

FAHEEMA SHIRIN v. STATE OF KERALA

Abhinaya Rajharathinam* Ajith Anto Perumbully***INTRODUCTION**

The emergence of the internet: boon or bane is one of the most disputed topics and its impact on the educational system has been open to discussion in the current era. This judgment emphasizes the contribution of the internet in the educational system where it has opened a ton of resources at the convenience of a laptop or mobile at any given time and location. This is enabling the students to equip and enhance their knowledge which in turn will lead to better future prospects

Likewise, equality, right to education, right to freedom of speech and expression are fundamental rights guaranteed to every citizen. All of these have been emphasized in the Indian Constitution, International Treaties and judgments. Education is deemed to bring about change and ingrain ideologies for the greater good of society. Despite, this if there are unlawful restrictions imposed which are contravening the right to privacy, right to freedom of speech and expression and discrimination on the basis of gender in a college hostel. The restrictions are stringent and limit the students from accessing the internet. The above-mentioned scenario is what this case is dealing with.

FACTS OF THE CASE

The petitioner, a student of Sree Narayana College was staying at the college hostel. There were certain restrictions imposed in the girl's hostel of the college. The restrictions were that the U.G. students are not allowed to use their laptops in the hostel. Also, from 6 pm to 10 pm, the hostel inmates are not allowed to use their mobile phones. The hostel did not provide any internet facility for the hostel inmates. The college authorities would collect the mobile phones for the above-mentioned duration.

However, in the boys hostel, the restriction were not this stringent and they had complete relaxation on Sunday.

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The Petitioner approached the college authorities to hold a meeting with the hostel inmates to address the difficulties encountered and to decide on the relaxation of the restrictions imposed. Though, the meeting was held this issue was not addressed. Instead, they had issued a warning that the inmates of the hostel have to adhere to the restrictions or submit in writing that they would not do so.

When the petitioner had submitted in writing the grievances faced with respect to the restriction. The authorities had obtained in writing the assent from all other hostel inmates with regard to the restrictions. The parents of the petitioner were informed of the same and were asked to meet the principal. It was claimed by the college authorities that the parents of the petitioner were acting rudely during the meeting.

After this, the petitioner was informed to vacate the hostel premises as she was not willing to adhere to the restrictions. Despite, being aware of the fact that the Petitioner's house is located 150kms away from the campus, the Petitioner was forced to miss classes for that period.

The Petitioner filed a writ petition¹ against the restrictions imposed in the girl's hostel under Article 226² in the High Court of Kerala.

ISSUES

1. Whether the restrictions imposed by the college authorities would tantamount to a violation of the Freedom of Speech and Expression of the Petitioner or not?
2. Whether the restriction imposed would infringe the freedom of privacy of the petitioner or not?
3. Whether the non-compliance of restriction shall ensue in the expulsion of the petitioner from the college hostel premises or not?
4. Whether the restrictions imposed curtail the right of students to acquire knowledge or not?
5. Whether having different restrictions in the girl's and boy's hostel would be discrimination on basis of gender?

¹ WP(C). No. 19716 [2019]

²Constitution of India, 1950

OBSERVATION

The High Court has given some valuable insights regarding the importance of the internet in the field of education. In recent times, U.G.C has recognized the courses in SWAYAM. Also, it has directed that colleges could take this into consideration of credits which makes it a part of the curriculum. Taking this into consideration, it has become a basic necessity for students to have internet access and denying the same will be tantamount to disrupting of different means to gain knowledge. The High Court has also emphasized that the “Right to Internet is a human right.”³ Also, the right to internet has absolutely become a fundamental right as it is a basic need. Furthermore, it is pertinent to note that just restricting mobile phones for a specific period of time will not curtail the students from misusing or avoiding the dangers that come along with the internet.

The High Court specified that though the parents have raised concerns with respect to the usage of mobile phones. The college authorities should take into account that the hostel inmates are all above the age of 18 and are adults. Hence, the onus on the college is to guide the students to deduce that the internet ought to be used judiciously. Also, it was stressed that the restrictions imposed were unlawful and that non-compliance with the same shall not ensue in expulsion and vacate from the hostel.

In consideration of U.G.C rules and regulations,⁴ it is pertinent to understand that colleges shall provide hostels to accommodate students to concentrate on their studies. Also, there shall be no discrimination on the basis of gender.

DECISION

The High Court taking into consideration all the contentions agreed that discrimination on the basis of equality with respect to restrictions i.e., relaxation on Sunday and timings in the boy's hostel. These restrictions are contravening the right to education, right to equality and CEDAW⁵. The High Court agrees with the contention of the Petitioner that the restrictions imposed by the college are tantamount to the violation of the freedom of speech and expression of the Petitioner. As the restrictions imposed by the college authorities are not

³ Universal Declaration of Human Rights Article 19

⁴ Promotion of Equity in Higher Educational Institutions Regulations, 2012

⁵ Conventions on Elimination of All Forms of Discrimination against Women, 1979

within the ambit of reasonable restrictions in the Article 19(2)⁶. Also, the restrictions that the students have to give mobile phones to the college authorities is an infringement of the right to privacy which is guaranteed under Article 21⁷. The High Court emphasized that the restrictions imposed were unlawful and it shall not become lawful for the reason that the students did not object to the same. Any unlawful restriction will remain unlawful

The High Court concluded that the parents are not to misbehave with the college authorities and it directed the college authorities to admit the petitioner as soon as possible. The college authorities were suggested that though, it is essential to make rules to maintain the discipline it shall not restrict the students from gaining knowledge.

ANALYSIS

Essentially, discrimination of any basis has to be eradicated from its root cause and it is believed that education can bring about that change in society. At this juncture, it is crucial that the institutions and schools are setting the right examples by treating every student equally regardless of their gender. Hence, the college was directed to impose similar restrictions in all hostels.

The essence of the mindset of using the internet judiciously and not harming oneself has to come from oneself. It cannot achieve the same result by imposing unreasonable restrictions which incidentally disrupt the means to gain knowledge. Imposing restrictions in no way achieves the result of students not misusing the internet and learning discipline.

CONCLUSION

“An unjust law is not a law.”⁸

The key takeaways from this judgment are the importance of the Internet in the education system, the necessity for gender equality at all levels and that imposing restrictions are not the solution to discipline issues. It rather emphasizes the need to ingrain certain qualities like discipline and the aftermath of misusing phones and laptops within students rather than making unreasonable restrictions that are causing inconvenience to the students and incidentally disrupting their means to gain knowledge.

⁶ Constitution of India, 1950

⁷ Constitution of India, 1950

⁸ Thomas Aquinas