

(2018) 05 DEL CK 0264

In the Delhi High Court

Case No : W.P.(C) 3569 OF 2018 & C.M. No.14077 OF 2018

ANIL KUMAR VERMA

APPELLANT

Vs

THE UNION OF INDIA

RESPONDENT

Date of Decision : 21-05-2018

Acts Referred:

University Grants Commission Act, 1956 — Section 3

Citation : (2018) 05 DEL CK 0264

Hon'ble Judges : REKHA PALLI

Bench : Single Bench

Advocate : Arun Banerjee, R.K. Prasad, Anil Soni, Abhinav Tyagi, Devesh Kuma

Final Decision : Dismissed

Judgement

REKHA PALLI, J.

1. The present batch of petitions raise common issues and seek common reliefs and are, therefore, being decided vide this common judgment. For the

sake of convenience, only the facts of WP (C) No. 3569/2018 are being referred to hereinbelow.

2. Vide the present petition, the Petitioners, who are B.Tech. degree holders from the Institute of Advanced Studies in Education, Gandhi Vidya

Mandir, Sardarshahr in Rajasthan seek the following prayers:-

â??i) Pass an order, writ and/or direction upon the respondent authorities to rationalize the modality of the examination of validation of B.Tech

examination by giving refresher course to the candidates. Â

ii) Pass a direction upon the respondent authorities to make the examination a test of merit and not a test of elimination.

iii) Pass a direction/writ of mandamus upon the respondent authorities to keep

the modalities of the examination as such as not to impinge upon the right to life/right to livelihood of sincere and honest candidates. iv) Pass such other order and/or orders that may be deemed fit and proper in the facts and circumstances of the case.â??

3. The facts as emerge from the record that are necessary for deciding the present petition are that the Petitioners have all obtained their respective engineering degrees, by way of distance mode of education, from the Institute of Advanced Studies in Education, which is affiliated to Gandhi Vidya Mandir, a deemed University under Section 3 of the University Grants Commission Act, 1956.

4. At the outset, it may be noted that the reliefs sought by the Petitioners relate to an examination being conducted by the Respondent No. 1/All India

Council of Technical Education (hereinafter referred to as "AICTE") pursuant to a decision dated 03.11.2017 of the Supreme Court in the case of

Orissa Lift Irrigation Corporation Ltd. & Ors. v. Rabi Sankar Parto & Ors [Civil Appeal Nos. 17869-70/2017]. In the aforesaid case, the Supreme

Court had, after considering the deteriorating effect of the commercialization of education by some deemed universities (including the University from

which the Petitioners claim to have obtained their technical degrees) on the standards of education in the country, held that the permissions granted by

the Distance Education Council to deemed universities to conduct courses leading to the award of engineering degrees were illegal. However, the

Court had, after considering the fact that the facilities at the Study Centres of these deemed Universities were never checked by the University

Grants Commission or any other statutory authority, instead of directing annulment of the degrees of the students admitted during the academic

sessions 2001-2005, granted an opportunity to those students to appear in an appropriate test to be conducted by the AICTE. The Court observed that

the said exam should ideally be held during May/June 2018 and, accordingly, directed the Respondent No. 1/AICTE to devise within one month, the

modalities for conducting the appropriate tests, including written as well as practical examinations, covering all the concerned subjects for the students

admitted during the academic sessions 2001-2005. At this stage, it may also be appropriate to refer to paragraphs 46 and 47 of the decision of the

Supreme Court in the case of Orissa Life Irrigation (supra), which read as under:-

46. Having found the entire exercise of grant of ex-postfacto approval to be incorrect and illegal, the logical course in normal circumstances would have been not only to set aside such ex-post-facto approvals but also to pass consequential directions to recall all the degrees granted in pursuance thereof in respect of Courses leading to award of degrees in Engineering. However, since 2004 UGC Guidelines themselves had given liberty to the concerned Deemed to be Universities to apply for ex-post-facto approval, the matter is required to be considered with some sympathy so that interest of those students who were enrolled during the academic sessions 2001- 2005 is protected. Though we cannot wish away the fact that the concerned Deemed to be Universities flagrantly violated and entered into areas where they had no experience and started conducting courses through distance education system illegally, the over bearing interest of the concerned students persuades us not to resort to recall of all the degrees in Engineering granted in pursuance of said ex-post-facto approval. However, the fact remains that the facilities available at the concerned Study Centres were never checked nor any inspections were conducted. It is not possible at this length of time to order any inspection. But there must be confidence and assurance about the worthiness of the concerned students. We, therefore, deem it appropriate to grant some chance to the concerned students to have their ability tested by authorities competent in that behalf. We, therefore, direct that all the degrees in Engineering granted to students who were enrolled during the academic years 2001 to 2005 shall stand suspended till they pass such examination under the joint supervision of AICTE-UGC in the manner indicated hereinafter. Further, every single advantage on the basis of that degree shall also stand suspended.

Â 47. The AICTE is directed to devise within one month from the date of this judgment modalities to conduct appropriate test/tests both in written examination as well as in practicals for the concerned students admitted during the academic sessions 2001-2005 covering all the concerned subjects.

It is entirely left to the discretion of AICTE to come out with such modalities as it may think appropriate and the tests in that behalf shall be conducted

in the National Institutes of Technology in respective States wherever the students are located. The choice may be given to the students to appear at

the examination which ideally should be conducted during May-June, 2018 or on such dates as AICTE may determine. Not more than two chances be

given to the concerned students and if they do not pass the test/tests their degrees shall stand recalled and cancelled. If a particular student does not wish to appear in the test/tests, the entire money deposited by such student towards tuition and other charges shall be refunded to that student by the concerned Deemed to be University within a month of the exercise of such option. The students be given time till 15th of January, 2018 to exercise such option. The entire expenditure for conducting the test/tests in respect of students who wish to undergo test/tests shall be recovered from the concerned Deemed to be Universities by 31.03.2018. If they clear the test/tests within the stipulated time, all the advantages or benefits shall be restored to the concerned candidates. We make it clear at the cost of repetition that if the concerned candidates do not clear the test/tests within the time stipulated or choose not to appear at the test/tests, their degrees in Engineering through distance education shall stand recalled and cancelled. It goes without saying that any promotion or advancement in career on the basis of such degree shall also stand withdrawn, however any monetary benefits or advantages in that behalf shall not be recovered from them.

Â 5. Thus, what emerges is that the Supreme Court had, while recommending that the examination should be held in May/June 2018, left it entirely to the discretion of the AICTE to decide not only the date of the examination but also all other modalities as it may think appropriate for conducting the same. Furthermore, the tests in this behalf were directed to be conducted by the National Institute of Technical Education in the states where the students were located, and it was clarified that such students who were eligible to appear in the said examination, may be granted two opportunities to clear the said examination, and in case they do not pass the said tests even after two opportunities, their degrees would stand recalled and cancelled.

6. It transpires that pursuant to the decision of the Supreme Court, the Respondents issued a public notice dated 02.12.2017, notifying the students who wish to appear in the said examination, to register themselves for the same on or before 15.01.2018. The said notice also specifically stated that the concerned examination is likely to be conducted in May/June 2018. For the sake of ready reference, the AICTE's public notice dated 02.12.2017 is reproduced hereinbelow:- ""PUBLIC NOTICE (IN RESEPECT OF DISTANCE EDUCATION OF ENGINEERING) In pursuance of the orders of

the Honâ??ble Supreme Court arising out of special Leave Petition (C) Nos. 19807808/2012 on the subject, the Honble Supreme Court inter alias has

directed (under para 46 of page No. 106 and para

47. page no.107) that the Diploma/P.G.Diploma/Degree/M.E./M.Tech. in Engineering awarded to students who were enrolled during the academic

years 2001 to 2005, stand suspended in the following four Deemed to be Universities:

(1) JRN Rajasthan Vidyapeeth, Rajasthan

(2) Institute of Advanced Studies in Education, Rajasthan

(3) Allahabad Agricultural Research Institute, Allahabad

(4) Vinayaka Missionâ??s Research Foundation, Salem, Tamil Nadu AICTE-UGC have been directed to conduct test/tests both in written and as

well as in practical for the concerned students under joint supervision. All students/candidates enrolled during the academic sessions 2001-2005 in the

aforesaid deemed to be universities are therefore informed that they may register online on AICTE website www.aicte-india.org for appearing in the

test. The online registration facility will be available from 02.12.2017. The test is likely to be conducted in May/June 2018. Last date for registration is

15.01.2018 till 05.00 pm.

7. After the Petitioners had registered themselves for the said examination before the deadline of 15.01.2018, the Respondent No. 1 published the

syllabus for the theory examination in January 2018, and for the practical examination in February 2018. The present petition was filed in April 2018

seeking inter alia a direction to the Respondents to rationalize the modalities for conducting the aforesaid examinations by including a refresher course

for the eligible candidates.

8. Upon notice being issued, the Respondent No. 1 has filed a counter-affidavit, clearly stating that the modalities, norms and syllabus of the

examination to be held on 03.06.2018 had been finalized by an Expert Committee comprising of Professors working in national-level institutions in

different streams across the country. The Respondents have filed a copy of the minutes of the meeting of the Expert Committee, which read as

under:- Minutes of meeting of the committee constituted on â??Honâ??ble Supreme Court Judgment in SLP No.19807-08/2012 titled as Orissa Lift

Irrigation Corp. Ltd. Vs. Shri Rabi Sankar Patro & Ors.â? A meeting of the committee was held at AICTE, headquarter, New Delhi on May 1st ,

2018 to discuss the representations received from various candidates and case filed in the Delhi High Court (W.P.3569/2018 and

C.M.NO.14077/2018) regarding modalities, syllabus and norms of examination to be conducted of Theory and Practical Examination in June 2018.

Following were present: Committee Members:-

1. Dr.R.K.Wats, Professor & Head, Media Centre, NITTTR, Chandigarh
2. Dr.S.S.Banwait, Professor, Deptt. of Mech. Engg., NITTTR, Chandigarh AICTE Officers:

1. Prof. Rajive Kumar, Advisor I, P & AP Bureau
2. Sh.N.K.Bhandari, Consultant, P & AP Bureau
3. Dr.T.C.Sharma, Consultant P & AP Bureau The committee was briefed about the various representation being received regarding modalities,

syllabus of the examination and case filed in Delhi High Court regarding rationalization of modalities of examination and syllabus etc. After going

through the representations etc., the committee came to the following conclusion:

1. The Committee Members informed that modalities regarding the conduct of the test were prepared well within the time framed given by the

Hon'ble Supreme Court vide its order dated 3rd November, 2017 and 22nd January, 2018.

2. While framing the curriculum (28 UG and 34 PG programmes in Engineering and Technology) for the proposed exams, due consideration was given

that the curriculum should comprise of mainly Basic/Foundation courses and the core courses, the knowledge of which is highly essential for being an

Undergraduate Engineer (B.Tech) or a Post Graduate Engineer (M.Tech.).

3. It is informed that the curriculum for the varied disciplines (both UG & PG Programmes in Engineering and Technology) was designed by experts

after taking into consideration the curriculum of recognised Indian Universities/ Institutions running similar programmes, curriculum pattern of GATE

and similar Qualifying/Competitive Exams being conducted in the country and as per the present need of society. It is informed that generally in a UG

Programme in Engineering and Technology, there are around 30-35 theory courses apart from practicals and project work during the complete

duration of the programme and in the case of PG engineering Programme these vary from 10-12 theory courses apart for practicals and project work.

However, while designing the curriculum for different disciplines for the proposed exams, 12 16 courses (depending on the length and breadth of the courses) in the case of UG programmes and only 6 courses in the case of PG programmes were finalized this is also in line with the AICTE model curriculum.

4. In the case of practical examination, a list of 50 practicals and 25 practicals has been finalised for UG and PG Programme in Engineering and Technology respectively. Out of this list only 2 practicals each are to be performed by the candidates. It is informed that theory and practicals go hand in hand and accordingly due care has been taken in this direction.

5. While finalising the pattern for theory exam, the pattern of GATE and similar other exams have been taken into consideration and accordingly the paper shall comprise of multiple choice questions of 1 and 2 marks. Keeping in view the profile of the candidates appearing in the exam and the nature of the examination i.e., qualifying only, more emphasis shall be given on comprehensive type and application type questions and no negative marking has been proposed as is being done in the case of GATE or other similar examination. This will enable the candidates to attempt more number of questions without the fear of negative marking. Taking in view the above points, it is very clear that a rational decision has been taken in finalizing the

modalities including, curriculum of theory and practical exams and mode of assessment as per the directions of the Hon'ble Court vide its orders dated

03.11.2017 and 22.02.2018. In most of the Technical Universities in India minimum passing marks are 40%. In the present case, total 40% marks are required in both theory papers taken together without any minimum marks fixed in paper one or two." " Â

9. Having set out the facts hereinabove, I may now deal with the rival contentions of the learned counsels for the parties. While the learned counsel for the Petitioners submits that the Petitioners have not been given an adequate opportunity to prepare for the exam to be conducted on 03.06.2018

and, therefore, prays that the examination be postponed by at least three months, the learned counsel for the Respondents submits that the Petitioners were informed on 02.12.2017 itself that the examination would be held in May/

June 2018 and, thus, contends that all the candidates had sufficient time to prepare for the same.

10. Learned Counsel for the Petitioners also contends that the syllabus for the exam is extremely vast and candidates like the Petitioners, who had acquired their engineering degrees 14-18 years ago, cannot be expected to prepare for the same at this age when they are all regular working professionals with family lives. On the other hand, by relying on the aforementioned minutes of the meeting of the Expert Committee, learned counsel for the Respondents contends that the examination to be conducted on 03.06.2018 was designed by taking into account the concerns of candidates like the Petitioners and, therefore, only contains the most basic questions that a person with an engineering degree ought to know.

11. Having considered the submissions of the learned counsels for the parties, I find that the basic two-pronged prayer of the Petitioners is that the examination be postponed by at least three months, and the syllabus for the same be reduced and brought in tune with what the Petitioners perceived to be the syllabus of the B.Tech./M.Tech degree course in the years they underwent their studies and received their respective degrees. I have given my thoughtful consideration to the Petitioners' prayer and have also perused the decision of the Hon'ble Supreme Court in Orissa Life Irrigation (supra) as also the aforementioned minutes of the Expert Committee. In light of the same, as regards the first prong of the Petitioners' prayer that the examination be postponed by at least three months, I find that Respondent No. 1's notice dated 02.12.2017 had already informed the candidates that the examination was most likely to be held in May/June 2018. The said notice dated 02.12.2017 not only gave the of 13 Petitioners' at least four months notice to prepare for and organize their lives around the imminent examination, but also flies in the face of the Petitioners' contention that they did not have adequate notice about the impending examination. In fact, even the decision of the Supreme Court in Orissa Lift Irrigation (supra) clearly mentioned that the examination should ideally be held in May/June 2018, thereby giving the candidates a near estimate of the timeline for the said examination. Therefore, as far the first prong of the Petitioner's prayer is concerned, I find no reason to interfere with the decision of Respondent No. 1/AICTE to conduct the same on 03.06.2018.

12. As regards the second prong of the Petitioner's prayer, that the syllabus for the examination to be held on 03.06.2018 be reduced so as to bring it

in consonance with what the Petitioners perceived to be the syllabus of the B.Tech./M.Tech degree course in the years they underwent their studies

and received their respective degrees, I find that the Supreme Court vide its decision dated 03.11.2017 in Orissa Lift Irrigation (supra), had

categorically left it entirely to the Respondent No. 1/AICTE's discretion to decide the modalities for conducting the said examination. This Court

cannot, against the orders of the Supreme Court, interfere with the discretion conferred on the Respondent No. 1, unless and until there is anything on

record to show that such discretion has been exercised in a perverse manner. In fact, on a perusal of the minutes of the meeting of the Expert

Committee, I find that the Respondent No. 1 had pre-emptively allayed any concerns or anxieties that the candidates may have had about the

impending examination, by designing an examination that only tests the candidates on the most rudimentary concepts of Engineering, that any

engineering student or professional ought to know. Thus, while there is nothing on record to show that the Respondent No. 1 had of 13 exercised its

discretion in a perverse or arbitrary manner, the minutes of the meeting of the Expert Committee show that the Respondent No. 1 had, in fact, duly

considered the legitimate concerns of the candidates while devising the modalities for the said examination. Therefore, this Court does not deem it

appropriate to interfere with the Respondent No. 1's discretion and reduce the syllabus for the examination to be held on 03.06.2018.

13. There is yet another reason why this Court does not propose to interfere with the Respondent No. 1's discretion in deciding the syllabus for the

examination to be held on 03.06.2018. In my opinion, matters such as deciding the syllabus for an examination, are purely academic matters that are

best dealt with by the concerned experts. It is only when the decision of the concerned experts/authorities is found to be arbitrary or perverse, can the

Court examine the same. As mentioned above, there is nothing on record to show that the Respondent No. 1/AICTE, which is the expert body on

technical education in India, has done anything arbitrarily or perversely in the present case. On the contrary, I find that the recommendations of the

Expert Committee are fully in consonance with the directions of the Supreme Court. Even otherwise, there is nothing on record to even show that the

syllabus for the examination is actually outside the scope of the syllabus that was taught to the candidates at the time they had studied for and received

their degrees. Therefore, in my considered view, at this stage there is nothing in the present case that warrants an interference in the syllabus decided

by the Respondent No. 1, for the examination to be held on 03.06.2018.

14. It may also be noted that, though admittedly the registration for the said examination was done on 15.01.2018 itself and the entire syllabus was put

up on the Respondent No. 1/AICTE's website by of 13 22.02.2018, the Petitioners in writ petitions being WP(C) No. 5423/2018 and WP(C) No.

5487/2018 have only approached this Court today, i.e. on 21.05.2018, when the examination to be held on 03.06.2018 is less than two weeks away.

The Petitioners in these two writ petitions have not been given any satisfactory reason for approaching this Court at such a belated stage and, in my

opinion, if the Petitioners in these writ petitions were genuinely aggrieved by the decision of the Respondent No. 1/AICTE, they ought to have invoked

the jurisdiction of this Court at a much earlier stage, and not merely 12 days prior to the scheduled dated of the examination in question. Therefore, in

my considered view, the writ petitions being WP(C) No. 5423/2018 and WP(C) No. 5487/2018 deserve to be outrightly dismissed on this ground alone,

i.e., on account of the Petitioners' delay in approaching this Court.

15. For the aforementioned reasons, I find no merit in the writ petitions. The writ petitions and the pending applications are dismissed with no order as

to costs.