

(2015) 11 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 5107, 2909, 5239, 4182, 4003, 4038, 4541, 3913, 4013, 3916, 4113, 4884, 4616, 4156, 4108, 4012, 2976, 3273, 3281, 3298, 3269, 3276, 2996, 5841, 5842, 5485, 6764, 7449 and 4614 of 2015

Amarender Kumar Sandra and Others	APPELLANT
Vs	
Rajiv Gandhi University of Knowledge Technologies and Others	RESPONDENT

Date of Decision : 13-11-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
University Grants Commission Act, 1956 — Section 3(1), 3(3), 5

Citation : (2015) 11 AP CK 0007

Hon'ble Judges : R. Kantha Rao, J.

Bench : Single Bench

Advocate : G. Vidya Sagar, Senior Counsel, Representing K. Udaya Sri, for the Appellant; M. Vidyavathi, Standing Counsel, for the Respondent

Final Decision : Disposed Off

Judgement

1. The composite State of Andhra Pradesh enacted Act XVIII of 2008 for establishment and incorporation of Rajiv Gandhi University of Knowledge Technologies (RGUKT, for short) in the State of Andhra Pradesh and establishment of constituent institutions at Basara, Nuzvid and Idupulapaya in the then Composite State of Andhra Pradesh. The Act came into force with effect from 22-12-2007. The three institutions are located at Basara in Telangana, Nuzvid in Andhra and Idupulapaya in Rayalaseema. They are under the control of the Governing Council, which is the apex body. The Government of State of Andhra Pradesh has sanctioned 438 permanent faculty posts of Professors, Associate Professors and Assistant Professors in various subjects of Engineering Sciences, Humanities etc., in RGUKT vide G.O. Ms. No. 4, Finance (SMPC-I) Department, dated 04-01-2013. In pursuance of the proceedings of the 4th respondent, the respondents 1 to 3-University (RGUKT) has advertised a

Notification vide Advertisement No. 2/2013, dated 01-6-2013 inviting applications for the above said posts from eligible candidates. The petitioners, who are the Contract Lecturers working in the University and some others applied for the posts. As per the said Notification, the University conducted a written test in Engineering subjects. Thereafter, shortlisted candidates list was declared during October, 2013. The Selection Committee after assessing the credentials of the candidates made recommendations and the recommendations were approved by the Governing Council of the University. Basing on the decision of the Governing Council, the University issued appointment orders vide proceedings dated 26-10-2013 to the petitioners. It was also mentioned in the appointment orders that the petitioners will be on probation for a period of one to two years from the date of joining duty.

2. It is submitted by the petitioners that they were orally informed that the then Deputy Chief Minister of erstwhile State of Andhra Pradesh issued a Note dated 26-10-2013 and thereafter, the Higher Education Department of the State of Andhra Pradesh issued letter dated 28-10-2013 to keep the appointments in abeyance. Challenging the same, some of the petitioners filed W.P. No. 6006 of 2014. It is further submitted that in the said writ petition, the Registrar of the University filed counter affidavit stating that the University has issued advertisement dated 01-6-2013, that the interviews were conducted, that the Governing Council in its 26th meeting held on 25-10-2013 unanimously approved the recommendations made and that appointment orders were issued on 26-10-2013. It is also mentioned in the counter affidavit that the Government sent a fax message on 28-10-2013 stating that complaints have been received that the Rule of Reservation was not followed in selecting the candidates etc., and directed the University to stop the selection process until further orders. It is further stated in the counter affidavit that the Andhra Pradesh State Council for Higher Education constituted an enquiry committee to enquire into the allegations made against the University in selection of the candidates vide Advertisement dated 01-6-2013 and the University is awaiting further orders to be followed in that regard. It is also stated in the counter affidavit that the Government has discretionary powers to constitute a committee to enquire into the allegations and that the selections have been kept in abeyance only on account of the directions of the Government.

3. After the counter affidavit dated 24-3-2013 was filed, this Court passed an interim order dated 11-7-2014 directing the 1st respondent to look into the report submitted by the enquiry committee and issue appropriate orders with regard to the posting of the petitioners therein.

4. It is further submitted that since the respondents have not complied with the orders dated 11-7-2014 passed in W.P. No. 6006 of 2014, the petitioners filed C.C. No. 1611 of 2014. This Court passed a common order dated 17-12-2014 in W.P. No. 6006 of 2014 and C.C. No. 1611 of 2014 recording that the statement made by the respondents that the meeting of the Governing Council is scheduled

to be held on 20-12-2014 where the issues will be discussed, directed the respondents to identify the candidates who are not affected by the allegations relating to the irregularities and report to the Court on 20-01-2015. During the course of hearing on 20-01-2015 on behalf of the respondents-State Government, the decision of the Governing Council was placed on record. The Governing Council resolved to cancel the selections made to renotify the posts. It is submitted by the petitioners that the decision of the Governing Council is irrational and illegal. The Governing Council has not acted in accordance with the powers vested in it under the Act XVIII of 2008 and it was carried out by the directives of the State Government, which is illegal and contrary to law. According to the petitioners, the State Government has no power or authority in the affairs of the respondents-University. Act XVIII of 2008 does not contemplate that the State Government has any supervisory control over the affairs of the University.

5. Nextly, it is submitted that the letter emanated from the then Deputy Chief Minister dated 26-10-2013 alleging that certain complaints have been received from the Peoples Representatives to the effect that the University authorities have made several irregularities in filling up of the teaching posts of the University and it formed the basis for issuing the proceedings by the Higher Education Department of the State of Andhra Pradesh vide letter dated 28-10-2013. According to the petitioners, the entire action including the letter of the then Deputy Chief Minister and the letter of the Higher Education Department dated 28-10-2013 are beyond the provisions of the Act XVIII of 2008 and they cannot interfere with the decision of the Governing Council of the University and therefore, the consequent steps taken by the University are liable to be declared as null and void. It is further submitted that as per the material available on record, there is no irregularity insofar as the selection of the petitioners is concerned. Neither in the enquiry report submitted by the Enquiry Committee constituted by the State Government nor in the Sub Committee recommendations of the Governing Council, there is any reference to the complaints received with regard to the selections more particularly that of the petitioners. Thus, the entire proceedings have been initiated at the behest of the third parties who would be the beneficiaries if the entire selection process is set aside. The respondents-University failed to appreciate that the selections are held in pursuance of the Advertisement dated 01-6-2013 by a duly constituted Selection Committee and the Selection Committee recommendations have been approved by the Governing Council in its 26th meeting held on 25-10-2013 and the same cannot be interfered with at the behest of the State Government and its functionaries.

6. It is further stated that the report submitted by the University to this Court would clearly show that the Enquiry Committee was constituted by the Higher Education Department and that the observations made by the Enquiry Committee in its report that the selection process is irregular and goes against the reservation policy and the merit order of the candidates was not followed,

was not arrived at properly and is not based on any cogent material. The observation made by the 3-men enquiry committee constituted by the State Government that there is no evidence of evaluation of candidates academic performance in terms of API scores as prescribed by the University Grants Commission (UGC) (Section 5) is wholly unwarranted. Either the Notification or the Application Form did not specify that one should have obtained API rank as per the UGC norms. Thus, the observations of the 3-men enquiry committee are irrational and misconceived. The allegation that the selection process goes against the reservation policy is equally devoid of any merit. Either the 3-men committee constituted by the State Government or the Governing Council never stated that there were any irregularities with regard to the selection of the candidates.

7. It is further submitted that the recommendations of the Sub Committee appointed by the Governing Council are vague and general in nature. No specific instances have been referred to, whereas the 3-men enquiry committee has gone into each and individual faculty and rectified the discrepancy in the selection. This shows that the observations of the Sub Committee appointed by the Governing Council are imaginary and general in nature, whereas the report of the 3-men committee is specific with reference to the issues. Thus, in respect of the candidates whose selection was not found fault with by the 3-men committee which was not unsettled by the Sub Committee, ought not to have been interfered with by the Governing Council which passed the resolution to cancel the selections made and to renotify the posts. The Governing Council has not considered the 3-men committee report while segregating the selections which are not vitiated by any irregularities. The Governing Council would have seen whether the irregularities committed would go to the root of the matter and to vitiate the entire selection process or whether all the appointments are liable to be cancelled. In fact, the Governing Council should have come to the conclusion in the light of the report of the 3-men committee that different yardsticks are to be applied while cancelling the selection. While the 3-men committee having undertook the main task of deep scrutiny of each and every candidate in each faculty, it is not open for the Governing Council to brush aside the said recommendations to cancel the entire selection. The Governing Council failed to appreciate that some of the candidates were innocent and they have been selected by virtue of their merit and not because of any extraneous considerations. Therefore, it should have segregated the selection of the petitioners and appointed them without cancelling the entire selection process.

8. Nextly, it is submitted that for the small irregularities in the selection, the selection of the petitioners and other meritorious candidates should not be made to suffer. Therefore, according to the petitioners, the Governing Council should have made its endeavour to segregate the candidates who were selected on their own merit and are not affected by any of the irregularities pointed out. It is the version of the petitioners that although there is sufficient material available to segregate the genuine and irregular appointments, the University has taken an

improper decision to cancel the entire selection process, unmindful of the fact that majority of the candidates who secured highest and meritorious marks are deprived of regular appointment without any basis.

9. Under these circumstances, the petitioners filed the present writ petitions to direct the respondents to continue them in their respective posts for which they have been selected and appointed by the appointment letters dated 26-10-2013 by suspending the resolution of the Governing Council of the respondents-University whereunder the entire selection process was cancelled and reformation was directed and to pass appropriate orders.

10. The respondents 1 to 3-RGUKT (University) filed counter affidavit contending, inter alia, as follows:

"(a) It is submitted that the Governing Council is the apex/ultimate body for the governance of the constituent institutions established under the Act XVIII of 2008 and is responsible for general superintendence, accreditation and direction of policies to the constituent institutions. It is admitted that the Governing Council in its 26th meeting held on 25-10-2013 approved the recommendations of the Selection Committee for the 82 vacancies including the Engineering branch and that the appointment orders have been issued to the selected candidates for 82 posts for the 3 campuses of RGUKT vide proceedings dated 26-10-2013.

(b) It is submitted that the respondents-University received fax message from the Principal Secretary to the Government, Higher Education Department dated 28-10-2013 stating that complaints have been received against the selection of the Assistant Professor/Lecturer, Professor and Associate Professor on the ground that selections have been made without following the rule of reservation and the procedure of Act XVIII of 2008 has not been followed. In view of the said complaints, the University was directed to stop the selection process until further orders. Thereafter, the Andhra Pradesh State Council of Higher Education constituted an enquiry committee to enquire into the allegations made against the University in selecting the candidates vide Advertisement dated 01-6-2013. Subsequently, all the Directors of the constituent institutions are directed to pay consolidated remuneration to the candidates who are working as of then (under selection) till a clarification is obtained from the Government. Therefore, the respondents-University did not agree with the contention that the petitioners are selected candidates under Notification No. 2/2013 as claimed.

(c) Next, it is submitted that the Governing Council of the respondents-University in its 33rd meeting held on 20-12-2014 constituted a Sub Committee from among the members of the Governing Council to look into the summary of the Enquiry Report. Thereupon, the Sub Committee examined the matter and has gone through the enquiry report of the 3-men enquiry committee, observed meticulously to arrive at a just decision. Basing on the report submitted by the Sub Committee, the Governing Council at its meeting held on 13-01-2015 passed a resolution to cancel the selection and renotify the posts in view of the gross

irregularities. The following are the irregularities which have been allegedly noticed by the Sub Committee:

i) As per Section 3(1) of the Act XVIII of 2008, the Institutes have autonomous status for teaching and research in IT and related areas under the control of common Governing Council. As per Section 3(3) of the said Act, each of such constituent institutes shall have independent status. The RGUKT issued institute-wise notification. The Enquiry Committee, in its report stated that although the notification was given institute-wise, the interviews were held by the same selection committee in a single spell for all the Institutes together, that is, University-wise. Therefore, the recruitment procedure adopted is not proper and not as per the provisions of the Act.

ii) The Governing Council Sub Committee sought the University to produce the award sheets. However, the University produced freshly written sheets in place of the original sheets in case of four branches (CSE/ME/EEE/ECE) and the Governing Council Sub Committee observed that none of these sheets are signed by the members of the selection committee.

iii) The Governing Council Sub committee observed that the selection committee has not prescribed any cutoff marks for final selection. In the absence of this, it is very difficult to understand why some candidates from the merit list have not been selected though vacant positions are there.

iv) Options were not taken, and so allotment to institutes is not proper.

v) Clubbing the post of Lecturer and Assistant Professor as single category led to an incorrect roster.

vi) Merit order is not followed.

vii) Regulations are not made as required in the Act.

viii) Reservations not followed correctly.

ix) Ineligible candidates were given appointment in Civil Engineering.

x) UGC Regulations are not followed. For Associate and Professor, API scores to be taken. If they fulfill minimum scores, then only they are eligible to call for interview.

(d) It is further submitted that the version of the petitioners that the State Government has no power or authority in the affairs of the respondents-University is not correct. The State Government has got control over the affairs of the University since it is funding the University. The affairs of the University particularly the recruitment cannot be undertaken without prior approval of the State Government. All the 438 posts for which the notification has been issued were approved by the State Government. Therefore, the contention of the petitioners that the State Government has no role or authority in the affairs of the University particularly in the recruitment is not correct.

(e) It is the version of the respondents-University that when once the entire selection is held as irregular and is against the reservation policy, there are no cut-off marks prescribed for final selection apart from other observations, it is not open for the petitioners to contend that there are no allegations or complaints against the selection. It is reiterated that once the 3-men committee as well as the Sub Committee of the Governing Council have made broad recommendations to the Governing Council with many observations that the entire process of selection is irregular, the Governing Council resolved to cancel the selections made and to renotify the posts. The petitioners have no legitimate right to claim for appointments since the employer has cancelled the entire selection process in view of the irregularities in the selection process. It is further submitted that the Act XVIII of 2008 confers enormous powers on the Governing Council to exercise on various issues even the powers that are not otherwise provided for. Thus, according to the respondents-University, the Governing Council has authority to constitute a sub committee seeking for the factual details enumerated in the report including the 3-men committee. Therefore, the decision of the Governing Council for cancellation of the entire process of the selection basing on the report of the Sub Committee of the Governing Council is correct and strictly in accordance with the powers conferred on it as per the Act XVIII of 2008. The fact that the Governing Council has brushed aside the recommendations of the 3-men committee and mainly relied upon the report of the Sub Committee is denied by the respondents-University. According to the respondents-University, basing on the report of the 3-men committee wherein certain discrepancies have been focused, the Governing Council exercised its powers to constitute a Sub Committee to enquire into the 3-men committee recommendations. Thereafter, basing on the 3-men committee report as well as the Sub Committee report, the Governing Council has resolved to cancel the selection process and renotify the posts. The Governing Council has focused on the discrepancies enumerated in the 3-men committee report. Further, it is for the Governing Council to take appropriate decision in the best interests of the University with the powers vested in it as per the Act XVIII of 2008 and it is not open for the petitioners to question the power and authority of the Governing Council.

(f) Contending as above, the respondents-University sought to dismiss the writ petitions."

11. I have heard Sri G. Vidyasagar, learned Senior Counsel appearing for the petitioners and Smt. M. Vidyavathi, learned Standing Counsel for RGUKT-respondents 1 to 3 and the learned Government Pleader for Higher Education for the 4th respondent.

12. It is submitted by the learned Senior Counsel appearing for the petitioners that the petitioners were not only selected for the respective posts and were also given appointment orders vide proceedings dated 26-10-2013, absolutely there is no irregularity or illegality in the selection. The decision taken by the

Governing Council of the University cancelling the entire selection process and directing a fresh notification is wholly illegal being violative of Articles 14 and 16 of the Constitution of India.

13. On the other hand, it is contended by the learned Government Pleader for Higher Education that basing on the recommendation of the Sub Committee appointed by the Governing Council of the University which pointed certain irregularities in the process of selection, the Governing Council, which is the apex body, took a decision to cancel the entire selection and to go for a fresh notification and the said decision cannot be interfered with by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

14. Before arriving at a decision on the crucial issue whether the resolution passed by the Governing Council of the respondents-University is proper and justified, it is necessary to examine certain important admitted facts which are borne out of the contents of the affidavit filed in support of the writ petition and counter affidavit. Indisputably, it is not the version of the respondents that the selection of the candidates is tainted with any malpractice or manipulations. It is also not the version of the respondents that the selection process was prompted by any mala fides or favouritism. The Deputy Chief Minister of erstwhile State of Andhra Pradesh issued a Note dated 26-10-2013 alleging that certain irregularities took place in the selection process and the rule of reservation was not followed. The details of the irregularities were not mentioned in the Note. Thereafter, the enquiries, which are referred to hereinabove, have been conducted and ultimately, a decision was taken by the Governing Council to cancel the entire selection. It is also mentioned in the counter affidavit that the Government sent a fax message on 28-10-2013 stating that complaints have been received that the rule of reservation was not followed in selecting the candidates and directed the University to stop the selection process until further orders. Thereafter, the Andhra Pradesh State Council for Higher Education constituted an enquiry committee to enquire into the allegations made against the University in selection of the candidates vide advertisement dated 01-6-2013. Therefore, solely basing on the fax message allegedly sent by the Government, the further process in the appointment of the candidates was stopped and the petitioners, who were given appointment orders, were not allowed to join their respective posts. It is true that mere selection of the petitioners to the respective posts does not vest them with any absolute right for appointment. But, in the instant case, the fact is that they were also given appointment orders and pursuant to the fax message, which was allegedly sent by the Government, they were not allowed to join their respective posts. However, they are continued in the same posts on a consolidated pay. Though the Governing Council of the University has power to cancel the selection list, the power is not absolute and it has to be exercised properly and reasonably without infringing the legitimate rights of the petitioners for appointment to the posts for which they were selected.

15. In this context, it would be necessary to refer to the following judgments relied on by the learned Senior Counsel appearing for the petitioners:

"(a) Union of India and Others Vs. O. Chakradhar, wherein the Supreme Court held as follows:

The nature and the extent of illegalities and irregularities committed in conducting a selection have to be scrutinized in each case so as to come to a conclusion about future course of action to be adopted in the matter. If the mischief played is so widespread and all-pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefitted or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notices to each selectee. The only way out would be to cancel the whole selection. Motive behind the irregularities committed also has its relevance.

In Union of India and Others Vs. O. Chakradhar, , the Supreme Court found that, The illegality and irregularity are so intermixed with the whole process of the selection that it become impossible to sort out the right from the wrong or vice versa.

Therefore, the Supreme Court upheld the decision whereby and whereunder the entire selection process was cancelled.

(b) In Joginder Pal and Others etc. Vs. State of Punjab and Others, after examining the ratio laid down in some earlier judgments, the Supreme Court held as follows:

It becomes crystal clear that once it is accepted that some of the candidates were untainted and who entered the service by virtue of their merit and not because of any extraneous considerations and such candidates should be segregated from tainted candidates, cancellation of entire selection process on the ground that the process smacks of mala fides and malpractices was not justified.

Thus, the Supreme Court allowed the untainted candidates to join the duties."

16. In the above two cases before the Supreme Court, the selection was tainted by corrupt practices and manipulations. But, the situation in the present writ petitions is totally different. The main thrust of the argument of the learned Government Pleader for Higher Education is that even though the petitioners were given appointment orders, they have no vested right to claim absorption in the said posts because certain irregularities were noticed in the process of selection and the Governing Council of the respondents-University cancelled the entire select list exercising its powers under Act XVIII of 2008. In support of her contention, she relied on the following judgments:

"(a) Union of India (UOI) and Others Vs. Tarun K. Singh and Others, , wherein large number of complaints were received alleging malpractices in the process of

recruitment by the Railway Board and the Railway Board after making enquiry into the allegations, took a decision that selection should be cancelled and there should be fresh advertisement. The Supreme Court upheld the decision, of cancelling the selection process and issuing a fresh advertisement inviting applications.

(b) Krishan Yadav and another Vs. State of Haryana and others, in which case also, the Supreme Court found that the entire selection was vitiated by fraud, nepotism, favouritism and arbitrariness.

(c) Original Application No. 1760 of 2012 of Central Administrative Tribunal, Allahabad Bench at Allahabad, wherein a view was taken that since the nature and extent of illegalities and irregularities committed in conducting the selection were so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefitted or wrongfully deprived of their selection and therefore, the selection process is liable to be cancelled."

17. In all the cases relied on by the learned Government Pleader for Higher Education, clearly it was established that the entire selection process was tainted with corrupt practices, fraud and manipulations and therefore, it was laid down in all the cases that it is not possible to separate the genuine candidates from the tainted candidates and the decision to cancel the entire selection process was therefore upheld.

18. The facts in the present writ petitions are entirely different. Absolutely, there is no allegation about any corrupt practice or manipulations in the process of selection. Any such allegations are not found in the Note sent by the then Deputy Chief Minister of erstwhile State of Andhra Pradesh or in the reports of the Committees referred above.

19. The Sub Committee did not specify the irregularities in its report. It made only certain general remarks regarding the selection, which according to the petitioners, are totally erroneous. There is no denial to the fact that the selection was held strictly in accordance with the notification issued for the posts. If the reservations are not correctly followed, they can be now applied correctly because the entire material is with the Selection Committee. On the pretext that some irregularities took place in the selection process, the candidates, who were selected fairly and by virtue of their merit, cannot be denied the appointment.

20. Having gone through the contentions urged in the counter affidavit, I am of the view that the irregularities pointed out are not material and the selection process is in accordance with the notification issued for the said posts. As already said, absolutely there is no malpractice, manipulation or fraud in the process of selection. If that is so, the entire select list cannot be cancelled to the detriment of the meritorious candidates. This is not a case wherein it is not possible to segregate the properly selected candidates from improperly selected candidates even by following the rule of reservation. On the pretext that some mistakes

occurred in the process of selection, the entire selection process shall not be annulled. As pointed out by the Hon''ble Supreme Court in the judgments referred supra, if the selection process is tainted with corrupt practices, manipulations and fraud, then only the entire selection can be cancelled. In the instant case, absolutely, even according to the respondents, there are no corrupt practices, manipulations or fraud played in the process of selection. Most of the petitioners are working as contract lecturers in the respondents-University. If they are selected fairly in accordance with the norms indicated in the notification, they cannot be denied appointment on the grounds viz., rule of reservation has not been followed, no cut-off marks were prescribed, some ineligible candidates were given appointment etc. The counter affidavit does not mention about any specific irregularities candidate-wise. Apparently, it seems that the basis for cancellation of the select list is nothing but the Note issued by the then Deputy Chief Minister of the erstwhile State of Andhra Pradesh and the fax message sent by the State Government. No specific irregularity has been pointed out by the Sub Committee appointed by the Governing Council of the respondents-University. Since the petitioners were given appointment orders, they shall be absorbed in the said posts unless it is shown that any taint, malpractice or fraud is attached to their selection or that they were not properly selected for their respective posts.

21. In view of what all stated herein above, the resolution of the Governing Council of the respondents-University cancelling the entire selection process in pursuance of Advertisement No. 2/2013 is declared as illegal and it is set aside. Consequently, the respondents are directed to examine the select list thoroughly, apply the rule of reservation and segregate the candidates who are improperly selected from the properly selected candidates and appoint the petitioners according to their merit and by applying the rule of reservation pursuant to their respective appointment orders. With the above directions, all the writ petitions are disposed of. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed. No costs.