

(2000) 08 MAD CK 0025

In the Madras High Court

Case No : W.A. No. 927 and C.M.P. No's. 9095 and 9096 of 1999

M. Mohana

APPELLANT

Vs

Bharathiyar University and Others

RESPONDENT

Date of Decision : 16-08-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226

Citation : AIR 2001 Mad 113 : (2000) 3 LW 725

Hon'ble Judges : K. Gnanaprakasam, J;A.S. Venkatachalamoorthy, J

Bench : Division Bench

Advocate : G.K. Selvarajan, for the Appellant; S. Haja Mohidden Kisthi, V.T. Gopalan, Addl. Solicitor General and R. Viduthalai, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Venkatachalamoorthy, J.—The above writ appeal has been directed against the order of the learned single Judge in W.P. 7884 of

1999 dated 30-4-1999.

2. The claim of the appellant is that she joined the Coimbatore Law College to undergo five year degree course in the academic year 1991 -92.

While she was studying in the 4th year, she met with a ghastly accident and was hospitalised and hence she could not put In required attendance.

Similarly in the fifth year, she had to undergo operations to set right the multiple fractures and because of which she could not put in the required

attendance. She filed suits and after obtaining Interim orders, she appeared for the fourth year and fifth year examinations. According to her, the

learned District Munsif dismissed the suit in O.S. 2092 of 1996, and held that the appellant had put in 55.16% of attendance in the 4th year and

61.2% attendance in the 5th year. Though it may be that the Principal had no power to condone the shortage of attendance of students beyond

10% out of the total number of working days, under Clause 17 of the Guidelines for attendance of students, issued by the Controller of

Examinations, Barathiar University, the Syndicate has power to condone, under extra ordinary circumstances, upto 20% out of the total number of

working days. The appellant would further claim that the 4th respondent viz., the Principal of the Law College gave wrong statement of attendance

to the respondents 1 and 2 and that had caused irreparable loss and hardships to the appellant. The writ petition was filed with a prayer to issue

direction to the respondents to condone the lack of attendance in the academic year 1994-95 and 1995-96 and publish the result of the

examinations undertaken by the appellant during June, 1996.

3. The learned single Judge dismissed the writ petition on the following grounds :

(a) The writ petition is barred by res judicata (b) The prayer to publish the results cannot be sustained because the appellant was permitted to write

the examinations by virtue of interim orders passed in the suits, which was only subject to the decisions in the suits and that since the suits have

already been dismissed, the appellant would not be entitled to such a prayer; (c) The District Munsif considered the prayer of the appellant viz.,

question of eligibility to write examinations and he found that the appellant had not established special or extraordinary circumstance for

condonation of lack of attendance; (d) The appellant cannot be permitted to take parallel proceedings for the same subject matter; (e) The

appellant failed to disclose filing of two other suits, writ petition and writ appeal and thus guilty of suppression of material facts.

4. Straightway we may say that we are in entire agreement with the finding of the learned single Judge.

5. There is no dispute that the appellant filed as many as three suits and also obtained interim orders and appeared for examinations. The reliefs

sought for in the plaint are for (a) declaring that the plaintiff is eligible and entitled to participate the forthcoming examinations with respect to 4th

year B. L. in the examinations to be commenced from 10-12-1996; (b) declaring that the plaintiff is eligible and entitled to participate the

forthcoming examinations with respect to 5th year B. L. in the examinations to

be commenced from 10-12-1996" and for other consequential reliefs. Obviously, this is on the basis that the appellant had put in necessary attendance. The suit was resisted by the respondents inter alia contending that the appellant did not satisfy the required attendance both for 4th year and 5th year. Ultimately, the suit came to be dismissed on merits. As against the decree and judgment of the Civil Court, appellant did not file any appeal. Hence that has become final. On the other hand, she has come forward to file the writ petition for directing the respondents to grant condonation for the shortage in attendance for both 4th and 5th years and to publish the results. In effect, the reliefs sought for before the Civil Court as well as in the writ petition are one and the same.

6. In these circumstances, the resultant position would be that:

(a) The appellant having opted to approach the Civil Court, cannot now seek to invoke the writ jurisdiction of this Court.

In fact, the Supreme Court in *M.S.R. Prasad Vs. Bommisetti Subba Rao and Others*, , ruled as under :

. . . . In view of the fact that the remedy available to the petitioner in the civil suit has already been available of, the High Court has rightly declined to interfere and dismissed the writ petition of the respondent.

(b) The decision in the Civil Suit, which has become final, would operate as res judicata in the writ proceeding.

In fact, the Supreme Court had to consider in *Ashok Kumar Srivastav Vs. National Insurance Company Limited and Others*, as to whether the

decision in writ proceedings will operate as res judicata in the subsequent judicial proceedings. In paragraph 14 of the judgment, it referred to the

earlier ruling of three Judge Bench in *Y.B. Patil and Others Vs. Y.L. Patil*, and quoted the relevant sentence from the judgment, which reads as

under :

The principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same

proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceeding.

7. Let us now proceed to consider the prayer that is sought for in the writ petition. The prayer is to direct the respondents to condone the lack of

attendance and to direct the respondents to publish the results of the

examinations written by the appellant. Of course, as far as the first prayer is concerned, counsel would submit that the respondents 1 and 2 may be directed to consider whether it is a fit case where the condonation of shortage of attendance has to be granted. As per the guidelines of attendance requirement in Colleges, the Syndicate shall have the power to condone, under extraordinary circumstances, upto a maximum of additional 10% over and above the 10%, which the principal of the College can condone. The learned District Munsif in the said suit has considered this aspect as well and pointed out that even though the claim of the appellant is that she met with a road accident and could not attend the college due to illness, she has not mentioned the reason for not attending the college during the 5th year. The learned District Munsif has given a categorical finding that the appellant has not satisfied that special circumstances existed for granting condonation of attendance. This finding remains unchallenged.

8. Apart from this we may also point out that the learned District Munsif has in para 12 of the Judgment has clearly pointed out that the appellant had given medical certificate only for 20 days and in fact deposed before that Court that during the remaining period she along with another student by name Parameswari attended the college regularly. Obviously, this statement cannot be correct. In this context, it has to be mentioned that the appellant before this Court represented that she met with a ghastly accident. But no document was produced before the Civil Court as well as before this Court to substantiate the same. We are in entire agreement with the learned single Judge that the appellant has not placed any material, which would persuade the Court to direct the respondents 1 and 2 to consider the application of the appellant for condonation of shortage of attendance. It has to be pointed out at this stage that the Jurisdiction that is being exercised by this Court is discretionary in nature and this Court exercises this discretion only in appropriate and deserving cases.

9. The next part of the prayer is to direct the respondent to publish the results of the examinations written by the appellant. Again this cannot be granted for reasons. Firstly, the appellant took up the examination only pursuant to the interim orders of the Civil Court, which could only be subject to the final outcome of the said suits. Out of the three suits, two suits were not pressed and the third suit was dismissed. That being so, if

this Court gives direction to the respondents to publish the results, it would go contra to the judgment rendered in those three suits. The Apex

Court in AIR 1997 993 (SC) made it clear that the interim orders passed are always subject to the final orders in the case. To quote the exact wordings.

Even otherwise, the interim orders passed are always subject to the final orders in the matter.

10. It is absolutely necessary to point out that the learned District Munsif ought not to have granted interim orders for mere asking when admittedly

the appellant put forth a case that she met with an accident and she was hospitalised, which resulted non-availability of term days (lack of

attendance). Any such interim orders should be granted only if a party makes out a strong prima facie case. In fact, the Supreme Court deprecated

the Courts passing interim orders and permitting the students to take up the examinations in undeserving cases. For the purpose of completeness,

we quote the following rulings.

In Central Board of Secondary Education Vs. Nikhil Gulati and Another, , it is held thus (at page 1206) :

Occasional aberrations such as these, whereby ineligible students are permitted, under Court orders, to undertake Board and/or University

examinations, have caught the attention of this Court many a time. To add to it further, the Courts have almost always observed that the instance of

such aberrations should not be treated as a precedent in future. Such casual discretions by the Court is nothing but an abuse of the process; more

so when the High Court at its level itself becomes conscious that the decision was wrong and was not worth repeating as a precedent. And yet it is

repeated time and again. Having said this much, we hope and trust that unless the High Court can justify its decision on principle and precept, it

should better desist from passing such orders, for it puts the "Rule of Law" to a mockery, and promotes rather the "Rule of Man".

In C.B.S.E. and Another Vs. P. Sunil Kumar and Others, , the Supreme Court was considering a case where pursuant to the directions given by

the High Court, certain students of unaffiliated institutions were allowed to take up examinations and in that context, the Supreme Court observed

thus (at page 2238) :

. . . . But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then

to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and this

Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of students.....

11. The next question is whether the appellant has come before this Court with clean hands and whether this Court has to exercise its discretionary

jurisdiction under the powers conferred under the Constitution. The appellant in the writ petition has disclosed filing of only one suit, whereas she

had in fact filed three civil suits. Similarly, filing of earlier writ petition has also been suppressed. Secondly, an impression was given before this

Court that she met with a ghastly accident and that is why she could not attend the college. On a deeper examination it is found that she produced

medical certificate only for 20 days and in fact in the witness box in the civil Court claimed having attended the college thereafter. Again this

statement is false.

12. In 1995, she gave a police complaint against the Principal and a Professor of the college. The substance of the complaint was that the Principal

pulled her right hand with his left hand and slapped her in her cheek with his right hand and at that time, the Professor pulled her saree. This

complaint was referred as false. Thereafter, she did not take up the matter further. On the contrary, when this Court put a question at the initial

stage as to what happened to the complaint, the appellant repelled that the matter was compromised. The appellant who has been instituting

various proceedings from 1995 and that too a law student, would not have kept quiet from taking up the matter further with reference to the said

incident by filing private complaint, etc. In the facts and circumstances this Court can come to the only conclusion that it was a false complaint. The

appellant has suppressed relevant facts before this Court and has not come before this Court with clean hands. It is our considered view that the

appellant does not deserve any sympathy. If we take a lenient view and direct the respondents 1 and 2 to consider her application for condonation

of shortage in attendance, then it will only be a misplaced sympathy and will cause serious set back to the institutions which are taking various steps

to maintain students' discipline. We can show our sympathy only by not awarding costs to the respondents in this appeal.

13. In the result, there are absolutely no merits in this appeal and the appeal is hereby dismissed. No costs. Consequently, C.M.P.Nos. 9095 and

9096 of 1999 are also dismissed.