

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 19TH DAY OF SEPTEMBER 2019 / 28TH BHADRA, 1941

WP(C).No.19716 OF 2019(L)

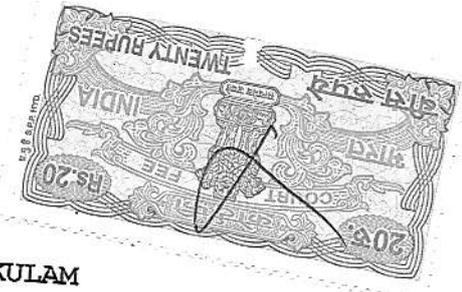
PETITIONER:

FAHEEMA SHIRIN.R.K
AGED 18 YEARS
D/O.HAKSAR.R.K. RAYAROTH THAZHE KUNIYIL MADAPPALLI
COLLEGE (PO) VADAKARA, KOZHIKKODE DIST.-673102.

BY ADVS.
SRI.LEGITH T.KOTTAKKAL
SMT.SURYA BINOY
SMT.SNEHA VIJAYAN

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY THE SECRETARY, DEPARTMENT OF HIGHER
EDUCATION SECRETARIAT, THIRUVANANTHAPURAM,
PIN-695001.
- 2 UNIVERSITY OF CALICUT,
THRISSUR-CALICUT ROAD, THENHIPALAM, MALAPPURAM
DISTRICT, PIN-673635, REPRESENTED BY ITS REGISTRAR.
- 3 UNIVERSITY GRANTS COMMISSION (UGC),
BAHADUR SHAH ZAFAR MARG, NEW DELHI, INDIA,
PIN-110002, REPRESENTED BY ITS SECRETARY.
- 4 PRINCIPAL,
SREE NARAYANAGURU COLLEGE, CHELANNOOR,
BALUSSERY.P.O., KOZHIKKODE DT., PIN-673616.
- 5 DEPUTY WARDEN,
WOMENS HOSTEL, SREE NARAYANAGURU COLLEGE,
CHELANNOOR, BALUSSERY.P.O., KOZHIKKODE DT.,
PIN-673616.
- 6 MATRON,
WOMENS HOSTEL, SREE NARAYANAGURU COLLEGE,
CHELANNOOR, BALUSSERY.P.O., KOZHIKKODE DT.,
PIN-673616.



ADDL. 7 SFLC. IN. ,
REPRESENTED BY ITS EXECUTIVE DIRECTOR,
K-9 SECOND FLOOR, BIRBAL ROAD, JANGPURA EXTENSION,
NEW DELHI, PIN 110014.

(ADDL.R7 IS IMPLEADED AS PER ORDER DATED 22.07.2019
IN I.A.NO.1/19.)

R3 BY SRI.S.KRISHNAMOORTHY, CGC
R4 BY ADV. SRI.R.K.MURALEEDHARAN
R7 BY ADV. S.PRASANTH (AYYAPPANKAVU)
R7 BY ADV. N.SUGATHAN
R7 BY ADV. SMT.VARSHA BHASKAR
R7 BY ADV. SRI.JYOTHISH D.MONY
SRI.P.C.SASIDHARAN, SC, CALICUT UTY,
SRI.JESTIN MATHEW, GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
21.08.2019, THE COURT ON 19.09.2019 DELIVERED THE FOLLOWING:

P.VASHA, J.

W.P(C).No.19716 of 2019-L

Dated this the 19th day of September, 2019

J U D G M E N T

A 3rd semester B.A student of Sree Narayanaguru College, Chelannur, Kozhikode, has filed this Writ Petition aggrieved by her expulsion from the hostel. It is stated that she has been staying in hostel run by the college which is an aided college affiliated to University of Calicut. It is stated that the inmates of the hostel were not allowed to use their mobile phone from 10 p.m to 6 a.m within the hostel and that undergraduate students were not allowed to use laptop also in the hostel. While so from 24.06.2019 onwards the duration of the restriction in using the mobile phones was changed as 6 p.m to 10 p.m. The petitioner claims that though she, along with other inmates of the hostel, met the Deputy Warden - the 5th respondent, requested to convene a meeting of the inmates, explaining the inconveniences caused to them on account of the restrictions, the Deputy Warden or the matron did not respond. It is also stated that though a meeting was convened within a week thereafter, no discussion was made regarding the restriction of the electronic devices. It is stated that the 5th respondent sent a WhatsApp message informing that those who do not abide by the rules would have to vacate the hostel. The petitioner claims that she thereupon approached the



Principal on 03.07.2019 and submitted Ext.P2 letter requesting to relax the restrictions. Thereupon, Ext.P3 letter was obtained from her in writing to the effect that she was not willing to abide by the new rule restricting usage of phone between 6 p.m to 10 p.m. Thereupon her parents were asked to meet the Principal on 05.07.2019; the 4th respondent informed them that the petitioner has to vacate the hostel as she refused to abide by the rules; Ext.P4 memo dated 05.07.2019 was issued to her directing her to vacate the hostel immediately; respondents 4 to 6 convened a meeting of the hostel inmates on 08.07.2019 when the students were informed about the action taken against the petitioner based on her request to relax the rules and that the inmates were asked to give in writing their willingness to abide by the restrictions when all the hostel inmates except the petitioner submitted such willingness; on 11.07.2019, Ext.P5 notice was issued to the petitioner directing her to vacate the hostel within 12 hours; on 15.07.2019, the petitioner submitted Ext.P6 leave letter for the period from 12.7.2019 on 15.7.2019, as it was not possible for her to attend the classes since she had to travel nearly 150 km every day; when the petitioner reached the hostel on 15.7.2019 to vacate her room, it was seen locked and the hostel authorities did not allow her to take her belongings.

2. It is stated that the change in duration of the restriction for use of mobile phone was stated to be effected based on the request of some of the parents. According to the petitioner, she or her parents were never notified of any hostel meeting or PTA meeting before the implementation of the rules. It is also her case

that such restrictions are imposed only in the girls hostel and therefore it amounts to discrimination based on gender, in violation of Clause 5 of Ext.P8 guidelines issued by UGC, which prohibits gender discrimination. It is also stated that the UGC (Promotion of Equity in Higher Educational Institutions) Regulations, 2012 mandates the college authorities to take appropriate measures to safeguard the interests of the students without subjecting them to discrimination based on gender, caste, creed, religion, language etc. Therefore, according to her, the restrictions are arbitrary and it impairs the quality of education accessible to female students and it hampers their potential. It is also stated that such restrictions amount to violation of the principles embodied in the Conventions on Elimination of All Forms of Discrimination against Women, 1979 ("CEDAW") and the Beijing Declaration along with Universal Declaration of Human Rights under which State parties are to take appropriate measures to prevent discrimination of all forms against women. It is also her contention that such restrictions are imposed when the State Government is exploring the possibility of digital learning even from the school level, as evident from Ext.P10 Facebook post of the Minister for Education. It is stated that the Education Department has introduced QR Code in text books enabling the students to scan it and read the lessons and allied topics and watch the videos in their mobile smart phones or tablets. It is stated that on account of the expulsion, the study time of the petitioner is reduced compulsorily because of the time involved for travel. It is also her case that she is denied her right to acquire knowledge through internet and

that by prohibiting the use of mobile phone, she is deprived of the access to the source of knowledge to her detriment which will affect the quality of her education. It is claimed that the right to access internet forms a part of freedom of speech and expression guaranteed under Article 19(1)(a) and the restrictions imposed do not come within reasonable restrictions covered by Article 19(2) of the Constitution of India.

3. The petitioner relies on the judgments of the Apex Court in *Anuj Garj v. Hostel Association of India*: (2008)3 SCC 1, *Ministry of Information and Broadcasting v. Cricket Association of Bengal & Anr.*: (1995) 2 SCC 161, *Shreya Singhal v. Union of India* : (2015)5 SCC 1, *N.D Jayal v. Union of India*: (2004) 9 SCC 362, *Justice Puttaswamy (Retd.) and Anr. v. Union of India & Ors.* : (2017) 10 SCC 1, *PUCL v. Union of India*: (1997)1 SCC 301, *National Legal Services Authority v. Union of India* : (2014) 5 SCC 438, *Shafin Jahan v. Asokan K.M & Ors.* : (2018)16 SCC 368: 2018 (2) KHC 890 and the judgment of this Court in *Anjitha K. Jose & Anr. v. State of Kerala & Ors*: 2019(2) KHC 220, the learned Counsel for the petitioner argued that the restrictions imposed as well as her expulsion consequent to it are illegal as it infringed her fundamental right to freedom and expression, right to privacy, right to education, etc.

4. Relying on the budget speech made by the Minister for finance it is stated that the State Government has proclaimed steps for making the internet accessible to all citizens recognizing the right to internet as a human right.

Referring to the Information Technology Policy of the Government for the year 2017, it is stated that the State Government is adopting mobile first approach for e-governance services in line to Digital Kerala Vision by leveraging high mobile penetration and coverage in the State. It is therefore argued that the restrictions have invaded her fundamental right to privacy guaranteed under Article 21 of the Constitution of India. Being an adult she claims that nobody has any authority to interfere with her freedom to use the mobile phones. It is argued that the forceful seizure of mobile devices have invaded the right of privacy of the hostel inmates. It is also her contention that the modification of rules on the basis of parental concern is also an infringement on her personal autonomy as well as that of other inmates of the hostel.

5. The 4th respondent has filed a counter affidavit. It is stated that the hostel is run by Sree Narayana Trust and it is under the control of the board of management. It is stated that the study time for the inmates is prescribed from 6 p.m to 8 p.m and from 9 p.m to 10 p.m, as per Ext.R4(a) rules of the hostel. As per Rule 14 of the Rules, usage of mobile phone is strictly prohibited in the college and hostel. It is stated that the petitioner was admitted in the hostel based on Ext.R4(b) application dated 04.10.2018 in which she along with her father had signed agreeing to abide by the rules of the hostel and to obey the directions of the hostel authorities. It is stated that there is a hostel for women and sports hostel for men under the control of the hostel committee, consisting of the Principal, members from the teaching faculty and Deputy Wardens of both the hostels. It is

stated that on receiving complaints from parents regarding the excessive usage of mobile phones in the hostel for women, a meeting was convened on 19.06.2019 in which as per Ext.R4(c) minutes it was unanimously decided to restrict the use of mobile phones from 6 p.m to 10 p.m from 20.06.2019 onwards in order to see that students are utilising their study time for study purposes only; the decision was communicated to all the inmates of the hostel on 20.06.2019 by the respective Deputy Wardens/respondents 5 and 6. It is stated that the petitioner had not made any request explaining any inconvenience on account of the restriction and that there was no request from the petitioner or any other inmate to convene any meeting. It is stated that though Ext.R4(a) rules prohibited usage of mobile phones in college and hostel, it was relaxed in the hostel and there was only restrictions in the timings for its usage. It is stated that there is no restriction for any student to use laptops in the hostels. It is stated that the petitioner was the only student/inmate, who refused to abide by the instructions to surrender the mobile phone. It is stated that other inmates complained to respondents 5 and 6 as to the disobedience of the petitioner. It is stated that her request to relax the rule was declined, when in Ext.R4(d) letter she stated that she is not ready to follow the decision to surrender her mobile phone between 6 p.m and 10 p.m; it was only thereafter that the 5th respondent contacted her father on 04.07.2019; but her father spoke to the 5th respondent very arrogantly in total disregard that the 5th respondent is a teacher as well as Deputy Warden of the hostel. It is stated that her father informed the 5th respondent that he does not have any problem if his daughter used

the mobile phone; the 5th respondent submitted Ext.R4(e) complaint to the 4th respondent explaining the humiliation she suffered from the petitioner's father; it is stated that her father came to the college on 05.07.2019 and shouted at the 4th respondent in front of the students, parents and other teachers waiting for admission procedure, accusing them for having banned the usage of the mobile phone in the modern age; despite all these, the 4th respondent did not take any stringent action against her; the 4th respondent instructed the 5th respondent to inform the petitioner that she can either choose to follow the instruction or to leave the hostel in case she is not willing to abide by the instructions. It is stated that the petitioner had given wide publicity to the incident accusing the college authorities for having asked her to vacate the hostel for using mobile phone. It is stated that in the meeting held on 08.07.2019, all other inmates of the hostel, except the petitioner agreed to surrender the mobile phones between 6 p.m and 10 p.m; therefore, she was given 2 days' time to inform her final decision; It is stated that out of the 44 students in the hostel excluding the 4 students, who are studying for B.Ed course/who are on leave, all the remaining 39 students agreed to abide by the instructions and to surrender the mobile phone between 6 p.m and 10 p.m. The 4th respondent stated that the petitioner was not asked to vacate the hostel within 12 hours as alleged. It is also stated that as per Ext.R4(g) minutes of the executive meeting of the PTA held on 12.07.2019, it was decided to implement the restriction imposing the usage of the mobile phone. It is also stated that her parent behaved rudely with the Vice President of the PTA also who was deputed to talk to

him. According to the 4th respondent, when the petitioner and her parent had signed the application Ext.R4(a) agreeing to abide by the instructions, she or her parent are not expected to object to the same. It is stated that there is restriction in the boys hostel also in the usage of mobile phone, which is between 6 a.m and 9 a.m and from 4 p.m to 6.30 p.m except on Sundays and from 10 p.m on all days. According to the 4th respondent, the college is having a full-fledged library with more than 30,000 books which the students can utilise and therefore acquiring knowledge through internet alone between 6 p.m and 10 p.m cannot be said to be an unreasonable restriction. Relying on the judgments in *Sojan Francis v. MG University*:2003 (2) KLT 582, *Unniraja v. Principal Medical College*: ILR 1983 (2) Ker.754, *Manu Vilson v. Sree Narayana College*: 1996(1) KLT 788, *Indulekha Joseph v. VC M G University & Ors.* : ILR 2008(3) Ker 346, *M.H Devendrappa v. Karnataka State Small Industries Corporation*: (1998) 3 SCC 732 etc. it is stated that supreme authority to control and enforce discipline in an educational institution is the head of the institution; the authorities of the college as well as the hostel are entitled to take suitable measure to maintain discipline; it is the duty of the members of the teaching staff to take appropriate measures to achieve excellence in education; it is the duty of the institution which imparts education, to maintain discipline and to enforce the rules and regulations which are lawfully framed, stating that the rules are not designed to curtail any fundamental right. It is further stated that in case the petitioner wants to gather knowledge through internet, she is free to use laptop for which there is no restriction. Relying

on the judgment in *TMA Pai Foundatons V State of Karnataka*: (2003) 6 SCC 790 and *Manager Kuriakose Alias College Mannam v. State* :2017 (3) KLT 1054 it is stated that teachers are like foster parents who are required to look after, cultivate and guide the children in the pursuit of education.

6. The Executive Director of Software, who got impleaded in the Writ Petition, has filed a counter affidavit stating that restriction in usage of mobile phones and laptops in hostel premises is an invasion of the the right of the girl students to acquire knowledge through digital resources. It is stated that internet provides access to any information at the touch of a button; there has been a rise of massive online open course platform through which the people across the world can access various educational courses taught by professional teachers; when the quantum of knowledge available online is increasing every day, arbitrary restriction to access the information puts the female inmates of the college at a serious disadvantage compared to male inmates as well as the students of the same class, who are not the inmates of the hostel and of other colleges and it amounts to a restriction on the right to freedom of speech and expression as held in *Ministry of Information and Broadcasting v. Cricket Association of Bengal & anr*: AIR 1995 SC 1236]. It is stated that as per Ext.R4(a) rules the inmates of the hostel cannot use mobile phones from 6 p.m to 10 p.m and they have to switch off the electric lights by 10 p.m, invading their right to freedom and the right to privacy of the inmates who are adults. It is stated that UGC has issued UGC (Credit Framework for online learning courses through SWAYAM) Regulation 2016

advising the Universities to identify courses where credits can be transferred to the academic record of the students for courses done on SWAYAM. It is therefore stated that such restrictions would deprive the students of their opportunity to have access to the SWAYAM platform. It is their further contention that access to internet is mainly done through mobile phones due to nonavailability of wi-fi facility in the hostel. Relying on the judgment in *Bennett Coleman & Ors. v. Union of India*: AIR 1973 SC 106, it is stated that the restrictions are outside the ambit of Article 19(2). It is stated that as per the study and survey conducted by UNESCO, women are at a disadvantaged position in terms of internet access and 70% of the users are men. Referring to the Information Technology Policy, 2017 it is stated that institution of learning are fundamental in developing scientific temper and facilitating IT access. According to the additional 7th respondent, the restriction imposed on usage of mobile phones, just because the students are staying in a hostel run by the college, is without any authority. It is also stated that the confiscation of mobile phones is in violation of their right to privacy as well as their right to property under Art.300A.

7. Heard Sri. Lejith T. Kottakkal, the learned Counsel for the petitioner, Sri. R.K. Muraleedharan for respondents 4 to 6, Sri. Prasant Sugathan for additional 7th respondent, the learned Government Pleader for 1st respondent and Sri. P.C.Sasidharan, the learned Standing Counsel for 2nd respondent and Sree. S. Krishna Moorthy, the learned Standing Counsel for the 3rd respondent.

8. The question to be considered is whether the restrictions imposed by the hostel authorities on use of mobile phones while enforcing discipline has infringed the fundamental rights of the petitioner, even assuming that such modification was brought about at the request from the parents.

9. A student is admitted in a hostel based on her application in which she herself as well as her parent would have furnished a declaration agreeing to abide by the rules and regulations already issued and the instructions which would be issued from time to time by the authorities. From the impugned restriction against using mobile phones during 6 pm to 10 pm from 20.06.2019 would show that the total prohibition of mobile phones prescribed in the rules was never acted upon. However in the light of the contention of the respondent college that it is upto the students to stay in the hostel strictly abiding the rules and instructions or else they are free to leave the hostel, it is necessary to examine whether a student has got a right to stay in a hostel and whether the college has got any obligation to permit a student to stay in the hostel. Chapter 7 of the Calicut University First Ordinances, 1978 provides for residence of students. Clause 3 thereof provides that every college shall provide residential quarters to such percentage of students as the syndicate may decide from time to time. Clause 4 provides that every student not residing with his/her parents or guardian shall be required to reside in any of the hostels maintained by the University or by the institutions affiliated to the University or in hostels or lodgings recognized by the University. It also provides that syndicate shall maintain a register of recognized hostels and lodgings. Clause

17 provides that every student shall inform the Principal his place of residence and shall also report the change of residence, if any. As per Clause 7 it is the duty of the managing council/governing bodies of the college to manage the collegiate hostel. There shall be a warden in every such hostel, a superintendent or proprietor working under the immediate direction, control or supervision of the Principal of the college. Students living in such hostels shall be under the disciplinary control of the warden, superintendent or proprietor, as the case may be. For every 50 students in a hostel, there shall be one resident tutor or assistant warden. The Principals of the college concerned have to frame rules for their collegiate hostel and get it approved by the syndicate. Students who have been rusticated shall not be permitted to reside in a recognized hostel or lodging during the period of rustication. Therefore, going by the aforesaid provisions the students have a right to residence in the college hostel/a hostel recognised by the syndicate and the college has an obligation to provide accommodation in the hostel, to the students who are residing far away from the college/away from their parents. The provisions in the ordinance also provide that every student residing in the hostel would be subject to the disciplinary control of the warden/superintendent/proprietor of the hostel. It is well settled proposition, in the light of a series of judgments like *Unnirajas'* case (*supra*), *Manu Vilson's* case, *Sojan Francis'* case, *Indulekha Joseph's* case (*supra*), etc., that the Principal of the College is the supreme authority to control the students and to enforce discipline in the college. Similar is the case with the hostel also, where the

authority would be the warden as well as Principal. Though instructions are to be obeyed by the inmates, is there any justification in imposing such restrictions. However in this case the question to be examined is whether such enforcement of discipline by restricting the use of mobile phones would result in curtailing the right of the students to acquire knowledge by different means. Using of mobile phones by itself would not cause any harm to anyone. If a restriction is unreasonable and arbitrary and infringes the fundamental right of an inmate, it cannot be said that the student has to abide by such restriction, especially when the inmate is an adult.

10. It is therefore necessary to examine whether usage of mobile phone during 6 pm to 10 pm would amount to indiscipline and whether the refusal to abide by the instruction in using it should result in expulsion from the hostel. It is stated that the object behind introducing such a restriction is to see that the students are utilising their study time for study purposes alone. The respondents have not stated whether usage of mobile phone by the petitioner or by any inmate caused any disturbance to other inmates. Therefore, indiscipline comes only to the extent of disobedience of an instruction. Then the question is whether an instruction or restriction can stand in the way of acquiring knowledge by the inmates. It is also necessary to examine whether they can utilise the study time for study purposes using the mobile phones also, in this advanced world of technology. The college authorities as well as parents should be conscious of the fact that the students in a college hostel are adults who are capable of taking

decisions as to how and when they have to study. It is a fact that there is large scale misuse of mobile phones; but that misuse can happen with laptops also; it can be even before 6 pm and 10 pm, before and after the study time.

11. The mobile phones which were unheard of once and later a luxury has now become part and parcel of the day to day life and even to a stage that it is unavoidable to survive with dignity and freedom. Though initially it was a mere replacement of land phone enabling one to connect another and talk, on the advent of internet the connectivity became so wide. On availability of more and more facilities, since the year 1998, the number of users gradually increased and as at present India stands 2nd in the world in the usage of internet. The facilities to access internet, which was initially possible only through desk top computers, later in laptop, is now available in mobile phones which are handy and portable; with more and more applications, connectivity became feasible for everyone everywhere even among the common man. Apart from the facilities to read E-news papers, e-books, etc. one can undergo online courses also sitting at home or hostel and it is pointed out that there are courses under SWAYAM recognized by the UGC, which students can undergo even when they are undergoing regular studies in colleges. Though the respondent college has stated that there is no restriction for the inmates to use laptops, all the students would not be ordinarily able to afford to have a laptop in addition to mobile phone. Assuming that the purpose is to prevent misuse of mobile phones during study time, such misuse is quite possible with laptops also. Thus the purpose of such restriction would not be achieved. It would

not be proper for the college authorities to impose such restrictions on students of the college going age even if it is at the request of parents, in their anxiety to see that their children are studying and not being misdirected through mobile phones. It is a well known fact that these phones as well as the modern technologies are prone to misuse. At the same time, the college authorities as well as the parents cannot be permitted to shut their eyes on the innumerable advantages out of internet on various aspects of learning with world wide connectivity, on its proper usage. Apart from facilities for interaction, exchange of ideas or group discussions, there are several methods by which the devices can be usefully utilised by its proper use by downloading of data or e-books or undergoing other courses, simultaneously utilising the facilities under the Swayam program of UGC, etc; knowledge can be gathered by adopting the method which one chooses. When one student may be interested in garnering knowledge by reference of books in libraries, one may be interested in referring to e-books or downloading data.

12. By compelling one that she should utilise the books in the library during the study time or that she should not access the technological means during a particular time or study time may not always yield positive results. A student above the age of 18 years shall be given the freedom to choose the mode for her studies provided it does not cause any disturbance to others. The schools in Kerala promotes digitalisation with smart class rooms and the modern technology has taken its place in all the fields even from primary section. Thus the usage of mobile phones in order to enable the students to have access to internet will only

enhance the opportunities of students to acquire knowledge from all available sources based on which they can achieve excellence and enhance quality and standard of education.

13. As pointed out by the Learned Counsel for the petitioner, it is relevant to note the resolution 23/2 adopted by the Human Rights Council in the 23rd session of United Nation's general assembly held on 24th June, 2013 on the role of freedom of opinion and expression in women's empowerment, in the light of the Convention on the elimination of all forms of communication against women and all previous resolutions of the commission on human rights and on the right to freedom of opinion and expression, including council resolution 20/8 of 5 July, 2012 on the promotion of protection and enjoyment of human rights on the Internet, relevant portion of which reads as follows:

- 1. Affirms the fundamental role that freedom of opinion and expression plays in the ability of human to interact with society at large, in particular in the realms of economic and political participation and reaffirms that active participation of women on equal terms with men at all levels of decision-making is essential to the achievement of equality, sustainable development, peace and democracy;*
- 2. Expresses deep concern that discrimination, intimidation, harassment and violence, including in public spaces, often prevent women and girls from enjoying fully their human rights and fundamental freedoms, including the right to freedom of opinion and expression, which hinders their full participation in economic, social, cultural and political affairs;*
- 3. calls upon all States*
 - (a) to promote, respect and ensure women's exercise of freedom of opinion and expression, both online and off-line, including as members of non-governmental organisations and other associations;*
 - (b) to ensure that women and girls exercising their right to freedom of opinion and expression are not discriminated against, particularly in employment, housing, the justice system, social services and education;*
 - (c) to facilitate the full equal and effective participation and the communication of all women at all levels of decision-making in their societies and in national, regional and international institutions, including new mechanisms for the prevention, management and resolution of conflicts;*
 - (d) to facilitate equal participation in, access to and use of information and Communications technology, such as the Internet, applying a gender perspective and to encourage international cooperation aimed at development*

of media and information and communication facilities in all countries;
(e) to provide women and girls with access to effective remedies for violation of the right to freedom of opinion and expression, and to ensure that there is no impunity for gender-based violence, including sexual violence, used to intimidate women and girls who are exercising their right to freedom of opinion and expression;

Further in the United Nations General assembly held on 14 July, 2014 the following resolution was adopted:

26/13 the promotion, protection and enjoyment of human life on the Internet

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noting that the exercise human rights in particular the right to freedom of expression on the Internet is an issue of increasing interest and importance as the rapid pace of technological development enables individuals all over the world to use new information and communication technologies

noting also the importance of building confidence and trust in the Internet, not least with regard to freedom of expression, privacy and other human rights so that the potential of the Internet as interalia an enabler for development and innovation can be realised.

Emphasising that access to information on the Internet facilitates vast opportunities for affordable and inclusive education globally, thereby being an important tool to facilitate the promotion of the right to education, while underlining the need to address digital literacy and the digital divide, as it affects the enjoyment of the right to education

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Considering the importance of government engagement with all relevant stakeholders including civil society, private sector and technical community and academia protecting in promoting human rights and fundamental freedoms online,

1.affirms that the same rights that people have off-line must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice, in accordance article 19 of the universal declaration of human rights and International covenant on civil and political rights;

2. Recognises the global and open nature of the Internet as a driving force in accelerating progress towards tdevelopment in its various forms;

3.Calls upon all States to promote and facilitate access to the Internet and international cooperation in the development of media and information and communication facilities and technologies in all countries;

4.Affirms that quality education plays a decisive role in the world and therefore calls upon all States to promote digital literacy and to facilitate access to information on the Internet, which can be an important role in facilitating the promotion of the right to education;

5.Calls upon all States to address security concerns on the Internet in accordance with the international human rights obligation to ensure protection of freedom of expression and freedom of association privacy and other human rights online including through National Democratic transparent institutions based on the rule of law in a way that ensures freedom and security on the Internet so that can continue to be vibrant force that generates economic social and cultural development

6.Stresses the importance of combating advocacy of hatred that constitutes

incitement to discrimination and violence on the Internet, including by promoting tolerance and dialogue

7 calls upon all States to consider formulating through transparent and inclusive processes with all stake holders and adopting national Internet related public policies that have the objective of universal access and enjoyment of human rights at their core

8. Encourages the special procedure to take these issues into account within the existing mandates as applicable;

9. Decides to continue its consideration of the promotion, protection and enjoyment of human rights including the right to freedom of expression on the Internet and other technologies as well as how the Internet can be an important tool for development and for exercising human rights in accordance with this programme of work."

(emphasis supplied)

As rightly pointed out by the learned counsel for the petitioner, the Apex Court has in ***Vishaka & Ors. v. State of Rajasthan & Ors.*** [AIR 1997 SC 3011 : (1997) 6 SCC 241] held that in the light of Article 51(c) and 253 of the Constitution of India and the the role of judiciary envisaged in the Beijing Statement, the international conventions and norms are to be read into the fundamental rights guaranteed in the Constitution of India in the absence of enacted domestic law occupying the fields when there is no inconsistency between them. Going by the aforesaid dictum laid down in the said judgment, the right to have access to Internet becomes the part of right to education as well as right to privacy under Article 21 of the Constitution of India. Though the learned counsel for the petitioner relied on the judgement in ***Sabu Mathew George vs Union of India and others:*** (2018) 3 SCC 229, where it was held that women are having equal constitutional status and identity, while considering the case relating to pre-natal determination of gender, in order to assert that there cannot be any discrimination based on gender, the counter affidavit shows that restrictions are imposed in men's hostel also though the duration is

different. However in paragraph 21 of that judgment,, in which the interim order passed on 13.4.2017 was incorporated, the Apex Court made it clear that the freedom of expression included the right to be informed and right to know and feeling of protection of expansive connectivity. In that case, the Apex Court took note of the instances on account of inappropriate exposure to the Internet and held that the respondents therein have a role to control it so as to see that there is no violation of the provisions contained in section 22 of Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, relating to determination of gender .

14. In the judgment in *Anuj Garg's* case the Apex Court while considering the prohibition of employing women in the premises where liquor is served in restaurants under the Punjab Excise Act, observed that the societal conditions as they prevailed in early 20th century, may not be a rational criteria in the 21st century. It is pertinent to note the observations made by the Apex court on parents patriae of the State as follows:

“ 31. Parens patriae power is subject to constitutional challenge on the ground of right to privacy also. Young men and women know what would be the best offer for them in the service sector. In the age of internet, they would know all pros and cons of a profession. It is their life; subject to constitutional, statutory and social interdicts— a citizen of India should be allowed to live her life on her own terms.

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37. Instead of putting curbs on women's freedom, empowerment would be a more tenable and socially wise approach. This empowerment should reflect in the law enforcement strategies of the State as well as law modelling done in this behalf.

Xxxx

51. The court's task is to determine whether the measures furthered by the State in the form of legislative mandate, to augment the legitimate aim of protecting the interests of women are proportionate to the other bulk of well-settled gender norms such as autonomy, equality of opportunity, right to privacy, etc.. The bottom line in this behalf would be a functioning modern democratic society which ensures freedom to pursue varied opportunities and options without discriminating on the basis of sex,

race, caste or any other like basis. In fine, there should be a reasonable relationship of proportionality between the means used and the aim pursued."

Though it was a case relating to employment, those observations made by the Apex Court referring to the provisions in the Act and resolutions in the CEDAW are equally applicable in the case of students also, who attained majority and those who want to enforce discipline as their guardian angels should be conscious of the need of the hour to get the children armed with the modern techniques to compete in the developing world and to come out successful. For that purpose restrictions as impugned would be completely out of place.

15. As found by the Apex Court in *Charu Khurana v. Union of India* (2015) 1 SCC 192, women still face all kinds of discrimination and prejudice and the days when women were treated as fragile, feeble, dependent and subordinate to men, should be a matter of history.

16. In the judgment in *Puttaswamy's* case (*supra*) the Apex Court held that right to privacy is held to be an intrinsic part of the right to life, personal liberty and dignity and hence a fundamental right under part III of the Constitution.

17. In the judgement in *S.Rengarajan and others v. P. Jagjivan Ram:* (1989) 2 SCC 574, while considering a case where the action of revoking U certificate issued for a film for public exhibition was under challenge, the Apex Court held that censors should be responsive to social changes and they must go with the current climate; it was held that freedom of expression which is legitimate

and constitutionally protected, cannot be held to ransom by an intolerant group of people; the fundamental freedom under Article 19(1)(a) can be reasonably restricted only for the purposes mentioned in Article 19(2) and the restriction must be justified on the anvil of necessity and not the quicksand of convenience or expediency. It was held that freedom of expression cannot be suppressed on account of threat of demonstration and processions or threats of violence which would tantamount to negation of the rule of law and the surrender to blackmail and intimidation.

18. Though it is true that the Principal of the college is the supreme authority to enforce discipline as held by this Court in *Manu Wilson's* case, *Sojan Francis'* case, *Indulekha Joseph's* case (*supra*) and that there cannot be any dispute that rules and regulations lawfully framed are to be obeyed by the students and that teachers are like foster parents who are required to look after, cultivate and guide the students in their pursuit of education for maintaining excellence of education, the rules should be modified in tune with the modernisation of the technology so as to enable the students to acquire knowledge from all available sources. It would be open to the authorities in the hostel to supervise whether any distraction or disturbance is caused to other students on account of usage of mobile phone or take action when any such complaint is received. The total restriction on its use and the direction to surrender it during the study hours is absolutely unwarranted. When the Human Rights Council of the United Nations have found that right to access to Internet is a fundamental freedom and a tool to ensure right

to education, a rule or instruction which impairs the said right of the students cannot be permitted to stand in the eye of law.

19. It is pertinent to note that the learned counsel for the college vehemently argued that in the absence of any challenge to the rules and regulations, the petitioner cannot be heard to challenge the action taken in accordance with the rules. The learned counsel for the college also argued that in the light of the judgment of the Full Bench of this Court in *Pavitrana V.K. M V State of Kerala & others: 2009(4) KLT 20: 2009(4) KHC 4*, the rules and regulations of the hostel will stand as long as it is not set aside. But in this case the rule was that the mobile phones shall not be used in the hostel. Therefore, what remains is only the decision/instruction restricting/banning the use of mobile phone from 6 pm to 10 pm and the direction to surrender the mobile phone to the warden. When it is already found that such an action infringes the fundamental freedom as well as privacy and will adversely affect the future and career of students who want to acquire knowledge and compete with their peers, such instruction or restriction cannot be permitted to be enforced.

20. While enforcing discipline it is necessary to see the positive aspects of the mobile phone also. As held by this Court in the judgment in *Anjitha K. Jose' case (supra)*, the restriction should have connection with the discipline and when there is nothing to show that there was any act of indiscipline on account of the usage of mobile phone by the petitioner, that cannot stand. The fact that no other student objected to the restriction or that all others obeyed the instructions will not

make a restriction legal if it is otherwise illegal. No student shall be compelled either to use mobile phone or not to use mobile phone. It is for each of the students to decide with self confidence and self determination that she would not misuse it and that she would use it only for improving her quality of education.

21. The parents as well as the authorities of the hostel have to consider the fact that almost all the undergraduate students staying in the hostel have attained majority. They have joined the course after passing one or two public examinations. The students in that age group are expected to be conscious of their duty to study properly in exercise of their right to education. The manner in which as well as the time during which each person can study well, vary from person to person.

22. I am of the view that what is required is a counselling for the students, as well as parents in the colleges. The students in the hostels should be given counselling in order to inculcate in them self restraint in the usage of mobile phones, to make them capable of choosing the right path, to make them aware of the consequence of misuse as well as advantage of its proper use. It should be left to the students to choose the time for using mobile phone. The only restriction that can be imposed is that they should not cause any disturbance to other students. While acting in exercise of right to privacy, persons like the petitioner shall also see that such exercise does not invade the right to privacy of another student residing in the hostel especially in her room.

23. At any rate, it is not fair on the part of a parent to shout at the teachers

or warden or Principal if at all their action was not acceptable to him. Such practices of humiliating the teachers, that too, in front of the students and the public is not fair or proper and is not expected from educated parents and hence deprecated. However, what is to be considered in this case is the unreasonableness of the restriction consequent to which the petitioner is expelled.

24. Regarding the contention of the respondent that any inmate is bound to abide by the rules and regulations or else she is free to leave the hostel, it is pertinent to note that rules and regulations require reforms to cope up with the advancement of technology and the importance of modern technology in day to day life. As per the University Regulations as well as the UGC Regulations, the college is bound to run a hostel to enable the students to reside near the college in order to enable them to have sufficient time to concentrate in their studies. Therefore, the hostel authorities are expected to enforce only those rules and regulations for enforcing discipline. Enforcement of discipline shall not be by blocking the ways and means of the students to acquire knowledge.

25. In view of the aforesaid reasons, I am of the view that imposing of such restrictions is unreasonable and therefore the respondent shall re-admit the petitioner in the hostel without any further delay. It is made clear that the petitioner or her parent shall not do any act in a manner humiliating any of the respondents or any other teacher or warden or Matron in the hostel/college. The petitioner or any other inmate shall also see that no disturbance is caused to others by usage of mobile phone in the hostel.

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The Writ Petition is allowed to the above extent.

Sd/-

(P.V.ASHA, JUDGE)

rtr/

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 COPY OF SCREENSHOT OF THE WHATSAPP MESSAGE DATED 24.6.2019 SENT BY 5TH RESPONDENT TO THE HOSTEL GROUP "NITHYAHARITHAM".
- EXHIBIT P2 COPY OF THE LETTER DATED 3.7.2019 SUBMITTED BY THE PETITIONER TO THE 4TH RESPONDENT.
- EXHIBIT P3 TRUE COPY OF THE LETTER DATED 3.7.2019 SUBMITTED BY THE PETITIONER TO THE 4TH RESPONDENT.
- EXHIBIT P4 COPY OF THE COMMUNICATION DATED 4.7.2019 AND 5.7.2019 BETWEEN THE 4TH AND 5TH RESPONDENTS, DIRECTING THE PETITIONER TO IMMEDIATELY VACATE THE HOSTEL.
- EXHIBIT P5 COPY OF NOTICE DATED 11.7.2019 ISSUED BY THE 4TH RESPONDENT.
- EXHIBIT P6 COPY OF THE LEAVE LETTER DATED 15.7.2019 SUBMITTED BY THE PETITIONER.
- EXHIBIT P7 COPY OF APPLICATION DATED 10.7.2019 FILED UNDER THE RIGHT TO INFORMATION ACT, 2005.
- EXHIBIT P8 COPY OF UGC STUDENT ENTITLEMENT GUIDELINES.
- EXHIBIT P9 COPY OF UGC (PROMOTION OF EQUITY IN HIGHER EDUCATIONAL INSTITUTIONS) REGULATIONS, 2012.
- EXHIBIT P10 COPY OF THE FACEBOOK POST DATED 5.7.2019 OF THE MINISTER FOR EDUCATION OF STATE OF KERALA.

RESPONDENT'S EXHIBITS:

- EXHIBIT-R4 (a) TRUE COPY OF THE RELEVANT PAGES OF THE HOSTEL RULES
- EXHIBIT-R4 (b) TRUE COPY OF THE APPLICATION FOR ADMISSION TO THE HOSTEL FOR WOMEN DATED 04/10/2018
- EXHIBIT-R4 (c) TRUE COPY OF THE MINUTES OF THE MEETING HELD ON 19/06/2019

- EXHIBIT-R4 (d) TRUE COPY OF THE LETTER RECEIVED FROM THE PETITIONER DATED 03/07/2019
- EXHIBIT-R4 (e) TRUE COPY OF THE COMPLAINT FILED BY THE 5TH RESPONDENT DATED 05/07/2019 TO THE PRINCIPAL
- EXHIBIT-R4 (f) TRUE COPY OF THE MINUTES OF THE MEETING DATED 08/07/2019
- EXHIBIT-R4 (g) TRUE COPY OF THE MINUTES OF THE MEETING OF THE PTA EXECUTIVE DATED 12/07/2019
- EXHIBIT-R4 (h) TRUE COPY OF THE REMINDER LETTER DATED 17.07.2019 ISSUED BY THE PRINCIPAL.
- EXHIBIT-R4 (i) TRUE COPY OF THE LETTER BY THE DEPUTY WARDEN IN CHARGE OF THE BOYS' HOSTEL.
- EXHIBIT-R7 (a) TRUE COPY OF THE UGC (CREDIT FRAMEWORK FOR ONLINE LEARNING COURSES THROUGH SWAYAM) REGULATION 2016
- EXHIBIT-R7 (b) TRUE COPY OF THE EXTRACT OF THE INFORMATION TECHNOLOGY POLICY, 2017 ISSUED BY THE DEPARTMENT OF INFORMATION ELECTRONICS AND INFORMATION TECHNOLOGY, GOVERNMENT OF KERALA.

