

(2009) 07 MAD CK 0202

In the Madras High Court

Case No : Writ Petition No. 7099 of 2009

S. Ashok Kumar

APPELLANT

Vs

The Principal, Dr. Ambedkar Government Law College

RESPONDENT

Date of Decision : 03-07-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 161

Citation : (2009) 6 MLJ 538 : (2009) WritLR 720

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : N.G.R. Prasad, for R. Shiva Kumar, for the Appellant; P. Wilson, A.A.G. for K.H. Ravi Kumar, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—Heard the learned Counsel appearing for the petitioner and the learned Additional Advocate General appearing for the respondent.

2. By consent of both parties, the writ petition is taken up for final hearing and disposal.

3. Originally, this writ petition had been filed praying for a Writ of Mandamus to direct the respondent to allow the petitioner to pay the fee for the

6th Semester and to continue his education in the respondent College, namely, Dr. Ambedkar Government Law College, Chennai. Later, the

prayer in the writ petition had been amended, as per the order of this Court, dated 27.4.2009, made in M.P. No. 2 of 2009. By way of the

amended prayer, the petitioner had prayed that this Court may be pleased to issue a writ of Certiorarified Mandamus to call for the records

relating to the order of the respondent, dated 13.11.2008, suspending the petitioner from the respondent College and to quash the same, in so far

as it relates to the petitioner and to direct the respondent to allow the petitioner to pay the fees for the 6th Semester and to attend the classes and

to continue his education.

4. The petitioner has stated that he belongs to the weaker section of the society and that he comes from a socially and economically backward

village, namely, Kulasekaranatham, in Thoothukoodi District. He had successfully completed his Higher Secondary Education from St.Johns

Higher Secondary School, Palayamkottai, in the year 2005. In order to pursue his further studies he had joined the respondent law college at

Chennai, with the aim of becoming a lawyer. He had been attending the classes in the respondent college, regularly, and he had completed his V

Semester during the month of September, 2008.

5. The petitioner has further stated that he was staying in the Law College Hostel at Kilpauk, Chennai. As the situation in the Hostel was not

conducive for his studies, he had shifted to his relative's house in Keelkattalai, during the month of August, 2008. While so, there was a clash

amongst some students inside the college campus, on 12.11.2008. On the said date the petitioner had not gone to the College, as he did not have

any examination on that date. In fact, the petitioner was staying in the house of his relative in Keelkattalai.

6. It has been further stated that it is clearly evident from the video recordings and the photographs available that the petitioner was not present at

the place where the incident had occurred. The petitioner's name does not figure in the first information report relating to the incident that had

occurred, on 12.11.2008, in Crime No. 1371/2008 in B-2, Esplanade Police Station, Chennai. However, as an abundant caution the petitioner

had obtained an anticipatory bail from this Court by an order, dated 29.1.2009, made in Crl.O.P. No. 1478 of 2009.

7. It has been further stated that after the incident which had happened, on 12.11.2008, the State Government had announced the closure of all

Law colleges in the state of Tamil Nadu. The Law Colleges had re-opened only on 19.1.2009. However, the colleges had again been closed due

to the unrest relating to the Tamil Eelam issue. Thereafter, the colleges had re-

opened only on 23.3.2009. While a number of students, who were in the same class as that of the petitioner, had been permitted to attend classes in the 6th Semester, the authorities of the respondent college, had refused to permit the petitioner to submit his application and to pay the fees for the 6th Semester. In spite of the several requests made by the petitioner to permit him to attend the classes in the 6th Semester, the authorities concerned had refused to entertain the request of the petitioner. Later, he was informed that he had been suspended from the college and that the order of suspension had been sent to his address at his native place.

8. The petitioner has further stated that the order of suspension in the proceedings of the respondent bearing Order No. 3146/A5/2008, dated 13.11.2008, does not pertain to the petitioner. It was relating to one S. Ashok Kumar, son of M. Sivalingam, whose name is found in serial No. 15 of the order. S. Ashok Kumar, Son of M. Sivalingam, had been arrested by the police in connection with the incident that had taken place in the respondent college, on 12.11.2008. The case of the petitioner is one of mistaken identity.

9. It has been further stated that the impugned order of suspension, dated 13.11.2008, had been passed, arbitrarily, without giving the petitioner prior notice and without obtaining his explanation. No show cause notice had been issued to the petitioner and there was no personal hearing. Due to the order of suspension, dated 13.11.2008, the authorities of the respondent College have refused to permit the petitioner to attend the classes in the 6th Semester and they had also refused to permit the petitioner to write the 6th Semester examinations, commencing from 4.7.2009. Since the petitioner has been put to severe hardship, irreparable loss and mental agony, he has preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

10. The learned Counsel, Mr. N.G.R. Prasad, appearing on behalf of the petitioner had vehemently argued that the petitioner is being wrongly punished for no fault of his, as it is a clear case of mistaken identity. Though, it may be true that the name of one S. Ashok Kumar, son of M. Sivalingam, has figured in the first information report, registered before the B-2, Esplanade Police Station, Chennai, in Crime No. 1371/2008, it

cannot be said that it is the name of the petitioner. In fact the petitioner was not present in the respondent college, on 12.11.2008, when the incident is alleged to have occurred. The suspension order of the respondent, dated 13.11.2008, does not relate to the petitioner. The fact that the petitioner was residing in the residence of his elder brother in Keelkattalai on the relevant date, is clear from the video recordings and the photographs available, relating to the said incident.

11. It has been further stated that in view of the fact that the petitioner was not allowed to join the classes of the 6th Semester conducted by the respondent College, he had submitted a representation, dated 16.3.2009, to the respondent as well as to the Director of Legal studies, Chennai, stating that he was not involved, in any way, in the incident that had taken place, on 12.11.2008. He had also stated that he was not present in the College, on the day of the occurrence. The name S. Ashok Kumar, found in the First Information Report, is not his name. Even though a suspension order seems to have been passed by the respondent, on 13.11.2008, wherein, the name S. Ashok Kumar is found in serial No. 15, it does not refer to the petitioner, as it refers to another S. Ashok Kumar, Son of M. Sivalingam. The order of suspension, dated 13.11.2008, had been handed over to the petitioner only on 16.4.2009, when he had approached the respondent, requesting him to permit the petitioner to join the classes of the 6th Semester.

12. The learned Counsel had further stated that the First Information Report, registered in Crime No. 1371/2008, before the B-2, Esplanade Police Station, Chennai, refers to only one S. Ashok Kumar, son of Sivalingam, and therefore, it is clear that the petitioner, whose name is S. Ashok Kumar, son of Shanmuganathan, was not involved in the incident that had occurred, within the premises of the respondent College, on 12.11.2008. Since the respondent had refused to permit the petitioner from joining the classes of 6th Semester of the respondent College, he has been put to severe hardship and agony. It cannot be said by the respondent that there is sufficient evidence against the petitioner to keep him under suspension, preventing him from writing the 6th semester examinations, to be held from 4.7.2009. As the suspension order of the respondent, dated 13.11.2008, suspending the petitioner from the respondent College, is

arbitrary and illegal, the petitioner cannot be validly prevented from writing the 6th Semester examinations of the respondent College.

13. In such circumstances, unless and until it is proved that the petitioner is involved in the unfortunate incident that had occurred, on 12.11.2008, he cannot be punished by preventing him from writing the 6th Semester examinations. Therefore, this Court is to take a compassionate view in the matter in permitting the petitioner to write the 6th Semester examinations of the respondent College, from 4.7.2009. Further, the impugned order of the respondent, dated 13.11.2008, is to be quashed, as it is arbitrary in nature and as it has been issued, without giving a show cause notice to the petitioner, calling for his explanation, with regard to his alleged involvement in the incident that had happened, on 12.11.2008. The said order of suspension, dated 13.11.2008, was issued by the respondent, without following the principles of natural justice and therefore, it is liable to be set aside.

14. Per contra, the learned Senior Counsel Mr. P. Wilson, Additional Advocate General, appearing on behalf of the respondent had submitted that the enquiry proceedings initiated against the petitioner and several other students of Dr. Ambekar Government Law College, Chennai, with regard to the incident that took place on 12.11.2008, had not been completed. It is not open to the petitioner to contend that since his name does not figure in the First Information Report, registered before the B-2, Esplanade Police Station, in Crime No. 1371/2008, no action can be taken against him by the College authorities concerned. In fact, the First Information Report, dated 12.11.2008, mentions the name of the petitioner as Ashok, also known as Ashok Kumar, apart from mentioning the name of the other Ashok Kumar, Son of M. Sivalingam.

15. Even from the statements made by Ayyadurai and Arumugam, made u/s 161 of the Criminal Procedure Code, it is clear that there were two persons with the name Ashok Kumar and both of them had been involved in the incident that had occurred on 12.11.2008. Though the classes of the 6th Semester had begun, on 19.1.2009, the petitioner had made a representation, requesting the respondent to permit him to attend the classes only on 16.3.2009. The petitioner had come to the College only on 16.4.2009, when the order, dated 13.11.2008, suspending him from the

College, was handed over to him.

16. It was further submitted that the prayer of the petitioner, requesting this Court to direct the respondent to permit him to pay the fees for the 6th

Semester, had been rejected by an order of this Court, made in M.P. No. 1 of 2009, on 7.5.2009. As the said order had not been challenged, it

had become final.

17. The learned Counsel had also pointed out that since certain criminal proceedings had been initiated against the petitioner and as the enquiry

launched by the authorities concerned to go into the incident that had occurred in the premises of the Dr. Ambedkar Government Law College,

Chennai, is yet to be completed, the request of the petitioner to write the 6th Semester examinations, commencing from 4.7.2009, cannot be

acceded to.

18. It has also been contended that the respondent has been vested with the inherent power to suspend any student of the college, on disciplinary

grounds. Further, he is also empowered to impose the punishment prescribed, under Regulation 28 contained in the Hand Book of the respondent

College, which reads as follows:

28. The Principal will inflict the following punishments in the interest of the students of the college:

(1) fine, (2) loss of attendance, (3) loss of term certificates, 4) suspension, 5) expulsion and, 6) any other punishment deemed fit under

circumstances for maintaining discipline in the college.

19. The learned Counsel for the respondent had also pointed out the regulations, with regard to the percentage of attendance required by the

students to be eligible to write the University examinations. It has been stated that the candidates securing more than 75% of the attendance would

be eligible to write the university examinations. Condonation of shortage of attendance would be on the recommendation of the Principal of the

College, if the attendance of the candidate is 66% and above, but less than 75%. Candidates who have secured less than 66% of the attendance

have to redo the entire course in the subsequent academic year, irrespective of the number of days falling short of attendance, by obtaining the

prior permission for re-admission from the Director of Legal Studies and the Tamil Nadu Dr. Ambedkar University, on payment of the fees

prescribed for such readmission.

20. The learned Counsel had further submitted that the number of working days for the respondent College, in the 6th semester, was 80. He had

also submitted that the petitioner does not get any right to write the examinations, merely for the reason that he was issued with the hall ticket for

the examinations relating to the earlier semesters. The learned Counsel has further stated that the petitioner had not attended the classes even on a

single day, in the 6th Semester. Even if his non-attendance is due to the suspension order issued by the respondent, there is no provision, under the

Rules and Regulations applicable to the respondent College, to permit such a candidate to write the examinations. Therefore, the only course open

to the petitioner is to re-do the semester, if he is permitted to do so by the authorities concerned, in accordance with the Rules and Regulations

applicable to his case. Further, a wrong precedent would be set if the students, like the petitioner, are permitted to write the examinations, even

though he had not attended even a single class in the 6th Semester.

21. The learned Counsel appearing on behalf of the respondent had further submitted that the petitioner has not alleged bias or mala fides against

the respondent. In such circumstances, it cannot be said that the order of suspension passed by the respondent, suspending the petitioner from the

College, is invalid, as it has been done only to maintain discipline amongst the students of the respondent College, especially, in view of the

seriousness of the incident that had occurred on 12.11.2008. The said incident had sent shock waves, not only in the legal circles, but also in the

minds of the law abiding citizens of the society at large.

22. By way of a reply, the learned Counsel appearing on behalf of the petitioner, had submitted that Regulation 28 of the Hand Book may

empower the respondent to inflict on the students of the college the various punishments, mentioned therein including the punishment of suspension.

However, no regulation has been shown by the learned Counsel for the respondent empowering the respondent to pass an order of temporary

suspension. Further, it has also not been shown as to the prejudice that would be caused to the respondent College if the petitioner is permitted to

write the examinations of the 6th Semester. In spite of the representations made by the petitioner, requesting the respondent to permit him to attend

the classes in the 6th Semester, he has been prevented from doing so. If the petitioner is short of the required attendance to write the examinations

it is not due to his fault. In fact, it is due to the illegal order of suspension passed by the respondent. As no reply has been sent by the respondent

for the representations made by the petitioner, the petitioner has been kept in the dark, regarding the shortage of attendance, till the eleventh hour,

causing irreparable loss and severe mental agony to the petitioner. In fact the suspension order of the respondent, dated 13.11.2008, does not

refer to two students bearing the name of Ashok Kumar. Similarly, the statements recorded, u/s 161 of the Criminal Procedure Code, does not

refer to two persons with the same name of Ashok Kumar. When only one name of S. Ashok Kumar is found in serial No. 15 in the suspension

order, no reasons have been stated for suspending the other student with the same name.

23. Mr. P. Wilson, the learned Additional Advocate General, appearing on behalf of the respondent had relied on a decision of the Supreme Court

reported in Controller of Examinations and Others Vs. G.S. Sunder and Another, , wherein it has been held as follows:

10. We have given our careful consideration to the above submissions. One thing must be put beyond doubt, in matters of enforcement of

discipline this Court must be very slow in interference. After all, the authorities in charge of education whose duty it is to conduct examinations

fairly and properly, know best how to deal with situations of this character. One cannot import fine principles of law and weigh the same in golden

scales. In the present system of education, the system of examinations is the best suited to assess the progress of the student so long as they are

fairly conducted. Interference by court in every case may lead to unhappy results making the system of examination a farce. For instance, we

cannot but strongly condemn copying in the examination which has grown into cancer of mass copying. Such unhealthy practices which are like

poisonous weeds in the fields of education must be rooted out in order that the innocent and the intelligent students are not affected.

24. The learned Counsel had also relied on a Division Bench judgment of this Court reported in G. Pravina Vs. The Registrar, Dr. Ambedkar Law

University and The Principal, Central Law College, , wherein it has been held as follows:

I. When there is no evidence to show that the candidate was refused permission to sit for the examination on the ground of non-payment of

donation and when the amount due was only tuition fee, then no direction can be issued in favour of the candidate, in the writ petition filed by her.

II. Mere issuance of hall ticket does not automatically allow the candidate to write the examination, unless the candidate has requisite attendance.

25. He had also relied on the decision of the Kerala High Court reported in P.M. Unni Raja and Others Vs. Principal, Medical College,

Trivandrum and Others, , wherein it has been held as follows:

Courts have generally set certain limitations and self-imposed restrictions on them while exercising their discretionary power under Article 226 in

dealing with decisions of academic bodies. The Courts have consistently kept their hands off high academic bodies unless flagrant violation of fair-

play based on bias or malafides is brought to their notice in the orders passed by them. Even formal violations of principles of natural justice have

been winked at by Courts if allegation of such violation is inconsequential in nature and when the aggrieved is assured of such opportunity in

parallel proceedings.

The teachers and the Principal are considered as a delegate of the parent for the purpose of correction and maintaining discipline. That the

Principal has such a power is incontrovertible. The essence of the matter, is that the head of the institution should in law be presumed to possess an

inherent right to do such acts as are necessary in his opinion to maintain discipline in the institution. This right is incapable of an exhaustive

identification. To limit it within defined confines would be to erode into his authority and fetter his discretion. To deny this right to the head of the

institution would be to sound the death-knell of discipline in the institution which is already a casualty, by the combination of diverse forces, from

within and from without.

The propriety or otherwise of an order of suspension of a student by the head of an institution will justify scrutiny under Article 226 only when

materials are placed before the Court of either denial of basic human rights or violation of principles of natural justice, glaring discrimination, bias or

malafides. The Principal has an inherent power to deal with the students, to improve them and to maintain discipline and include in such power the

right to suspend them when occasion demands.

The Principal Acts as a second parent of his students. It will not be possible to delineate his powers in clear terms, in the same way as the rights of

a parent over his child cannot be clearly enumerated. The Principal is the best judge to determine what action is to be taken against a student

accused of pre-admission misconduct. To limit his powers to the misconducts in the course of studies would render him ineffective as the head of

the institution. It may not be proper to import the principles of master and servant bodily to the relationship between teacher and taught.

In these cases, the Principal had before him reports of very grievous charges against the petitioners of having secured mark-lists which do not tally

with the marks in the official records. He was aware of the fact that by such admission the petitioners had denied admission to other more

deserving candidates. He had also before him materials from which he knew that crimes were registered against these petitioners, that investigation

was going on, that they were arrested by the police and that they were released on bail. Thus, the Principal had a wealth of materials before him for

suspending the petitioners from the institution.

Power of suspension is an ancillary and an incidental power. Thus, the Principal acted within his powers in ordering suspension of the petitioners.

The request to fault those orders cannot be granted.

26. In view of the submissions made by the learned Counsel, Mr. N.G.R. Prasad, appearing on behalf of the petitioner, and Mr. P. Wilson, the

learned Additional Advocate General, appearing on behalf of the respondent and on a perusal of the records available, this Court is of the

considered view that the reliefs sought for by the petitioner in the present writ petition cannot be granted, at this stage. This Court does not find it

appropriate to exonerate the petitioner from the charges levelled against him for having been involved in the incident that had occurred in the

respondent College, on 12.11.2008. There is no dispute with regard to the fact that the enquiry, initiated against the petitioner and the other

students of the respondent College, has not been concluded.

27. In the relevant records, shown by the learned Counsel for the respondent relating to the investigation being conducted by the police, based on

the First Information Report, dated 12.11.2008, registered in Crime No.

1371/2008, before the B-2, Esplanade Police Station, Chennai, it has been shown as though the petitioner had also been involved in the incident by causing hurt to other students, using his hands and legs. Whereas, the other S. Ashok Kumar, Son of M. Sivalingam is shown to have used a wooden log during the assault. Even though the petitioner had claimed that he was not found in the video recordings and in the photographs relating to the incident, such recordings or photographs cannot be taken as the only complete and final evidence relating to the incident.

28. Further, an investigation is being conducted based on the First Information Report, registered in Crime No. 1371/2008, in B-2, Esplanade Police Station, Chennai. Therefore, it would be premature for this Court to hold that the petitioner is not connected, in any way, to the incident that had occurred in the respondent College, on 12.11.2008. It is for the investigating agency and for the authorities concerned, who are enquiring into the matter, to come to a conclusion, based on the evidence available. Merely because the name of the petitioner is not mentioned in the First Information Report, dated 12.11.2008, registered before the B-2, Esplanade Police Station, Chennai, it cannot be said that he has not been involved in the incident that had taken place, on 12.11.2008.

29. Further, the respondent, as the Head of the Dr. Ambedkar Government Law College, Chennai, has an onerous duty cast on him to maintain discipline amongst the students of the said institution. As such he is vested with certain inherent powers, including the power to prevent the delinquent students from attending classes, by issuing an order of suspension. No educational institution can be run in a disciplined manner without such powers being exercised by the authorities, who are in the management of such institutions. There is no doubt that a high level of discipline is to be maintained in educational institutions, especially, in the institutions which are responsible for creating well trained, like Lawyers, Doctors and Engineers, who are expected to play important roles in the society. Further, it is clear that the petitioner had not attended classes even for a single day in the 6th semester, due to the impugned suspension order issued by the respondent. As a consequence, he has failed to meet the attendance requirements of the College, as prescribed by the regulations in the Hand Book of the respondent institution.

30. It is clear from the decision of the Supreme Court, in Controller of Examinations and Others Vs. G.S. Sunder and Another, , that in the matter of enforcement of discipline in educational institutions the Courts of law should be slow in interfering. This Court in a decision reported in K.

Hariharan and L. Gopinathan Vs. The Vice Chancellor, Bharatidasan University, The Registrar Bharatidasan University and The Principal Arignar

Anna Govt. Arts College, , had held as follows:

12. It goes without saying that the primary object of all educational institutions are to impart quality education, as well as character building in their students, to enable them to emerge as good citizens in future. Unless strict discipline is maintained in the institutions of learning, the ultimate object of imparting quality education and of character building would be lost, leading to disastrous consequences.

31. In such view of the matter, the contentions raised on behalf of the petitioner cannot be countenanced. As there is no merit in the writ petition it

is liable to fail. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected M.P. No. 4 of 2009 is closed.