
(2019) 03 UK CK 0095

In the Uttarakhand High Court

Case No : Writ Petition (S Of B) No. 168 Of 2017

Parshuram & Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 18-03-2019

Acts Referred:

University Grants Commission Act, 1956 — Section 23

Citation : (2019) 03 UK CK 0095

Hon'ble Judges : Ramesh Ranganathan, CJ; Narayan Singh Dhanik, J

Bench : Division Bench

Advocate : Rakesh Thapliyal, Pradeep Joshi, Vikas Pande

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. The jurisdiction of this Court is invoked by six petitioners who completed their Bachelor's Degree in Engineering, in distance mode, from the Institute of Advance Studies in Education University, Gandhi Vidya Mandir, Sardar Shahar, District Churu, Rajasthan, in the year 2005. Even before completing their Engineering Degree in distance mode, the petitioners had all joined service as Junior Engineers as they possessed the qualification of a Diploma in Engineering. A degree in Engineering would have enabled the petitioners to be considered for promotion, to the post of Assistant Engineer, in the quota earmarked for Graduates in Engineering.

2. The validity of the Bachelor's Degree in Engineering, obtained by the petitioners through distance mode, came up for consideration in Orissa Lift Irrigation Corporation v. Rabi Sankar Patro, (Judgment in Civil Appeal Nos. 17869-17870 of 2017 and batch dated 3.11.2017) wherein the Supreme Court observed that there was a distinction between a regular University, established under a Central Act, a Provincial Act or a State Act, and an Institution Deemed to be University managed under the UGC Act; a Deemed to be University could

certainly award degrees, but could not use the word "University", by virtue of Section 23 of the UGC Act; even after conferral of such status, it still continued to be "an Institution Deemed to be University"; if it was equated with a University, in every sense of the term, it would lead to incoherent and incongruous results, in that its area of operation or the field of its activity would be completely unlimited and unregulated; and this was certainly not the intent of the UGC Act.

3. The Supreme Court, thereafter, observed that the expectations from a Deemed to be University are of excellence, research and advancement in its chosen field, for which such status is accorded; while there is no embargo on such Deemed to be University from entering into new areas of education, or introducing new courses, but, in that case, it cannot demand or receive complete relaxation from the regulatory regime; it must satisfy all those requirements which a normal institution is required to fulfill; the logical conclusion was that a Deemed to be University is still an institution of the stature of a "technical institution" and, if it desires to introduce new courses, it must fulfill the requirements of 1994 AICTE Regulations; the Deemed to be University was required to abide by the provisions of the 1994 AICTE Regulations, and could not introduce courses leading to award of degrees in Engineering without the approval of the AICTE; permission granted by the Distance Education Council, allowing the Deemed to be University to introduce courses leading to the award of degrees in Engineering, was illegal and opposed to law; the illegality, in the exercise of power, was to such an extent that it could not be cured by an ex post facto approval granted later; the grant of such approval was only superficial and perfunctory; such power was exercised without causing any inspection; and the endorsement of the decision, by the Joint Committee of UGC - AICTE - DEC dated 11.5.2007, was completely flawed.

4. The Supreme Court, thereafter, observed:

".....Having found the entire exercise of grant of ex-post-facto 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.

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."

5. Accordingly, the Supreme Court directed:

"I 1994 AICTE Regulations, do apply to Deemed to be Universities and the Deemed to be Universities in the present matter were not justified in introducing any new courses in Technical Education without the approval of AICTE.

II Insofar as candidates enrolled during the Academic Sessions 2001-2005, in the present case the ex post facto approvals granted by UGC and their concerned

authorities are set aside.

III Consequent to aforesaid direction No.II, all the degrees in Engineering awarded by concerned Deemed to be Universities stand suspended.

IV The AICTE shall devise the modalities to conduct an appropriate test/tests as indicated in Para 47 above. The option be given to the concerned students whose degrees stand suspended by 15.01.2018 to appear at the test/tests to be conducted in accordance with the directions in Para 47 above. Students be given not more than two chances to clear test/tests and if they do not successfully clear the test/tests within the stipulated time, their degrees shall stand cancelled and all the advantages shall stand withdrawn as stated in Paras 46 and 47 above. The entire expenditure for conducting the test/tests shall be recovered from the concerned Deemed to be Universities by 31.03.2018.

V Those students who do not wish to exercise the option, shall be refunded entire money deposited by them towards tuition fee and other charges within one month of the exercise of such option. Needless to say their degrees shall stand cancelled and all advantages/benefits shall stand withdrawn as mentioned in Para 47.

VI If the students clear the test/tests within the stipulated time, all the advantages/benefits shall be restored to them and their degrees will stand revived fully."..... (emphasis supplied)

6. Thereafter, on applications being made seeking clarification and modification of the said judgment, the Supreme Court, in its order in MA Nos. 1795-1796 of 2017 dated 22.1.2018, observed as under:

"We, therefore, as a one-time relaxation in favour of those candidates who were enrolled during the academic years 2001-2005 and who, in terms of the judgment, are eligible to appear at the test to be conducted by AICTE, direct:-

a] All such candidates, who wish to appear at the forthcoming test to be conducted by AICTE in May-June 2018 and who exercise option to appear at the test in terms of the judgment, can retain the degrees in question and all the advantages flowing therefrom till one month after the declaration of the result of such test or till 31.07.2018 whichever is earlier.

b] This facility is given as one-time exception so that those who have the ability and can pass the test in the first attempt itself, should not be put to inconvenience. If the candidates pass in such first attempt, they would be entitled to retain all the advantages. But if they fail or choose not to appear, the directions in the judgment shall apply, in that the degrees and all advantages shall stand suspended and withdrawn. At the cost of repetition, it is made clear that no more such chances or exceptions will be given or made. They will undoubtedly be entitled to appear on the second occasion in terms of the judgment but this exception shall not apply for such second attempt."

7. The petitioners, who obtained their Bachelor's Degree in Engineering through the distance mode, were, in terms of the judgment of the Supreme Court in Civil Appeal Nos. 17869-17870 of 2017 and batch dated 3.11.2017 and the clarification issued thereafter in MA Nos. 1795-1796 of 2017 dated 22.1.2018, permitted to appear in the subsequent examination to be conducted at the National Institute of Engineering, and were given two attempts to pass the examination, failing which the degrees which they had obtained were to stand cancelled. While three of these six petitioners passed in the examination held between 3rd to 6th June 2018, one other passed in the December 2018 examination. As a result thereof, their Bachelor's Degrees would not be cancelled.

8. Sri Rakesh Thapliyal, learned Counsel for the writ-petitioners, would submit that, as a result of the petitioners having passed in the examination, their Bachelor's Degree in Engineering must be held to have remained valid right from its inception; and since they had completed their Bachelor's degree in Engineering through distance mode earlier, they are entitled to be considered for promotion to the post of Assistant Engineer, in the quota earmarked for Graduates in Engineering, for the recruitment years 2008-09 and 2009-10. This claim of the petitioners is based on the observation of the Supreme Court, in paragraph 47 of the judgment dated 3.11.2017, to the effect that, "If they clear the test/tests within the stipulated time, all the advantages or benefits shall be restored to the concerned candidates."

9. Sri Rakesh Thapliyal, learned Counsel for the petitioners, would further submit that, in the light of the aforementioned judgment of the Supreme Court, prayer 1 has become infructuous; and the only prayer, which the petitioners seek, is prayer 2 i.e. to promote them to the post of Assistant Engineer (Civil), against the degree holders quota, for the recruitment years 2008-09 and 2009-10. Learned Counsel would also submit that since, on the petitioners passing the test, all advantages and benefits are required to be restored to them, they are entitled to the benefit of being considered for promotion as Assistant Engineers in the selection years 2008-09 and 2009-10.

10. We must express our inability to agree. A decision is only an authority for what it actually decides and not every observation found therein nor what logically follows from the various observations made in it. Every judgment must be read as applicable to the particular facts proved, or assume to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The case cannot be quoted for a proposition that may seem to follow logically from it. It is not a profitable task to extract a sentence here and there from a judgment and to build up on it. (State of Orissa v. Sudhansu Sekhar Misra [AIR 1968 SC 647]: Quinn v. Loathem [1901 AC 495]). Judgments ought not to be read as statutes. They are an authority for what they decide. A word here or a word there should not be read out of context. (Sri Koanaseema Co-operative Central Bank Ltd v. N

Seetharama Raju [AIR 1990 AP 171]).

11. Observations of the Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions, but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes {Haryana Financial Corpn. V. Jagdama Oil Mills [(2002) 3 SCC 496]}. In London Graving Dock Co. Ltd. V. Horton: (1951) 2 All ER 1 (HL):-

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge."

12. In Home Office v. Dornet Yacht Co.: (1970) 2 All ER 294, Lord Reid said (at All ER p. 297g-h), "Lord Atkin's speech ...is not to be treated as if it were a statutory definition. It will require qualification in new circumstances".

13. Megarry, J. in (1971) 1 WLR 1062 observed:

"One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board: (1972) 2 WLR 537 Lord Morris said:

"There is always peril in treating the words of a speech or a judgment as though they were words in legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case....."

(emphasis supplied)

14. These observations have been reiterated by the Supreme Court in Ashwani Kumar Singh v. U.P.Public Service Commission [(2003) 11 SCC 584]; Union of India v. Amrit Lal Manchanda [(2004) 3 SCC 75]; Escorts Ltd. v Commissioner of Central Excise, Delhi II [(2004) 7 SCC 214]; Bharat Petroleum Corpn. Ltd v. N.R. Vairamani [(2004) 8 SCC 579]; Union of India v. Major Bahadur Singh [(2006) 1 SCC 368].

15. Having held that all the degrees in Engineering of the students, obtained through the distance mode, stood suspended till they pass the examination, and every single advantage on the basis of that degree shall stand suspended, the Supreme Court observed that, if they cleared the test/tests within the stipulated time, all the advantages or benefits would be restored, meaning thereby that, consequent on their passing the examination, their Bachelor's Degree and all advantages and benefits which these students had received in the light of the

said degree, would stand restored. The petitioners' Bachelors' Degree in Engineering were to be restored only from the date they passed the examination, which is 3rd to 6th June, 2018 with respect to three of them, and December, 2018 with respect to the fourth. In the light of the aforesaid judgment of the Supreme Court, the petitioners are entitled to claim only those advantages and benefits which remained suspended because of the order of the Supreme Court, and which stood restored consequent on the petitioners passing the test.

16. Accepting the submission of the Sri Rakesh Thapliyal, learned Counsel for the petitioners, that the aforesaid sentence in the order of the Supreme Court would require this Court to deem the petitioners' Degree in Engineering to be valid from its very inception, would negate the very basis of the order of the Supreme Court which, while holding that such degrees were required to be withdrawn, took a sympathetic view and permitted such degrees to remain in force consequent on the candidates appearing for, and on passing, the test to be conducted pursuant to the judgment. Any advantage or benefit which the petitioners had, before their Bachelor in Engineering degree stood suspended as a result of the judgment of the Supreme Court, stood restored on their passing the test. As the petitioners had not been promoted earlier as Assistant Engineers, under the Graduates in Engineering quota, the question of restoration of a benefit, which was not extended to them earlier, does not arise. The petitioners are entitled to claim the right to be considered for promotion as Assistant Engineer, under the Engineering degree quota, only from the date on which they passed the examination, and not from a date ten years prior thereto, and nine years prior to the date of the judgment of the Supreme Court.

17. Viewed from any angle, we see no reason to grant the relief sought for by the petitioners in the writ petition. Suffice it to make it clear that the petitioners shall be entitled to be extended all such benefits, which degree holders in Engineering are entitled to, consequent on their passing the test, as directed to be held by the Supreme Court, in June/December, 2018.

18. Subject to the aforesaid observations, the writ petition fails and is, accordingly, dismissed. No costs.