
(2015) 06 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 4962 and 7632 of 2015

Kukkala Venkateswarlu and Others

APPELLANT

Vs

The Acharya Nagarjuna University and Others

RESPONDENT

Date of Decision : 22-06-2015

Acts Referred:

Constitution of India, 1950 — Article 246

University Grants Commission Act, 1956 — Section 12A, 26, 26(1)(f), 26(1)(g)

Citation : (2015) 5 ALD 493 : (2015) 6 ALT 355 : (2016) LabIC 953

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

Advocate : Pulla Rao Yellanki, for the Appellant; Srinivas Mantha, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Nooty Ramamohana Rao, J.—In both these cases a common question touching upon the eligibility of the petitioners for selection to the posts of Assistant Engineer (E and M) notified by the respondent Singareni Collieries Company Limited arises for consideration. There are 3 petitioners in W.P. No. 4962 of 2015 and 6 petitioners in W.P. No. 7632 of 2015.

2. The case of the petitioners in W.P. No. 4962 of 2015 is that they have obtained B.Tech/B.E. degrees in Mechanical Engineering from Acharya Nagarjuna University and Andhra University as the case be, whereas the 6 petitioners in W.P. No. 7632 of 2015 have joined the service of the Singareni Collieries Company Limited with ITI certificate and subsequently passed the Section A and B of Associate Membership Examination conducted by the Institution of Mechanical Engineers (India). It is their case that a pass in Section A and B of Associate Membership Course in Mechanical Engineering from the Institution of Mechanical Engineers (India) is recognized by the Government of India, Ministry of Human Resources Development, Department of Higher Education and All India Council for Technical Education (AICTE) as equivalent to AMIE. Therefore, the

petitioners claim that they are eligible to be recruited as Assistant Engineer (E and M) for which the recruitment process is initiated by the Singareni Collieries Company Limited. It is their further case that though they have applied for recruitment, the Singareni Collieries Company Limited has not considered them as eligible and qualified for participating in the recruitment process and hence did not include their names in the list of eligible candidates displayed for appearing at the written test initially slated to be held on 01.03.2015, but was postponed. Hence, these writ petitions.

3. Heard Sri G. Vidya Sagar, learned Senior Counsel for petitioners and Sri J. Rama Chandra Rao, learned Additional Advocate General for Singareni Collieries and Sri M. Sreenivas and Dr. P.B. Vijay Kumar for Nagarjuna and Andhra Universities and Sri B. Narayana Reddy for UOI.

4. Through circular No. 42 dated 16.01.2015 the Singareni Collieries Company Limited has notified that it has been approved to fill-up certain vacancies in Executive Cadre by inviting applications from among the eligible internal employees working with the company. Amongst others, 17 vacancies of Assistant Engineers (E and M) (Men only) in E-2 grade have been notified for internally qualified and eligible candidates to apply for the said post. The number of years of experience required for these posts as on 01.01.2015 is stated as 3 years. The minimum qualifications notified are as follows:

"B.E., B.Tech., AMIE or its equivalent qualification in Mechanical/Electrical and Electronics Engineering (Regular) from the institution approved by UGC and AICTE with 3 years or more service in any capacity as on 01.01.2015."

5. As was spelt out supra, the case of the petitioners is that the Department of Higher Education, Ministry of Human Resource Development, Government of India, through its notification dated 24.11.2006 has brought out that the Institution of Mechanical Engineers (India) has submitted a request along with the requisite material for review and reconsideration of the earlier decision of the Ministry withdrawing the recognition of the diploma/degree courses run by it. The department appears to have got the said material re-examined by AICTE. The AICTE through its Expert Committee re-examined the content of both the courses offered by the Institute and submitted its recommendations with revision of syllabus for both the courses. Thereafter, the High Level Committee for according recognition of educational qualifications considered the matter at its meeting held on 16.10.2006 and made its recommendations. Based thereon the Government of India decided to restore the recognition to the courses run by the IME, Mumbai with effect from 16.10.2006 subject to the condition that the IME should run the courses based on the new syllabus approved by the AICTE. As per the approval of the AICTE, the Technician Engineers Course part I and II (Diploma Level) will have 22 papers in place of existing 14 papers and Degree level course of Section A and B of Associate Membership will include 24 papers in place of 11 papers at present. In addition to this, there will be 9 elective subjects. After completing theory papers, students will have to undergo at least

3 months mandatory apprenticeship/practical training/ project report at an All India Council for Technical Education approved Polytechnic for Part I and II of Technician Engineers Course for award of Certificate equivalent to Diploma in Mechanical Engineering and the Apprenticeship/Practical training of the same duration in AICTE approved Degree Colleges for award of Certificate equivalent to Bachelors Degree in Mechanical Engineering for Section A and B of Associate Membership Course. This notification has also permitted those students who were registered prior to 10.06.2002 to be allowed to complete the courses with pre-revised syllabus till the next scheduled examination, to be held in December 2006 and their Degree/Diploma will be recognized for employment in Central Government. Those who do not complete their courses by that time (December, 2006) will have to follow the revised syllabus.

6. Though all the 6 petitioners in W.P. No. 7632 of 2015 have asserted that they have passed the Section A and B of Associate Membership Course conducted by the Institution of Mechanical Engineers in the post December 2006 period, the petitioner Nos. 1 to 5 have enclosed the certificates issued by the Institution of Mechanical Engineers (India) vouching for the fact that they have passed the exam sometime during 2010-2011, and the 6th petitioner, it is asserted in Paragraph No. 2 (vi) that he passed the said examination in December, 2012. Hence, based upon the notification issued by the Department of Higher Education, Ministry of Human Resource Development, Government of India, dated 24.11.2006 the petitioners would assert that they are qualified to compete for the post of Assistant Engineer (E and M) in E-2 grade notified by the Singareni Collieries Company Limited.

7. The General Manager (Personnel) of the Singareni Collieries Company has filed separate counter affidavits in W.P. No. 4962 of 2015 and 7632 of 2015.

8. In the counter affidavit filed in W.P. No. 4962 of 2015, it is pointed out that the Singareni Collieries Company has clearly indicated in the notification that such of those internal candidates having B.E., B.Tech., AMIE or its equivalent qualification in the respective discipline (regular) from the institution approved by UGC and AICTE with three or more number of years of service in any capacity as on 01.01.2015, alone are eligible to apply. Therefore, it is clearly spelt out by the Company that only those candidates who have studied the requisite course by regular mode in any institution approved by UGC and AICTE are alone eligible. Since, the petitioners are possessing B.E. and B.Tech. degree having not studied the said course by regular mode, but through correspondence course, while being employed with the Company, they cannot seek any eligibility for appearing for the selections. In paragraph 7 of the counter affidavit, it is hinted that the petitioners are required to satisfy the eligibility qualifications as spelt out in the circular dated 16.01.2015 and they cannot seek an amendment of the requirements spelt out therein in any manner and only such of those candidates who have studied the courses concerned by regular mode are alone eligible.

9. A reference was also made to a public notice taken out by the All India Council

for Technical Education that was published in all newspapers on 12.04.2011, wherein the policy of AICTE not to recognize the qualifications acquired through distance education mode in the fields of Engineering and Technology has been brought out, for the benefit and notice of general public. It was also brought out that AICTE has the policy to consider only MBA and MCA Courses through distance mode for its recognition provided the same has been approved by the tripartite committee of AICTE, UGC and DEC (Distance Education Council).

10. In the counter affidavit filed in W.P. No. 7632 of 2015, it has been pointed that the AICTE has communicated to the Singareni Collieries Company on 07.12.2009, pursuant to a query raised by it on 18.11.2009, that the courses offered by Institution of Mechanical Engineers (India) Mumbai, are not recognized by AICTE. The communication of AICTE dated 07.12.2009 has been enclosed to the counter affidavit. In view of non-recognition of the courses offered by IME by AICTE, a specific stand is taken in paragraph 13 of the counter affidavit that the recognition and approval by Apex Statutory body of AICTE or UGC is mandatory as held by the Supreme Court in a catena of judgments. Further the respondents have also placed reliance upon a public notice on professional courses in Engineering and Technology through ODL (Open Distance Learning) mode dated 11.03.2015 issued by UGC. Thus the public notice dated 11.03.2015 was published by the UGC, after taking over the regulatory functions of erstwhile Distance Education Council (DEC). Further, as per mandate given to it by the Ministry of Human Resource Development to regulate Open and Distance Learning in Universities and Affiliated Colleges, the UGC has decided that no university/institution should offer Diploma, Bachelors and Masters level program in Engineering and Technology other than MBA and MCA till the finalization of UGC (Open and Distance Learning) Regulations, 2014 or notification of relevant Regulations by an independent regulatory authority established by Central Government to deal with ODL education in higher education system in the country, whichever is earlier. It was also further notified that UGC has also decided not to consider any request for ex-post facto approval for ODL programmes offered by any University/Institution at this stage.

11. Sri M. Sreenivas, learned Standing Counsel for Nagarjuna University has placed reliance upon a recognition accorded to several universities/institutions for offering various academic programmes through distance mode. In this notification, in so far as Acharya Nagarjuna University is concerned, it is has been permitted to offer B.Tech/Civil, Mech., EEE, ECE, Computer Science and Information Technology. Similarly, in so far as Andhra University is concerned, B.Tech in Chemical Engineering, B.E. in Civil Engineering, Mech., EEE, ECE courses have also been approved. Therefore, he would submit that the courses offered through distance mode of learning by these (Nagarjuna and Andhra) universities cannot be treated or considered as unauthorized courses.

12. In the above background, Sri G. Vidya Sagar, learned Senior Counsel for the petitioners, has urged that the degrees awarded by the Andhra University as well

as the Acharya Nagarjuna University shall be considered as valid degrees in Engineering and Technology and hence, the petitioners in W.P. No. 4962 of 2015 cannot be construed as not possessing the necessary qualifications. In so far as the petitioners in W.P. No. 7632 of 2015 are concerned, they have passed Section A and B of Associate Membership Course offered by the Institution of Mechanical Engineers (India) Mumbai, which is recognized by the Government of India as equivalent to Bachelors degree in Mechanical Engineering and hence by the notification, the petitioners in W.P. No. 7632 of 2015 shall be treated as possessing an equivalent qualification to that of a degree in Mechanical Engineering and consequently all these petitioners should be treated as eligible for appearing for the selection. The learned Senior Counsel has also pressed into service, in support of the plea of the petitioners, Regulation 33 of Coal Mines Regulations 1957, which dealt with the necessary qualification to be possessed by an Engineer to be appointed to hold general charge of machinery, its installation, maintenance and safe working. In an open-cast mine worked by heavy earth-moving machinery where the aggregate Horse Power of all the machinery used exceeds 750, or any other mine in which aggregate Horse Power of all the machinery used exceeds 500, a degree or equivalent qualification in Electrical or Mechanical engineering recognized by the Central Government for the purpose of recruitment to superior post and service under them and not less than two years experience in the installation and maintenance of machinery of the type used in the mine are eligible to be appointed. Therefore, it is urged that in terms of Regulation 33 of the Coal Mines Regulations 1957, a degree or equivalent qualification in Mechanical Engineering recognized by the Central Government for the purpose of recruitment to its service is what is essentially needed. Sri Vidya Sagar, therefore, contends that the impugned notification should be read down to the extent of its insistence that the qualification should be obtained by a regular mode of study and that an equivalent qualification also should be obtained by a regular mode of study. Sri Vidya Sagar would contend that when once the Ministry of Home Resource Development, Government of India, notified equivalence, then the unprincipled insistence that the equivalent qualification must also be obtained by a regular mode pales itself into insignificance.

13. Sri J. Ramachandra Rao, learned Additional Advocate General, who appeared on behalf of Sri Nandigama Krishna Rao, learned Standing Counsel for Singareni Collieries, would submit that the entire gamut of controversy raised herein is covered by the judgment rendered by the Supreme Court in Annamalai University rep. by Registrar Vs. Secy. to Govt. Infn. and Tourism Dept. and Others, (2009) 4 JT 43 : (2009) 3 SCALE 293 : (2009) 4 SCC 590 : (2009) 3 SCR 355 : (2009) 2 UJ 1022 : (2009) AIRSCW 1294 and would contend that the qualifications obtained only through the regular mode of study alone are liable to be taken into account and if the qualification is not recognized by the AICTE, such qualification cannot be taken into account or consideration by the respondent company.

14. It is true that the Supreme Court was called upon in *Annamalai University rep. by Registrar Vs. Secy. to Govt. Infn. and Toursm Dept. and Others*, (2009) 4 JT 43 : (2009) 3 SCALE 293 : (2009) 4 SCC 590 : (2009) 3 SCR 355 : (2009) 2 UJ 1022 : (2009) AIRSCW 1294 to consider as to whether the provisions of the UGC Act and the Regulations framed by UGC Act would be binding on all universities whether conventional or open. During the course of discussion, the Supreme Court has also noticed its earlier judgments rendered in *State of A.P. v. K.Purushotham Reddy and Osmania University Teachers Association v. State of A.P.*, and arrived at a conclusion that UGC Act, having been enacted in terms of Entry 66 of List 1 of the Seventh Schedule to the Constitution of India would prevail over the Open University Act. It is worth noticing the reasoning assigned by it in Paras 40, 41, 42, 49 and 54, which run as under:

15. The UGC Act was enacted by the Parliament in exercise of its power under Entry 66 of List I of the Seventh Schedule to the Constitution of India whereas Open University Act was enacted by the Parliament in exercise of its power under Entry 25 of List III thereof. The question of repugnancy of the provisions of the said two Acts, therefore, does not arise. It is true that the statement of objects and reasons of Open University Act shows that the formal system of education had not been able to provide an effective means to equalize educational opportunities. The system is rigid inter alia in respect of attendance in classrooms. Combinations of subjects are also inflexible.

16. Was the alternative system envisaged under the Open University Act was in substitution of the formal system is the question. In our opinion, in the matter of ensuring the standard of education, it is not. The distinction between a formal system and informal system is in the mode and manner in which education is imparted. UGC Act was enacted for effectuating coordination and determination of standards in Universities. The purport and object for which it was enacted must be given full effect.

17. The provisions of the UGC Act are binding on all Universities whether conventional or open. Its powers are very broad. Regulations framed by it in terms of clauses (e), (f), (g) and (h) of sub-Section (1) of Section 26 are of wide amplitude. They apply equally to Open Universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by UGC. The standards and the coordination of work or facilities in universities must be maintained and for that purpose required to be regulated. The powers of UGC under Sections 26(1)(f) and 26(1)(g) are very broad in nature. Subordinate legislation as is well known when validly made becomes part of the Act. We have noticed hereinbefore that the functions of the UGC are all pervasive in respect of the matters specified in clause (d) of sub-section (1) of Section 12A and clauses (a) and (c) of subsection (2) thereof.

18. In *State of A.P. Vs. K. Purushotham Reddy and Others*, AIR 2003 SC 1956 : (2003) 3 SCALE 88 : (2003) 9 SCC 564 : (2003) 2 SCR 832 : (2003) AIRSCW

1449 : (2003) 2 Supreme 630 , this Court held:

"19. The conflict in legislative competence of the Parliament and the State Legislatures having regard to Article 246 of the Constitution of India must be viewed in the light of the decisions of this Court which in no uncertain terms state that each Entry has to be interpreted in a broad manner. Both the parliamentary legislation as also the State legislation must be considered in such a manner so as to uphold both of them and only in a case where it is found that both cannot co-exist, the State Act may be declared ultra vires. Clause I of Article 246 of the Constitution of India does not provide for the competence of the Parliament or the State Legislatures as is ordinarily understood but merely provide for the respective legislative fields. Furthermore, the Courts should proceed to construe a statute with a view to uphold its constitutionality."

19. It was observed:

"20. Entry 66 of List I provides for coordination and determination of standards inter alia for higher education. Entry 25 of List III deals with broader subject, namely, education. On a conjoint reading of both the entries there cannot be any doubt whatsoever that although the State has a wide legislative field to cover the same is subject to entry 63, 64, 65 and 66 of List I. Once, thus, it is found that any State Legislation does not entrench upon the legislative field set apart by Entry 66, List I of the VII Schedule of the Constitution of India, the State Act cannot be invalidated."

20. This Court in *Osmania University Teachers' Association Vs. State of Andhra Pradesh and Another*, AIR 1987 SC 2034 : (1987) 3 JT 424 : (1987) 2 SCALE 289 : (1987) 4 SCC 671 : (1987) 3 SCR 949 : (1987) 2 UJ 490 , held as under:

"14. Entry 25 List III relating to education including technical education, medical education and Universities has been made subject to the power of Parliament to legislate under Entries 63 to 66 of List I. Entry 66 List I and Entry 25 List III should, therefore, be read together. Entry 66 gives power to Union to see that a required standard of higher education in the country is maintained. The standard of Higher Education including scientific and technical should not be lowered at the hands of any particular State or States. Secondly, it is the exclusive responsibility of the Central Government to co-ordinate and determine the standards for higher education. That power includes the power to evaluate, harmonise and secure proper relationship to any project of national importance. It is needless to state that such a coordinate action in higher education with proper standards, is of paramount importance to national progress. It is in this national interest, the legislative field in regard to "education" has been distributed between List I and List III of the Seventh Schedule.

15. The Parliament has exclusive power to legislate with respect to matters included in List I. The State has no power at all in regard to such matters. If the State legislates on the subject falling within List I that will be void, inoperative and unenforceable.

30. The Constitution of India vests Parliament with exclusive authority in regard to co-ordination and determination of standards in institutions for higher education. The Parliament has enacted the U.G.C. Act for that purpose. The University Grants Commission has, therefore, a greater role to play in shaping the academic life of the country. It shall not falter or fail in its duty to maintain a high standard in the Universities. Democracy depends for its very life on a high standards of general, vocational and professional education. Dissemination of learning with search for new knowledge with discipline all round must be maintained at all costs. It is hoped that University Grants Commission will duly discharge its responsibility to the Nation and play an increasing to role bring about the needed transformation in the academic life of the Universities."

21. In view of what has been spelt out by the Supreme Court in Annamalai University rep. by Registrar Vs. Secy. to Govt. Infn. and Toursm Dept. and Others, (2009) 4 JT 43 : (2009) 3 SCALE 293 : (2009) 4 SCC 590 : (2009) 3 SCR 355 : (2009) 2 UJ 1022 : (2009) AIRSCW 1294 it emerges that the provisions of the UGC Act will have binding force and the notification, which has been issued by it as recently as on 11.03.2015, advising universities/institutions not to offer Bachelors Level programmes in Engineering and Technology till the finalization of UGC (Open and Distance Learning) Regulations 2014 cannot be ignored by this Court. Similarly in State of Tamil Nadu and Another v. Adhiyaman Educational and Research Institute and Others, the Supreme Court has made it clear that the provisions of AICTE Act and Rules and Regulations framed thereunder will have precedence over any other general subject enactment:

"The aforesaid provisions of the Act including its preamble make it abundantly clear that the Council has been established under the Act for coordinated and integrated development of the technical education system at all levels throughout the country and is enjoined to promote qualitative improvement of such education in relation to planned quantitative growth. The Council is also required to regulate and ensure proper maintenance of norms and standards in the technical education system."

22. This duty and responsibility cast on the Council implies that the norms and standards to be set should be such as would prevent a lopsided or an isolated development of technical education in the country.

23. In view of these settled principles, the contents of Regulation 33 of Coal Mines Regulations are liable to be treated only as general in nature and content, and it cannot be considered as having overriding effect. Further, these Regulations have provided for the minimum academic requirements for one to possess before he can be appointed as an Engineer in a Mine. If, the employer is insisting for a superior qualification to be possessed than the one provided by the Coal Mines Regulations, no employee can make a grievance of it. The primary aim of the Coal Mines Regulations is the safety of both the mine and those who

work therein. By the employers insistence of a superior qualification it cannot be said the safety of the Mine or the other Miners is compromised.

24. I am, therefore, of the opinion that the respondents are justified in insisting for the qualification to be obtained by a regular mode for one to be rendered eligible to be considered for recruitment.

25. Hence, both the writ petitions fail and accordingly, are dismissed.

26. Consequently, miscellaneous petitions, if any pending shall also stand dismissed. No costs.