
(2015) 05 MAD CK 0028

In the Madras High Court

Case No : Writ Appeal(MD) No. 466 of 2015 and M.P.(MD) Nos. 1, 2 of 2015

The Anna University

APPELLANT

Vs

Narayanaguru International Institute of Science and
Technology and Others

RESPONDENT

Date of Decision : 14-05-2015

Acts Referred:

Citation : (2015) 05 MAD CK 0028

Hon'ble Judges : T.S. Sivagnanam, J;G. Chockalingam, J

Bench : Division Bench

Advocate : K. Chellapandian, Additional Advocate General and K. Govindarajan,
for the Appellant; Isaac Mohanlal, Advocates for the Respondent

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J—This appeal by the Anna University is directed against the interim order, dated 27.04.2015, in M.P.(MD) No. 1 of 2015 in W.P.(MD) No. 20496 of 2014. The said writ petition was filed by the first respondent herein (hereinafter referred to as the respondent Institution) for issuance of a writ of mandamus to direct the Anna University to permit 245 students (170 in UG and 75 in PG) studying in the first year and to appear for the first semester examination commencing on 17.12.2014. In the said writ petition, the first respondent had filed a miscellaneous petition in M.P.(MD) No. 1 of 2014 for interim orders to enable their 245 students to take the first semester examination. By order, dated 16.12.2014, interim direction was issued by the Writ Court directing the appellant University to permit 245 students studying in the first year to take the first semester examination, with a further direction to withhold the results until further orders. Pursuant to the interim direction granted, the students of the first respondent Institution appeared for the first semester examination and their results have been withheld. The same batch of 245 students moved to the second semester and exams were approaching, therefore, the first respondent filed M.P.(MD) No. 1 of 2015 in W.P.(MD) No.

20496 of 2014 for a direction to the appellant University to permit their students to take the second semester examination commencing from 27.05.2014. In the said miscellaneous petition, an interim direction was issued on 27.04.2015 permitting the students (220) to take up the second semester examination and the results were directed to be kept in a sealed cover till the disposal of the writ petition. This interim direction, dated 27.04.2015, is the subject matter of challenge in this appeal. The appeal was heard by a Division Bench on 06.05.2015 and while ordering notice of motion returnable in four weeks, order of interim stay was granted till then. The first respondent Institution has filed a petition to vacate the interim order in M.P.(MD) No. 2 of 2015 and the same was listed before this Court and the learned counsels appearing on either side made their submissions in the appeal itself and with their consent the writ appeal itself is disposed of.

2. The learned Additional Advocate General assisted by Mr. K. Govindarajan, learned counsel for the appellant submitted that the AICTE has not granted approval to the first respondent Institution for the academic year 2014-15 and the order of rejection of approval is under challenge before this Court and this aspect of the matter was not considered while issuing the interim direction, dated 27.04.2015.

3. Further, it is submitted that the appellant University has not granted affiliation to the first respondent Institution for the academic year 2014-15 since the Institution did not have approval of the AICTE and the question of granting permission to the students to sit for the examination does not arise. By placing reliance on the decision of the Hon'ble Full Bench of this Court in the case of Rukmani College of Education run by Rukmani Educational and Charitable Trust Vs. The State of Tamil Nadu, AIR 2008 Mad 137 : (2008) 1 CTC 545 : (2008) 1 LW 571 , it is submitted that no Institution is entitled to admit students before the grant of affiliation by the University and if such admissions are made, it amounts to committing fraud on those students and cheating them. Further, it is submitted that it would impermissible for the Court to permit the students of an un-affiliated Institution to appear for examination conducted by the University under the interim orders of the Court or to direct the University to grant affiliation with retrospective effect. It is further submitted that the first respondent Institution is utilising the students as a shield to cover up the illegal admissions and playing with the life of innocent students.

4. Mr. Isaac Mohanlal, learned counsel appearing for the first respondent submitted that the respondent Institution was established during 2002-03 and approval was granted by AICTE and affiliation was given by the appellant University continuously from 2002. For the first time, for the academic year 2014-15, an order was passed on 16.06.2014 refusing extension of approval for the academic year 2014-15. It is submitted that by then admissions were undertaken by the respondent Institution in the light of the approval and affiliation having been enforce from 2002 onwards. Since the order, dated

16.06.2014, passed by AICTE was a cryptic order, the petitioner filed a writ petition in W.P.(MD) No. 10287 of 2014 channeling the said order. The said writ petition was allowed, by order, dated 06.08.2014 giving directions to AICTE to afford an opportunity of personal hearing to the respondent Institution and pass orders within a period of thirty days. However, in the said order, it was pointed out that the order would not give right to the Institution to make admission during the academic year 2014-15. It is submitted that even much prior to the order, the admissions were made not to the full strength, but the Institution admitted only 245 students, though they had approval for more than 750 students in all branches.

5. It is further submitted that pursuant to the directions issued in W.P. No. 10287 of 2014, dated 06.08.2014, AICTE passed an order, dated 20.08.2014, refusing to grant extension of approval for the academic year 2014-15. The petitioner filed a writ petition in W.P. (MD) No. 17257 of 2014 challenging the said order, dated 20.08.2014, and for suitable interim orders to grant provisional extension of approval for the academic year 2014-15. In the said writ petition, an order of status quo was granted on 27.10.2014. Ultimately, the said writ petition was disposed of by order dated 25.11.2014, recording the undertaking given by AICTE to reconsider the case of the respondent Institution afresh. Thereafter, the AICTE passed orders on 09.02.2015, rejected the extension of approval for the academic year 2014-15 with a further direction to transfer the students admitted for the academic year 2014-15 to other nearby approved Institutions as per the AICTE norms. Further direction was issued to consider the request for extension of approval for the academic year 2015-16 after conducting fresh inspection and verification of deficiencies. This order, dated 09.02.2015 was challenged by the first respondent by filing W.P.(MD) No. 2140 of 2015. In the said writ petition, the first respondent sought for interim stay of the operation of the order, dated 09.02.2015, refusing extension of approval for the first respondent Institution functioning for 12 years with approval. While ordering notice of motion in the said writ petition, the respondents were directed to maintain status quo and the order was subsequently extended and the writ petition is pending. It is further submitted that since the students, who were admitted for the academic year 2014-15 had to appear for the first semester examination the respondent Institution moved this Court by way of a writ petition in W.P. No. 20496 of 2014 in which an interim direction was granted in M.P. No. 1 of 2014, on 16.12.2014 permitting 245 students studying in the first year to appear for the first semester examination. It is submitted that this order was accepted by the appellant University and was implemented. It is further submitted that the same set of students have now become eligible to appear for the second semester and the formalities for issuance of hall tickets have been fully complied and the respondent Institution has paid the examination fee for all the students and considering the entire facts of the case, the learned Judge had granted interim order and the writ petition in W.P.(MD) No. 20496 of 2014 has not become infructuous since interim order was granted on 16.12.2014 to appear for first

semester examination and the results were directed to be withheld and in the same writ petition for the same set of students permission was sought for to appear for the second semester and the same was granted by the impugned order and no prejudice would be caused to the appellant University, if the students of the respondent Institution are permitted to appear for the examination since results have been directed to be withheld.

6. Before considering the merits of the submissions made by the learned counsels on either side, this Court posed a question to the learned Additional Advocate General as regards the maintainability of the writ appeal against the interim order in M.P.(MD) No. 1 of 2015 in W.P. (MD) No. 20496 of 2014, dated 07.04.2015. The learned Additional Advocate General submitted that the interim direction was issued on 27.04.2015 and the interim order is virtually a final order and therefore the writ appeal is maintainable.

7. The issue as to whether an intra Court appeal under Clause-15 of the Letters Patent is maintainable against an interim order granted in a writ petition is no longer res integra. In R. Kannan vs. Indcem Electronics Ltd., a similar question arose for consideration before the Hon"ble Division Bench stating that the order impugned therein is not a Judgment within the meaning of Clause 15, Letters Patent of this Court.

8. The Hon"ble Division Bench, after elaborately considering the matter, held that the interim order made in the application which has not reached finality, determining the rights and liabilities as between the parties and which cannot be said to have caused grave and substantial injustice to the appellant will not fall within the meaning of the expression "Judgment" occurring in Clause-15 of the Letters Patent. Accordingly, the appeal was held to be not maintainable.

9. In Dr. Chinnaraj Joseph Jeyakumar vs. The Governing Counsel of American College and others in W.A. No. 540 of 2008, dated 02.08.2008, a similar view was taken and held that the ex parte interim orders are not Judgments for an aggrieved person to invoke the jurisdiction of the Appellate Court, under Clause 15 of the Letters Patent. Adopting the same legal principle, W.A. No. 2347 of 2012, dated 05.12.2012, was disposed of by the First Bench giving liberty to the appellant therein to file application to vacate the interim order.

10. By applying the above legal principles, the only conclusion that could be arrived, is to hold that the present writ appeal filed against an interim order is not maintainable. So far as the question of prejudice is concerned, we find no material to show that the appellant has been put to grave and substantial injustice on account of the interim direction. Infact, the interim direction issued for the first semester examination, on 16.12.2014 was complied with by the appellant University.

11. In the light of the above discussion, we hold that this writ appeal is not maintainable and accordingly, the same is dismissed. However, this will not prevent the appellant University to approach the Writ Court by filing a petition for

vacating the interim direction, which has been issued, if so advised and all contentions are left open. No costs. Consequently, connected miscellaneous petitions are closed.