

(2011) 06 MAD CK 0255

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 9770 of 2008 and 3344 of 2009 and M.P. (MD) No's. 3 and 4 of 2008 and 1 to 3 of 2009

J. Jebagiftson

APPELLANT

Vs

The Secretary and
Correspondent (Chairman)
Infant Jesus College of
Engineering and Others

RESPONDENT

Date of Decision: June 14, 2011

Hon'ble Judges: D. Hariparanthaman, J

Bench: Single Bench

Advocate: R. Anand, for the Appellant; K. Srinivasan, for M.P. Senthil, for 1 to 3, R. Devaraj, Advv. for G.M. Mani Associates for 4 and D. Muruganantham, A.G.P. for 5 and 6, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

D. Hariparanthaman, J.

The Petitioner passed S.S.L.C. Examinations in 2003. He joined Diploma in Mechanical Engineering (D.M.E.) course at Jeyaraj Annapackiam Polytechnic at Nazareth in 2003. He passed D.M.E. in April 2006.

2. Thereafter, he joined in the 1st Respondent College in the second year in B.E. (Mechanical Engineering) during 2006 -2007. Since, he passed Diploma in Mechanical Engineering, he was admitted in the 2nd year of B.E. course. He passed 3rd and 4th semester examinations. During June 2007, he joined 5th semester.

3. According to the Petitioner, the students including the Petitioner objected the behaviour of one teaching staff viz., Mr. Livingston Jebakumar. There were agitations against the said teacher for his conduct. While so, the college intimated the father of the Petitioner in their letter dated 10.11.2007 that the college was to issue Transfer Certificate to the Petitioner and he shall not continue his studies at

the 1st Respondent college. The following reasons are given for issuing the Transfer Certificate:

- i. The Petitioner has not got signature in the observation and record note book in time.
- ii. The Petitioner did not write and did not pass the series test and model test.
- iii. The Petitioner was very rude and rough to the Faculty members.
- iv. The Petitioner instigated other students to boycott the classes.

4. Besides the Petitioner, 6 other students were also issued similar letter. The College has also sent another letter dated 06.12.2007 to the parents of the 7 students, who were to issue Transfer Certificates, to meet the Principal before 15.12.2007, otherwise, the students would not be admitted to the College in the 6th semester. Accordingly, the parents met the Principal. All the parents pleaded to the College to continue the students until they complete the course. According to the college, the parents did not respond to the letter. While so, the College sent the Transfer Certificate along with their letter dated 02.01.2008.

5. The parents of the Petitioner complained to the Anna University in their letter dated 11.01.2008 stating that the Petitioner was unjustly sent out of the College. A detailed letter was sent stating that the College arbitrarily acted against the Petitioner. It is stated that they met the Principal, Head of the Department and the Chairman for continuation of the studies of the Petitioner in the College.

6. The Petitioner also sent another letter dated 11.01.2008 to the Anna University about the conduct of the College that the College arbitrarily despatched the Transfer Certificate and thereby, he was not able to continue the studies.

7. In these circumstances, according to the Petitioner, the University directed the College to permit the students to continue their studies and accordingly, they were permitted to pursue their studies and they appeared for the 6th semester examinations.

8. When the college re-opened after the semester holidays on 26.06.2008, the Petitioner was not permitted to attend 7th semester classes. No written order was issued.

9. The students complained to one students' organization viz., Students Federation of India. The said organization took up the cause of the students with the Anna University. They sent a fax complaining the arbitrary action of the College in not permitting the students to continue their studies. The College insisted the students to get their Transfer Certificates unjustly and arbitrarily.

10. The University sent a letter dated 23.07.2008 to the College, in response to the complaint received from the Students Organization and directed the College to send

their remarks in respect of the said matter along with the fax received from the Students Federation of India.

11. It seems that no remarks were offered by the College for their conduct. The College did not explain the reason as to why the students including the Petitioner were not permitted to attend the classes for 7th semester from 26.06.2008.

12. In these circumstances, the University sent a letter dated 04.08.2008 advising the college to permit the students to continue their studies.

13. Thereafter, the Commissioner of Technical Education has also sent a letter dated 07.08.2008 to the College, to permit the students to continue their studies.

14. In the mean time, one among the 7 students did not pursue his studies in the College. In the said circumstances, the College sent a circular dated 13.08.2008 permitting six students to attend the classes from that day onwards. Though the name of the Petitioner is found place in the circular dated 13.08.2008, he was not permitted to attend the classes. Hence, he filed W.P.(MD) No. 7943 of 2008 to attend the classes pertaining to the 7th semester. An interim order was passed on 12.09.2008, directing the 1st Respondent to permit the Petitioner to attend the 7th semester classes. Thereafter only, the Petitioner was permitted to attend the classes from 16.09.008.

15. While so, the College sent a communication dated 01.10.2008 that the Petitioner lacks attendance for appearing 7th semester examination that was to commence from 13.10.2008. According to the College, the Petitioner had only 16% of attendance up to 30.09.2008, while the required attendance is 75%. Thus, the Petitioner has filed the writ petition in W.P.(MD) No. 9770 of 2008, praying to quash the aforesaid letter dated 01.10.2008 of the College, not permitting the Petitioner to appear in the examination and for a direction to the Respondents to permit the Petitioner to attend 7th semester examinations.

16. The writ petition was admitted on 03.11.2008. While admitting the writ petition, this Court issued an interim direction in M.P.(MD) No. 4 of 2008 in W.P.(MD) No. 9770 of 2008 to the Respondents, to permit the Petitioner to attend the examinations for 7th semester of B.E.(Mechanical) course that was scheduled to commence on 07.11.2008. It is stated that the result of the Petitioner shall not be published until further orders from this Court. Hence, his result is yet to be published.

17. At this juncture, it is relevant to note that the other 5 students, who were similarly situated like the Petitioner were permitted to write 7th semester examination by the College and their results were published. It is also relevant to note that those students were permitted only on 13.08.2008 as narrated above. It is surprising that the College states that the special classes were conducted for those students and thereby required attendance were given to them. It is not known as to

why the same treatment was not given to the Petitioner, since tuition fees for the 7th semester was collected from the Petitioner also like other students.

18. The 8th semester commenced from the 1st week of December 2008. The College sent a letter dated 03.12.2008, informing the Petitioner that since he had only 21% attendance in the 7th semester classes, it should be treated that he did not complete the said semester. Therefore, he could not be permitted to attend the 8th semester classes.

19. The Petitioner sent a representation to the University stating that again he was unjustly denied permission to attend the classes during 8th semester. This time, the University issued a direction, dated 10.12.2008 to the College, to permit the Petitioner to attend the 8th semester classes. Accordingly, the Petitioner was permitted to attend the classes from 15.12.2008. The Petitioner attended the classes and he had the requisite attendance for the 8th semester. When the 8th semester examination was to commence in April/May 2009, the University sent a letter dated 06.04.2009, to the Petitioner stating that since the result of the 7th semester examination was withheld, subject to the result of the writ petition in W.P.(MD) No. 9770 of 2008, the Petitioner could not be permitted to appear for the 8th semester examination during April 2009. This has forced him to file the writ petition in W.P.(MD) No. 3443 of 2009 to quash the said order dated 06.04.2009 of the University. While admitting the writ petition in W.P.(MD) No. 3443 of 2009 on 18.04.2009, this Court issued a direction in M.P.(MD) No. 2 of 2009 to the Respondents to permit the Petitioner to take up the 8th semester examinations that commenced from 20.04.2009. It is stated that the result of the examination shall be withheld until further orders of this Court. Pursuant to the same, the Petitioner was permitted to take both the theory and practical examinations for 8th semester.

20. The College filed the counter affidavit and also filed typed set of papers. The University has not filed any counter affidavit.

21. Heard both sides.

22. I have considered the submissions made on either side.

23. The College informed 7 students that they were issued Transfer Certificates in their letter dated 10.11.2007. The said letter dated 10.11.2007 is extracted hereunder:

I am directed by the Management Committee to issue the Transfer application to your son because of the following reasons. He shall not continue to study at Infant Jesus College of Engineering during the Even semester.

1. He has not got signature in the observation and Record note book in time.
2. Not written and passed the Series Tests and Model Test.
3. He was very rude and rough to the Faculty Members.

4. He instigated other students to boycott classes.

The reason for the decision to issue Transfer Certificate to the Petitioner is extracted above. Before passing the said order, none of the students including the Petitioner were heard. The reason given in the letter dated 10.11.2007 is also vague without any details. The said order dated 10.11.2007 is highly arbitrary and no prudent educational institution could issue such an order without following the basic principles of natural justice. This shows the very attitude of the College and the bent of mind exhibited by them.

24. The said narration of facts are not in dispute. After sending the aforesaid letter dated 10.11.2007, the College sent the Transfer Certificates along with their letter dated 02.01.2008. It was complained to the University. The University seems to have interfered and the students were permitted to continue the course and they completed 6th semester.

25. The College did not leave the matter and they unjustly denied permission to attend the classes to all the 7 students for the 7th semester classes. One of the students did not pursue his studies in the College. The six others including the Petitioner complained the matter to one Students organization viz., Students Federation of India and the said organization took up the matter with the Anna University by sending fax. The University sent a letter dated 23.07.2008 to the College Seeking to send remarks. The letter dated 23.07.2008 of the Anna University to the College seeking its remarks is extracted hereunder:

I am to inform you that a fax letter has been received from the III Year, B.E. (Mechanical) students of your college, through Thiru. P. Uchimakali, District, Indian Students Association, Tirunelveli, requesting permission to continue their studies in your college, as the college management is not allowing them to attend the classes.

In this regard, you are requested to sent your early remarks in respect of the above matters to this office. I enclose herewith a copy of the above reference for your early remarks.

26. In spite of the letter from the Anna University, directing the College to send their remarks for not admitting the students for classes, the College did not choose to send their remarks. The College also did not choose to permit the students to attend the classes. In these circumstances, the Anna University sent a letter dated 04.08.2008, directing the College to permit the students including the Petitioner. The letter dated 04.08.2008 sent by the Anna University to the College is extracted hereunder:

I am to inform you that one more requisition letter has been received from the IV Year B.E. (Mech.) students of your college, requesting permission to continue their studies at your college, as they are not allowed to attend the classes and insisted by the management to get their Transfer Certificate. They have requested pardon for

their mistakes, if anything, done by them. Further, they have informed that they will not do any problems against the college, in future.

In this regard, you are requested to consider the welfare of the students and also permit them to continue their studies in your college. Hence, I enclose herewith a copy of the 3rd reference of your remarks to send the same to this office, at the earliest.

27. The Commissioner of Technical Education, Chennai also directed the college in his letter dated 07.08.2008, to permit the students to continue their studies. Only thereafter, the college sent the circular dated 13.08.2008, permitting the six students including the Petitioner to attend classes. It is not known as to why the College acted contrary to their circular and did not permit the Petitioner alone, while the other students were permitted to attend the classes from 13.08.2008 onwards.

28. Since the Petitioner was not permitted to attend the classes, he was constrained to approach this Court and got an interim order on 12.09.2008 to attend the classes. Thereafter, he was permitted to attend the classes from 16.09.2008.

29. The aforesaid narration of facts would make it clear that the Petitioner could not be blamed for not attending classes from 26.06.2008 to 15.09.2008. The other 5 students, who were similarly situated like the Petitioner, were permitted to attend the classes only from 13.08.2008 and they were also unjustly denied permission to attend the classes from 26.06.2008 to 13.08.2008. When the Petitioner had 21% of attendance for 7th semester and did not have 75% of attendance, the other 5 students could not have 75 % of attendance, since they also did not attend the classes from 26.06.2008 to 13.08.2008. But, they were certified that they attended 75% classes. It is stated that they were asked to attend special classes. It is not known as to why the same treatment was not given to the Petitioner. It is an admitted fact that all the students including the Petitioner paid fees for 7th semester course. In my view, the Petitioner could not be blamed for lack of attendance in the said circumstances. Had he been permitted to attend classes from 26.06.2008, he could not have lacked in attendance.

30. Not attending of classes between 26.06.2008 to 15.09.2008 was not due to sickness or otherwise, but only in the aforesaid circumstances, for which the Petitioner could not be blamed. Thus, this Court, in the said circumstances, by an interim order in W.P.(MD) No. 9770 of 2008, directed the Respondents to permit the Petitioner to appear for 7th semester examination.

31. Even when the 8th semester commenced in the 1st week of December 2008, without any reasons, the College refused permission to the Petitioner to attend the classes. The classes commenced on 03.12.2008. When the matter was complained, the University sent the letter dated 10.12.2008, directing the college to permit the Petitioner to attend the classes. Thereafter only, the Petitioner was permitted to attend classed from 15.12.2008. Fortunately, the intervention of the University was

immediate and therefore, there was no lack of attendance. In any event, though he had sufficient attendance, the University passed the impugned order dated 06.04.2009, stating that the Petitioner could not be permitted to appear in April 09 examinations for 8th semester, since the result of the 7th semester was yet to be published.

32. Since the Petitioner had sufficient attendance, the University is not correct in passing the impugned order dated 06.04.2009. Since the Petitioner had sufficient attendance for 8th semester, the University should have permitted him to appear for the examination, particularly in the aforesaid circumstances. In any event, this Court intervened by an interim order in W.P.(MD) No. 3344 of 2009 and permitted the Petitioner to take the 8th semester examinations. However, this Court passed an order that the result would be subject to the result of the further orders of this Court.

33. Considering the facts and circumstances, in my view, there is no impediment for directing the University to publish the results of 8th semester, particularly taking into account the aforesaid facts and taking into account the fact that the student would not be blamed for any of the events.

34. As far as the result of 7th semester is concerned, I have already categorically held that the Petitioner was prevented from attending the classes from 26.06.2008 to 15.09.2008. The matter was complained to the University and the University sought for remarks as to why the Petitioner was not permitted to attend the classes. The College did not choose to send their remarks. The University directed the college to permit the Petitioner to attend the classes. Thereafter, the Commissioner of Technical Education also issued a direction to permit the Petitioner to attend the classes. Thereafter only, the College issued a circular dated 13.08.2008, permitting all the 6 students to attend classes. However, contrary to their circular, the Petitioner alone was not permitted to attend the classes, while 5 others were permitted. The Petitioner approached this Court and got an interim order and thereafter only, he was permitted to attend the classes from 16.09.2008. Hence, the Petitioner could not be blamed for lack of attendance and the lack of attendance was due to the act of the college, by not permitting him to attend the classes from 26.06.2008 to 15.09.2008, arbitrarily.

35. Taking into account the aforesaid facts, this Court gave an interim direction, directing the Respondents to permit the Petitioner to take the 7th semester examination, though the Petitioner did not have sufficient attendance. In the aforesaid circumstances of the case, the result of the 7th semester could not also be withheld. Already, the Petitioner has suffered a lot. The students, who joined along with him, completed their course even in April 2009. Now, he has lost two years in his career, for no fault of his.

36. In the peculiar circumstances of the case and for the detailed reasons given above and in the interest of justice, the Respondent University is directed to publish the result of the 7th and 8th semester examination, for which he appeared. The results shall be published within a period of two weeks from the date of receipt of a copy of this order.

37. The writ petitions are disposed of on the above terms. No costs.