an enquiry, to ascertain the truth and to arrive at a logical conclusion, on the allegations levelled against the teachers. In so far as attendance is concerned, college has contended that the appellant had only 60% attendance and even condonation of attendance, is not permissible under the regulations. The College has also contended that the appellant was allowed to appear for the internal and practical examinations and therefore, the contention to the contra, that he was prevented from entering the college and stopped at the entrance, is incorrect. For the abovesaid reasons, the 5th respondent college has prayed for dismissal of the Writ Petition.

8. Adverting to the submissions, a learned single Judge, by order dated 22.04.2015, dismissed W.P(MD)No.5161 of 2015. Being aggrieved by the same, present appeal has been filed.

9. Assailing the correctness of the order of the learned single Judge and inviting the attention of this Court to the documents, including newspaper reports, enclosed in the typed set of papers, Mr. P. Senthur Pandian, learned counsel for the appellant, submitted that on 09.03.2012, one Rooth Shini, studying in Ist year Computer Science, in the 5th respondent college, attempted to commit suicide and was admitted in a private hospital, Tuticorin. Sayarpuram Police registered a case against two teachers in Crime No. 45/15 under Sections 294(b), 506(i) IPC and Section 4 of Tamil Nadu Prevention of Women Harassment Act, 2002, responsible for the said conduct. Parents of the victim, conducted a hunger strike before the Tuticorin Collectorate. Students also joined, objecting to the inaction on the part of the Management.

10. As the protest intensified, Anna University, Chennai, constituted a committee, to find out the truth. When the college reopened on 26.03.2015, the appellant was prevented from attending the classes. Request of the appellant and his father to permit him to continue the classes was not considered. The college obtained apology and undertaking letters from other students. Learned counsel for the appellant further contended that though the College did not permit the appellant to remit the fees, he had paid the examination fees, by way of Demand Draft. He was permitted to write the practical examinations from 16.04.2015 to 18.04.2015, in some subjects, in a separate room, but was not permitted to take up theory papers, on the ground that he did not possess the minimum attendance.

11. At this juncture, learned counsel for the appellant invited the attention of this Court to Regulation 11.1(b) of the UG (B.E./B.Tech.) Regulations 2008, of Anna University, Chennai, which states that every practical exercise/experiment shall be evaluated based on the exercise/experiment prescribed as per the syllabi and the records of work done maintained. There shall be at least one test during the semester. The criteria for arriving at the internal assessment marks (15 marks) shall be decided based on the recommendation of the class committee and shall be announced at the beginning of every semester by the Principal.

12. Learned counsel for the appellant further submitted that as per clause 6.1 of the abovesaid Regulations, every candidate who has fulfilled the following conditions shall be deemed to have satisfied the requirements for completion of a semester. As per the regulations, every student is expected to attend all classes and secure 100% attendance. However, in order to give provision for certain unavoidable reasons such as Medical/participation in sports/personal, the student is expected to attend atleast 75% of the classes during any semester commencing from First semester.

13. As per Regulation 6.1.1, a student shall secure not less than 75% (after rounding off to the nearest integer) of overall attendance taking into account the total number of 450 periods in a semester within 90 working days in all courses put together attended by the candidate as against the total number of periods in all courses offered during the semester (vide clause 5.3).

14. Attention of this Court was also invited to regulation 5.3, which reads that the Head of the institution/Principal may conduct additional classes for improvement, special coaching, conduct of model test etc., over and above the specified periods. But for the purpose of calculation of attendance requirement or writing the end semester examinations (as per clause 6) by the students 450 periods conducted within the specified academic schedule alone shall be taken into account and the overall percentage of attendance shall be calculated accordingly.

15. Referring to Regulation 6.2, learned counsel for the appellant further submitted that however, a candidate who secures overall attendance between 65% and 74% in that current semester due to medical reasons (prolonged hospitalization/accident/specific illness/participation in sports events) may be permitted to appear for the current semester examinations subject to the condition that the candidate shall submit the medical certificate attested by the Head of the Institution. The same shall be forwarded to the Controller of Examinations, Anna University, Chennai, for record purposes.

16. As per Regulation 6.3, candidates who secure less than 65% of overall attendance shall not be permitted to write the University examination at the end of the semester and not permitted to move to the next semester. They are required to repeat the incomplete semester in the next academic year, as per the norms prescribed.

17. Thus, by inviting the abovesaid regulations, Mr. Senthurapandian, learned counsel for the appellant submitted that if a candidate has secured less than 65% of overall attendance, he shall not be permitted to write the University examination at the end of the semester and not permitted to move the next semester. They have to redo the course. According to him, the appellant was prevented from attending the classes from 26.03.2015 to 14.04.2015 for 14 working days. Number of periods which the college prevented the appellant was $14 \times 7 = 98$. Before he was prevented from attending the college, he had attended 296 periods in six semesters out of 450 periods, as per clause 5.3 of the abovesaid regulation and it works out to 65.7% ($296/450 \times 100$).

18. Learned counsel for the appellant further submitted that if it is rounded off to 66%, then the restriction cannot be placed under clause 6.3. of the regulation, which states that candidates who secure less than 65% of overall attendance shall not be permitted to write the University examination at the end of the semester and not permitted to move to the next semester.

19. Learned counsel for the appellant further submitted that as per Regulation 7 of the Anna University, Chennai, had the appellant been absent from attending the classes, the College or the Class Advisor, should have advised the student or informed the parents, accordingly. In the case on hand, when the college has blamed the appellant, for not attending the classes, there was no such advice or information. But on the contra, the college itself has prevented the appellant in

not attending the classes and blamed him for short of attendance. Clause 7 reads as follows:

"To help the students in planning their courses of study and for general advice on the academic programme, the Head of the Department of the students will attach a certain number of students, to a teacher of the Department, who shall function as Class Adviser for those students, throughout their period of study. Such Class Advisors shall advise the students and monitor the courses undergone by the students, check the attendance and progress of the students attached to him/her and counsel them periodically. If necessary, the Class Adviser may also discuss with or inform the parents about the progress of the students."

20. Inviting the attention of this Court to the disciplinary committee notice, dated 27.03.2015, learned counsel for the appellant further submitted that alleging that the appellant had violated the Rules and Regulations of the respondent-College, planned and destroyed the reputation of the College, created unrest among the students and damaged the college properties, he was asked to appear before the Disciplinary Committee, on 07.04.2015 at 10.30 a.m., and to explain the statement on his behalf, on the above allegations. On receipt of the notice, dated 27.03.2015, the appellant and his father, went to the college. They were informed to appear before the Committee on 07.04.2015. But no charge memo was served. The College asked the appellant not to attend the College, till 07.04.2015. When he insisted for an order in writing, it was refused. The appellant was not permitted to meet the Principal of the College and therefore, father of the appellant wrote a letter, dated 29.03.2015, to the Principal, explaining the above, and sought permission to continue his son's education. Copy of the same was sent to the Vice-Chancellor, Anna University, Chennai. The appellant has also sent a letter, dated 29.03.2015, to the Principal, Holy Cross College, Nagercoil, stating, as to how, he was made to wait for 2 1/2 hours and instructed to attend only on the date of enquiry i.e., 07.04.2015. It is also his contention of the learned counsel for the appellant that though a request was made to permit him to attend the classes, it was denied.

21. Attention of this Court was invited to the specific averments made in the letter, dated 29.03.2015, wherein allegations have been made to the effect that by creating shortage of attendance, the College had intended to prevent him, from writing the examination. He also submitted that the appellant was not allowed to pay the examination fees for the 6th Semester. Therefore, he was constrained to send a Demand Draft, towards the examination fees, to the College, with a copy marked to the Anna University, Chennai.

22. Learned counsel for the appellant further submitted that though the appellant was permitted to take up the practical examinations, he was not allowed to attend theory classes for the sixth semester examination. The College has taken back his Identity Card and Bus Pass. In this regard, a letter, dated 09.04.2015, was also sent to the College and Anna University, Chennai, regarding the withdrawal of Identity Card and Bus Pass. On 27.04.2015, only a

temporary Identity Card was issued, valid only for that day and when theory examinations commenced, he was not allowed to attend the examinations, on the grounds that he lacked attendance. At this juncture, he also invited the attention of this Court to the letter, dated 25.03.2015, enclosed in the additional typed set of papers and submitted that one Mr. P. Poomayil, who had lacked attendance to write 6th Semester examinations, prompt information was given.

23. Denying the allegations that the College has prevented the appellant from attending the classes, Mr. Ajmal Khan, learned Senior Counsel for the respondent-Management submitted that vide letter, dated 27.03.2015, the appellant was directed to appear on 07.04.2015, for an enquiry, before the Disciplinary Committee and to explain his case, on the allegations of violation of College Rules and Regulations, by planning and destroying the reputation of the College, creating unrest among students and damaging the college properties. He further submitted that nobody has prevented the appellant from attending the classes. On the other hand, he chose to remain absent.

24. According to the learned Senior Counsel for the respondent, as per Regulation 6 of UG(BE/B.TECH) Regulations of Anna University, 2008, candidates, who shall secure, not less than 75% of overall attendance, taking into account the total number of 450 periods in a semester within 90 working days in all courses, put together attended by the candidate, as against the total number of periods in all courses offered during the semester (vide Clause 5.3), alone would be permitted to take up the examinations and the said condition is permissible, only if a candidate secures an overall attendance, between 65% and 74%, in that current semester, due to medical reasons (prolonged hospitalization/accident/specific illness/participation in sports events) and since the appellant had secured attendance, less than 65%, he is not entitled to seek for condonation of attendance.

25. It is his submission that only for certain contingencies, stated supra, condonation is permissible and since the appellant remained absent on his own, which does not fall under any of the reasons, under Regulation 6, he was not permitted to write the theory examinations, at the end of the semester and consequently, would not be permitted to move to the next semester. He further submitted that the appellant has to repeat the incomplete course in the next academic year, as per the regulations.

26. Learned Senior Counsel for the 5th respondent-College further submitted that the question, as to whether, the appellant was prevented or not, cannot be gone into, in this proceedings, under Article 226 of the Constitution of India. He further submitted that the appellant was permitted to take up the practical examinations from 15.04.2015 to 18.04.2015. He also submitted that when the Registrar, Anna University, Chennai, sought for certain details, about the misbehaviour and absence of the appellant, a detailed reply, dated 13.04.2015, was given to the University, as to how, the appellant behaved.

27. Denying the averment that absence from attending the College, was not intimated promptly, learned Senior Counsel for the 5th respondent-College further submitted that SMS intimation was given to the appellant on 23.04.2015 to attend the examination. He further submitted that the appellant attended the Morning Practical examination, but thereafter, failed to attend the theory classes. According to him, it was not correct to contend that the appellant was prevented from attending the classes. He also submitted that when he had attended the Morning Practical Examination, he should have attended the theory classes and nobody prevented him.

28. It is the submission of the learned Senior Counsel for the 5th respondent-College that when the appellant attended all the internal assessment examinations, it cannot be contended that the College prevented him from attending other classes. It is also his submission that had the College intended to prevent the appellant from attending the classes, then, he would not have been permitted to attend the internal examinations. According to him, when the appellant was permitted to attend the arrears examination conducted on 15.04.2015 and other internal examinations for the 6th Semester from 16.04.2015 to 18.04.2015, there was absolutely no reason, for the College to prevent the appellant from attending the classes.

29. Learned Senior Counsel for the 5th respondent further submitted that periodical details of the attendance of students are sent to the Anna University, Chennai. He denied the contention of mala fide, attributed against the College. According to him, Holycross Engineering College, Thoothukudi, is a reputed college and there is no need for the College, to take any vindictive action against the appellant.

30. By way of reply and inviting the attention of this Court to the additional typed set of papers, learned counsel for the appellant submitted that hall tickets were issued only in respect of arrears papers and the appellant was prevented from attending theory classes. He also referred to the temporary Identity Card, dated 27.04.2015, issued to the appellant, valid only for the said date. He also submitted that as per practice in the College, the security staff would not allow a student to enter the college to attend the classes, unless and until, he was given ID Card. As the permanent ID Card and bus pass, were taken back by the College and only temporary ID Card was issued, valid only for 27.04.2015, it is the College, which has prevented the appellant from attending the classes from 27.03.2015. He further submitted that there was no reason, as to why, the College issued only a temporary ID Card, when he was a regular student.

31. Learned counsel for the appellant also submitted that considerable amount has been spent by the appellant for the course, but due to the mala fide action of the College, he could not take up the theory examinations. Summing up, learned counsel for the appellant submitted that the College has prevented the appellant from attending the classes and thus, made him to suffer for lack of attendance, thereby, prevented him from taking up the 6th Semester theory examinations,

and consequently, punished him.

32. As the 5th respondent-College submitted that periodical attendance particulars have been submitted to the University, records pertaining to the same, were directed to be produced by the Anna University, Chennai. Correspondences between the College, appellant and the Anna University, were also directed to be produced. Pursuant to the same, records to that extent were produced.

Heard the learned counsel for the parties and perused the materials available on record.

33. Material on record discloses that one Miss. Ruth Shaini, a first year student in Computer Science, attempted to commit suicide and in this regard, a case in Cr. No. 45 of 2015, has been registered on 10.03.2015, under Sections 294(b), 506(i) IPC r/w. Section 4 of the Tamil Nadu Prevention of Woman Harassment Act, 2002, on the file of Sawyerpuram Police, Thoothukodi. Father of the said Miss. Ruth Shaini, has made allegations against four persons. Allegations have also been made against a Professor, by name, Dr. B. Dona Arul Selvi, stating that the said student was humiliated.

34. Material on record further discloses that students and others have staged a protest, against the Management and that the same has been reported in newspapers. Students of Holy Cross College and others have joined a road-roko. Material on record, enclosed at Page No. 26 of the typed set of papers, indicate that there was a peace committee meeting held on 10.03.2015 and the proceedings recorded therein are as follows:

35. One of the decisions, stated to have taken in the Peace Committee Meeting, is that no disciplinary action would be taken against the students, who had participated in the peace committee meeting. Taking note of the circumstances, Holy Cross Engineering College had decided to close the College, until further orders. Subsequently, on 27.03.2015, the Principal, Holy Cross Engineering College, Thoothukudi, has issued a notice to the appellant, alleging that it was brought to the notice of the committee that apart from previous complaints, the appellant had violated the College Rules and Regulations, planned and destroyed its reputation, created unrest among the students and damaged its properties. Notice, dated 27.03.2015, reads as follows:

HOLYCROSS ENGINEERING COLLEGE DISCIPLINARY COMMITTEE NOTICE

Present:

- (1) Dr. B. Dora Arul Selvi, Principal, Holycross Engineering College - Chairperson
- (2) Mr. Sivakumar, Head of the Department, Mechanical Engineering - Member
- (3) Mr. Jeyamurgun, Head of the Department, Electronic and Communication Engg. - Member

Anna University, Chennai regulation on discipline state that's, "Every student is required to observe disciplined and decorous behaviour both inside and outside the college and not to indulge in any activity which will tend to bring down the prestige of the University/College." (AU Regulation clause 21)

It has been brought to the notice of this committee apart from previous complaints against you that, you had violated the college rules and regulations and that you had planned and destroyed the reputation of this college, created unrest among student and damaged college properties (Approx. Value Rs. 1,25,000/-).

To ascertain facts behind this allegation, you are hereby asked to appear before the Disciplinary Committee on 07.04.2015 at 10.30 A.M. and explain the statement on your behalf, failing within discipline action shall be taken against you in absentia.

Committee Chairperson

Date: 27.03.2015"

36. It is the case of the appellant that on receipt of the notice, dated 27.03.2015, two letters, dated 29.03.2015, have been sent. One written by the appellant and other by his father, Mr. S. Jebaraj David. Letters, dated 29.03.2015, sent to the Principal of the College are reproduced hereunder:

37. Copies of the abovesaid letters, are stated to have been sent to the Vice Chancellor, Anna University, Chennai. Though in the abovesaid letters, dated 29.03.2015, both the appellant, as well as his father, have specifically averred that on receipt of the notice, dated 27.03.2015, they had gone to the college and sought for the details of the charges, levelled against the appellant, but the Management did not issue any charge memo, but directed the appellant, not to attend the College, till 07.04.2015 and despite their request to the College authorities, to give it in writing, it was refused by them and though the appellant, in his letter, dated 29.03.2015, has specifically stated that Mr. Sivakumar, Head of the Department (Mechanical Engineering) has refused to give a letter, in writing, to that effect and though both the appellant as well as his father, have made specific allegations, to the effect that when the appellant had not committed any mistake, in order to punish him, the College has deliberately prevented the appellant from attending the classes, resulting in shortage of attendance, for writing examinations, there is absolutely no reply from the college to the appellant. From the records produced by the College, it is evident that though the College has acknowledged both the letters of the appellant and his father, there is no denial of the contents of the letters and no reply has been given by the College.

38. During the course of hearing Mr. Ajmal Khan, learned Senior Counsel submitted that the College thought it fit not to reply to the abovesaid letters, as it contained false allegations and therefore, the averments made in the

abovesaid letters, cannot be construed to mean that they have been admitted.

39. Material on record further discloses that the agitation by the students and others, over the conduct of certain teachers, has resulted in registration of FIR. The appellant has specifically alleged that the Management was against the students, who rendered assistance to Miss. Rudh Shini.

40. Perusal of the notice, dated 27.03.2015, further shows that Dr. B. Dona Arul Selvi, Principal, Holycross Engineering College, as Chairperson of the Disciplinary Committee, has issued the said notice. Two other persons named in the Committee, are Mr. Sivakumar, Head of the Department, Mechanical Engineering and Mr. Jeyamurugan, Head of the Department, Electronics and Communication Engineering.

41. Had the appellant indulged in violation of the College Rules and Regulations, by planning and destroying the reputation of the College, creating unrest among students and damaging the college properties, nothing prevented the College from suspending the appellant. At this juncture, it is also to be noted that in the peace committee meeting, a decision has also been taken by the Management, not to take disciplinary action, against the students, who had attended the peace committee meeting and after conducting an enquiry into the 9th March incident, action would be taken against the erring persons. No material has been placed before this Court, as to whether, action has been taken against any other student, other than the appellant. Though both the appellant and his father, in their letters, dated 29.03.2015 respectively, have also made it clear that if the charges are not dropped and if the appellant is not permitted to attend the classes, the Management would be responsible, even then, there is no response from the college authorities.

42. Perusal of the files produced by the College further shows that a Demand Draft for Rs. 1,650/-, dated 07.04.2015, drawn in favour of Holycross Engineering College, has been received towards registration and fees, for April/ May" 2015 examinations. Perusal of the files submitted by the management also shows that the notice, dated 27.03.2015, was sought to be quashed in W.P. (MD) No. 5161 of 2015, with a prayer to call for the records, pursuant to the impugned order passed by the 5th respondent, in his proceedings, dated 27.03.2015 and consequently, to direct the respondents to permit the appellant to attend the 3rd year B.E. Mechanical Engineering Classes and Practical Classes and to permit the appellant to write the ensuing University Semester examinations to complete his B.E. Mechanical Engineering Degree.

43. Notice, dated 08.04.2015, sent on behalf of the appellant, to the Principal Secretary, Higher Education Department, Registrar, Anna University, Chennai and others, including the Principal, Holycross Engineering College, is extracted hereunder:

NOTICE

Date: 08.04.2015

To

1. The State of Tamil Nadu Represented by its Principal Secretary to Government, Higher Education Department, Secretariat, Chennai - 09.
2. The Regional Officer, All India Council of Technical Education (AICTE) - SRO, Shastri Bhavan, Chennai - 600 006.
3. The Registrar, Anna University, Guindy, Chennai - 600 025.
4. The Director, Student Affairs, Anna University, Guindy, Chennai - 600 025.
5. The Principal, Holycross Engineering College, No. 7/131, Vagaikulam Srivaikuntam Express Road, Sri Mulakarai, Thannoothu Village, Srivaikundam Taluk, Thoothukudi - 628 851.

Sir/Madam,

Sub: Writ Petition (MD) No. 5161/2015 - on the file of the Hon''ble Madurai Bench of Madras High Court - Filed against not permitting the Student to attend the Class - Notice - Reg.

1. My client J. Jeswin Samuel, S/o. Jebaraj David, studying B.E. Mechanical Engineering 3rd Year in 5th of your college filed a Writ Petition before the Hon''ble Madurai Bench of Madras High Court in W.P.(MD) No. 5161/2015 with the prayer to call for the records in pursuant to the impugned order passed by 5th of you in his proceedings dated 27.03.2015 and Quash the same and consequently Direct you to permit him to attend the 3rd year B.E. Mechanical Engineering Classes and Practical Classes and to him to write the ensuing university semester examinations to complete his B.E. Mechanical Engineering Degree.
2. My client states that a girl student namely Miss. Rudh Shaini doing first year computer engineering fell off the third floor of the 5th of your college building on 09.03.2015 afternoon after a few teachers publicly reprimanded her following an alleged malpractice during an internal exam. She suffered a fracture in her right leg and a spinal cord injury. The father of Miss. Rudh Sahini made a police complaint before the Sawyerpuram police on 10.03.2015 against four Lecturers and the same was registered in Crime No. 45/2015 under section 294(b), 506(i) of I.P.C. And 4 of Tamil Nadu Prevention of Woman Harassment Act 2002 and the criminal case is pending. Immediately the 3rd of your constituted a Committee to conduct an inspection in Holycross Engineering College, Tuticorin and to find out the truth.
3. In the mean time the 5th you, without passing any order and restraining my client and other students from attending classes who all are participated in the protest against the 5th of you management on 10.03.2015. The intention of the 5th of you is restraining my client and some selective students from attending

the semester exams on the ground of lack of attendance.

4. Therefore my client filed a Writ Petition before the Hon"ble Madurai Bench of Madras High Court in W.P. (MD) No. 5161/2015 and the above said Writ Petition came up for admission on 08.04.2015 before the Hon"ble High Court and the Hon"ble High Court was pleased to order Notice of Motion on 08.04.2015 and consequently direct us to take Private Notice to you and the case is posted for your appearance on 16.04.2015.

5. Therefore take Notice and appear in the above Writ Petition (MD) No. 5161/2015 on the file of the Hon"ble Madurai Bench of Madras High Court on 16.04.2015, failing which the case will be decided in your absence.

(M. SARAVANAKUMAR) Counsel for Petitioner."

44. Even for the notice, dated 08.04.2015, there is no reply, on behalf of the Management. Perusal of the files submitted by the Management of Holycross Engineering College, further discloses that the College has sent a report, dated 11.03.2015, to the Registrar, Anna University, Guindy, Chennai. The said report is reproduced hereunder:

11.03.2015

To The Registrar, Anna University, Guindy Campus, Chennai - 25.

Honorable Sir/Madam,

Sub: Submission of report of the mishap that occurred on 09.03.2015 - Regarding

This report is to intimate that the Second Internal Tests for the II semester students of this college were scheduled between 09.03.2015 and 14.03.2015. The tests were conducted as Programmed and students from all the branches appeared as per the schedule at 11.15 AM. On that day the II semester CSE department students wrote Programming and Data Structures - I test. A First Year CSE department student named R. Rooth Shiney who was seated in the Hall (Hall No. 14 - Girls Only) used bit papers prepared at home and was found copying from it in the test hall. The hall invigilator caught her red handed and advised her to meet the principal. The student accompanied by a female staff met the principal and in turn was asked to writ an apology letter stating that she would not indulged in such malpractices.

The concerned staff, who had accompanied her, left the student in the girls common room for preparing the apology letter which is on the II floor. The student (R. Rooth Shiney) sat there for some time and all of a sudden ran out the girls common room climbed the stairs reached the open terrace and jumped down. The college staff reacted immediately by taking her to The Government Medical College Hospital, Tuticorin by College Vehicle. Meanwhile the college had alerted the services of 108 Ambulance for emergency treatment and was subsequently admitted in the Government Medical College Hospital by our staff for a Comprehensive treatment and then handed over to her parent. At present

her parents have shifted her to a private hospital in Tuticorin and she is undergoing treatment.

The college commenced as usual the next day (10.03.2015). However the students did not cooperate for the smooth functioning of the college and stayed away from their classes. As per the advice of the Department of Police, the administration of this college has decided that the college will remain closed until further orders.

This intimation is submitted to your honourable authority for consideration and advice.

Thanking you

Yours faithfully Sd/- Principal

Copy To:

1. The Commissioner, Directorate of Technical Education, Chennai."

45. As per the report, the College had commenced as usual on 10.03.2015, but the students did not co-operate with the College and stayed away from the classes. As per the advice of the Police, the Administration of the College decided to close the college, until further orders. Nothing is indicated in the report, dated 11.03.2015, that the appellant and other students have violated the rules and regulations.

46. Files further disclose that when the representation, dated 29.03.2015, was acknowledged by Anna University, vide letter No. 9765/SA3-2/2015, dated 10.04.2015, the Registrar, Anna University, Chennai, has advised the Principal, Holy Cross Engineering College to meet the Director, Student Affairs, in person, along with the Administrative Officer, Mr. J. Jeswin Samuel, the appellant and his parent, on 20.04.2015 at 10.30 A.M., to discuss and clarify the issues.

47. As extracted earlier, in the representation, dated 29.03.2015, the appellant has made specific allegations against the Principal and Head of the Department (Mechanical Engineering), that they had prevented him from attending the classes. Letter, dated 10.04.2015, of the Registrar, Anna University, Chennai, is enclosed herewith:

ANNA UNIVERSITY Chennai 600 025.

REGISTRAR

Lr. No. 9765/SA3-2/2015

Dated: 10.04.2015

To

The Chairman, Holy Cross Engineering College, 7/131, Vagaikulam Srivaikundam Express Road, Thannoothu, Tuticorin District 628851.

Sir,

Sub: Anna University - Allegation against the Principal and HOD - To Discuss with the Director - In the office of the Student Affairs - Reg.

Ref: Representation received from Mr. J. Jeswin Samuel, dated 29.3.2015.

I am to inform that a representation has been received from Mr. J. Jeswin Samuel, student of your college regarding various complaints, against the Principal and Mr. Sivakumar (HOD, Mechanical Department).

In this regard, advise the Principal to meet the Director, Student Affairs, in person, along with the Administrative Officer, the student Mr. J. Jeswin Samuel and his parent on 20.04.2015 at 10.30 a.m., to discuss and clarify the issues.

Yours faithfully, sd/- for Registrar

Copy to:

1. The Individual concerned

2. Stock file."

48. Files produced do not indicate that even after the receipt of the letter, dated 10.04.2015, the Registrar, Anna University, Holycross Engineering College, has sent any communication to the appellant to appear before the Director, Student Affairs, Anna University.

49. Files produced by the Management also indicates that when the appellant has sent a letter, dated 07.04.2015, to the College, stating that he was orally suspended and not permitted to pay the examination fees, with the copy marked to the Vice Chancellor, Anna University. At this juncture, it is also relevant to extract the abovesaid letter, wherein, the appellant has specifically alleged that from 27.03.2015, he was not permitted to attend the classes and not permitted to pay even the examination fees. Letter, dated 07.04.2015, reads thus,

From J. Jeswin Samuel (III Mechanical DEPT.) S/o. S. Jebaraj David. Type-III 3/5 Camp.I, Thermal Nagar, Thoothukudi.

To The Principal, Holycross Engineering College, Thoothukudi.

Respected Madam,

As you issued me a disciplinary Committee notice at 27.03.2015, that to attend an enquiry at 7.04.2015. In this middle of the days our College gave me oral suspension.

Today [7.04.2015], I attended the enquiry. But even now you didn't give permission and not allow to pay my exam fees.

So I humbly request you to consider my Demand Draft for 6th Semester Exam

fees.

Thanking you,

[Attached = Demand Draft Original DD No. 1 TT 728175]

Date: 7/4/15

Yours Obediently

sd/- [J. Jeswin Samuel]

Place: Thoothukudi

Copy subjected to : Vice Chancellor/Anna University/Chennai."

50. From the letter, dated 13.04.2015 of the College, addressed to Registrar, Anna University, Chennai, it could be deduced that for the first time, the College has made allegations against the appellant that he along with third parties, were instrumental in organising strikes, refraining from attending classes, destroying the smooth functioning of the college, trying to defame the college, by writing false complaints against the College and other allegations.

51. Though the Principal, Holy Cross Engineering College, has made several allegations against the appellant and ultimately, contended that the student, like the appellant herein, stood as an hindrance to the objective of imparting professional education and his conduct of bringing down the morale of the college of all the students and staffs, quite contrary to the imputations made against the appellant and strangely, requested the Registrar, Anna University, Chennai, to instruct the appellant to attend the classes immediately. If the college has not prevented the appellant from 27.03.2015 onwards, they could have sent a reply to (i) letter, dated 29.03.2015 of the appellant and his father, (ii) letter dated 07.04.2015, of the appellant that he was not orally suspended, (iii) representation, dated 08.04.2015, addressed to the Secretary to the Government, Higher Education Department and others, including the College, and (iv) lawyer's notice, after the filing of the writ petition, stating that the appellant was not prevented from attending the college, and instructed him to attend the classes immediately. When the college has requested Anna University to advice the appellant to attend the classes, then why it has not chosen to directly instruct him to attend the classes? Thus, before the Anna University, they have projected a picture, as if the appellant had not attended the classes on his own and thus, requested them to advice the appellant. Head of the Department, Mechanical Engineering, has not taken any steps as per Clause 7 of the abovesaid Regulation. At the risk of repetition, the said Regulation is reproduced hereunder:

"To help the students in planning their courses of study and for general advice on the academic programme, the Head of the Department of the students will attach a certain number of students to a teacher of the Department who shall function as Class Adviser for those students throughout their period of study. Such Class

Advisers shall advise the students and monitor the courses undergone by the students, check the attendance and progress of the students attached to him/her and counsel them periodically. If necessary, the Class adviser may also discuss with or inform the parents about the progress of the students."

52. As rightly contended by the learned counsel for the appellant that there is absolutely no material in the files produced by the college, towards attendance check progress of the appellant. There was no instruction to the appellant or to the parents, regarding attendance and progress. On the other hand, the College seemed to have taken a stand that they have requested the University to instruct the appellant to attend the classes. At no point of time, the College has refuted the contents of the letters, by sending any reply to the appellant or his father. As observed earlier, when the College had chosen to send letters to the University, there is no reason, as to why, the College has not sent any letter to the appellant to attend the classes, or to his father, if the appellant had remained absent. There is absolutely no explanation for the abovesaid conduct. As rightly pointed out by the learned counsel for the appellant that the College had not issued any orders, suspending the appellant from the College. When the appellant was not suspended, then why he was not allowed to attend the classes?

53. Though Mr. Ajmal Khan, learned counsel for the 5th respondent-College, has contended that when the appellant had attended all the internal examinations, except on 23.04.2015 and when he remained absent, SMS message was given by the College, for the internal examinations, scheduled on 23.04.2015 and also produced the message details, the contrary contention of Mr. P. Senthurpandian, learned counsel for the appellant, that on 23.04.2015, there was no internal examination for the appellant on that day and therefore, such intimation serve no purpose, has not been refuted, nor any valid explanation is given.

54. As regards the contention that the appellant was not permitted to pay the examination fees and that he had to take a Demand Draft, in favour of the College, for the examination fees, is evident from the letter, dated 07.04.2015. Here again, there is no reply to the appellant.

55. Hall Ticket, dated 22.04.2015, has been issued to the appellant for the arrears papers, viz., Thermal Engineering Laboratory-I and Transforms and Partial Differential Equations. Insofar as arrears papers are concerned, the appellant has been permitted to write the abovesaid examinations on 27.04.2015, for which, a temporary ID Card has been issued, which is reproduced hereunder:

56. The contention of the appellant that the permanent ID Card and Bus Pass were seized, though refuted by the College, there is no reason, as to why, a temporary ID CARD was issued to the appellant, valid only for 27.04.2015. Needless to state that in Colleges, permanent ID Cards are issued to every student. There would be a bus pass as well. By the issuance of temporary ID Cards, by the College, an adverse inference can also be drawn, as to the action

of the College, that for attending regular classes, permission has not been granted.

57. Contention of the appellant is that from 27.03.2015, he was not permitted to attend theory classes. In the arrears subject, he had no attendance problems. The contention, as to whether, he was permitted to attend only certain internal examinations and not permitted to take up regular classes, for the 6th Semester subjects, which resulted in shortage of attendance and the further contention that regular ID Card and Bus Pass were seized and therefore, the appellant had no other alternative to pay the fees, on his own, by way of Demand Draft and the further contention that security of the College would not permit him to enter the college and attend classes, without regular ID Card and that the appellant was issued only a temporary ID Card, valid only on 27.04.2015, are all supported by letters, dated 07.04.2015 and 09.04.2015 respectively, sent to the Principal, Holycross Engineering College and the copy of the said letters, have been sent to the Vice Chancellor of Anna University, Chennai.

58. The contention of Mr. Ajmal Khan, learned counsel for the 5th respondent-College, that the appellant had only 62% of attendance, far below than the requirement and in the absence of satisfying any of the contingencies mentioned in Clause 6 of the abovesaid Regulations and therefore, there was no possibility even for condonation of the attendance, cannot be countenanced for the reason that the attendance particulars sent by the College, periodically, to Anna University, Chennai, is for 480 periods, which is also contrary to the regulations. The details are as follows:

59. Details furnished by the appellant in the additional typed set of papers, are as follows:

The individual is not permitted to attend the classes from 26.03.15 to 14.04.2015, i.e., Approximately 98 periods.

If it is taken into A/c. $296 + 96/450 = 88\%$

Having above 65% attendance (Page 3, Clause 6.2)

The student may permit to attend the exam with medical certificate. Here the College is not permitted to attend its classes and University not take any action.

Current exam attended (Page 44)

6th Semester Current exam (Practical) attended on 16, 17 and 18.04.2015."

60. Going through the above, Mr. Ajmal Khan, learned counsel for the appellant fairly admitted that the appellant had attended 290 periods, out of 480, which comes to 65.7%. Number of periods, from 26.03.15 to 14.04.2015, not permitted by the College, is 98 periods. In the letters, dated 29.03.2015, addressed to the Holycross Engineering College, Tuticorin, both the appellant and his father, have clearly stated that the appellant was prevented from attending the classes, from 27.03.2015, willfully to create shortage of attendance in the

ensuing examinations. As discussed, there is no reply.

61. Thus from the above, objection of the respondent-College that condonation is not permissible, fails, on the admission of the learned Senior Counsel that the appellant has secured 65.7% of attendance. At the risk of repetition, Regulations 5.3 and 6.1 to 6.3 are reproduced hereunder:

"5.3. The Head of the Institution/Principal may conduct additional classes for improvement, special coaching, conduct of model test etc., over and above the Specified periods. But for the purpose of calculation of attendance requirement or writing the end semester examinations (as per clause 6) by the students 450 periods conducted within the specified academic schedule alone shall be taken into account and the overall percentage of attendance shall be calculated accordingly.

6.1. A Candidate who has fulfilled the following conditions shall be deemed to have satisfied the requirements for completion of a semester. Ideally every student is expected to attend all classes and secure 100% attendance. However, in order to give provision for certain unavoidable reasons such as Medical/ participation in sports/personal, the student is expected to attend atleast 75% of the classes during any semester commencing from First semester.

6.1.1 Therefore, he/she shall secure not less than 75% (after rounding off to the nearest integer) of overall attendance taking into account the total number of 450 periods in a semester within 90 working days in all courses put together attended by the candidate as against the total number of periods in all courses offered during the semester (vide clause 5.3)

6.2 However, a candidate who secures overall attendance between 65% and 74% in that current semester due to medical reasons (prolonged hospitalization/ accident/specific illness/Participation in Sports events) may be permitted to appear for the current semester examinations subject to the condition that the candidate shall submit the medical certificate attested by the Head of the Institution. The same shall be forwarded to the Controller of Examinations, Anna University, Chennai for record purposes.

6.3 Candidates who secure less than 65% of overall attendance shall not be permitted to write the University examination at the end of the semester and not permitted to move to the next semester. They are required to repeat the incomplete semester in the next academic year, as per the norms prescribed."

62. Though the respondent-College has contended that the abovesaid contingencies do not exist, in the case of the appellant and therefore, there cannot be any condonation, on the facts and circumstances of the case, we are of the view that when the College had prevented the appellant from attending the theory classes for the 6th semester examinations, applicability of the said conditions, do not arise.

63. As rightly pointed out that no charge memo has been issued. By the action of

the College, in preventing the appellant, he had to lose one semester and by staying back in the sixth semester, he cannot move to the seventh semester degree course. As the appellant has satisfied the attendance requirement, now computed and extracted supra, he need not repeat the 6th semester course. He must be permitted to move on to the 7th semester in the 4th year. He must be permitted to write the 6th semester examination.

64. Though on the facts and circumstances, it is a fit case, where costs can be imposed on the Institution, for the act of preventing the appellant from attending the theory classes, considering the future of the appellant in pursuing final year course in the same college, and "Holy Cross" means, we desist from doing so. The appellant be permitted to continue his final degree course, without causing any hindrance. So also, as the appellant is directed to concentrate on his studies. It is reported by the learned counsel for the appellant that the College had commenced its classes. Period spent during litigation should not be put against the appellant, for computing attendance.

65. In the light of the above discussion, writ appeal is allowed and the respondents are directed to permit the appellant to write the 6th semester examination in B.E Mechanical Engineering in Holycross Engineering College. No costs.