

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NO.18838 of 2015

Between :

V.Ajay Kumar, S/o Sri Narsaiah,
Aged about 36 years, R/o Qtr.No.SD-226,
RK-8 Colony, Srirampur (Post),
Adilabad District and others.

..... Petitioners

And

Singareni Collieries Company Limited,
Kothagudem, Khammam District, rep.by
its Chairman & Managing Director and
others

..... Respondents

DATE OF JUDGMENT PRONOUNCED : 09.02.2016

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SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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1. Whether Reporters of Local Newspapers may : No
be allowed to see the Judgment ? :
 2. Whether the copies of judgment may be marked : Yes
to Law Reporters/Journals :
 3. Whether Their Lordship wish to see the fair : No
copy of the Judgment ? :

***THE HON'BLE SRI JUSTICE P. NAVEEN RAO**

+ WRIT PETITION NO.18838 of 2015

% Dated 09.02.2016

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... Respondents

! Counsel for Petitioners : Sri G.Vidya Sagar, senior counsel
for Smt. K.Udaya Sri, counsel, for petitioners

^Counsel for Respondents : Sri J.Sreenivasa Rao, standing counsel for
Respondents 1 and 2;

<GIST :

>HEAD NOTE :

? Cases referred :

(2013) 3 SCC 385
(2001) 8 SCC 676
2015 (5) ALD 483
(2009) 4 SCC 590
(1993) 2 SCC 349
(2001) 1 SCC 442

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.18838 of 2015

ORDER:

Petitioners are employees of Singareni Collieries Company Limited (for short, "SCCL"). During the course of service petitioners obtained B.Tech., Degrees from the Jawaharlal Nehru Technological University of Hyderabad (JNTUH) through Correspondence-cum-Contact mode.

Petitioners intend to compete to the post of Management Trainee (E&M) E2 Cadre. On the ground that the degree obtained by them is not through regular mode, their candidature is not considered. Hence, this writ petition. Petitioners pray to declare that the qualifications possessed by them are valid, that they are eligible to participate in the recruitment and to allow them to take examination for the post of Management Trainee (E&M).

2. By order dated 26.06.2015, this Court directed to issue hall tickets to petitioners to write the recruitment examination. However, their papers were directed not to be evaluated. Petitioners were accordingly permitted to write written examination. Praying to vacate the interim orders granted by this Court, SCCL filed vacate petition.

3. Heard Sri G.Vidyasagar, learned senior counsel appearing for petitioners and learned standing counsel for SCCL. With the consent of learned counsels for respective parties, the writ petition is finally disposed of by this order.

4. Employment notification No.1 of 2015 was issued to fill up the post of Management Trainee (E&M). The notification no.1 of 2015 deals with several categories of posts, including Management Trainee (E&M). To the post of Management Trainee (E&M), qualifications prescribed in the notification are, BE/B.Tech/AMIE or its equivalent qualification with at least two years full-time Post in Electrical, Mechanical and Electrical & Electronics Engineering (Regular) with minimum 60% marks. The notification also stipulated maximum age of eligibility as 30 years as on 01.02.2015. As per

the advertisement, the last date for submission of the applications Online was 25.02.2015. After successful submission of applications Online, the candidates are required to take print out of filled in Online application, sign the same and by enclosing copies of the certificates in proof of age, qualification, experience, marks memos, etc., should be sent to the General Manager, Recruitment Cell on or before 04.03.2015.

5. Petitioners herein who are employees of the respondent company intended to compete for the direct recruitment. Applications submitted by petitioners in pursuance to said notification was received, but they were not issued hall tickets. On enquiries, petitioners were informed that as they do not have **regular** degree, they were not called for written examination.

6. Learned senior counsel appearing for petitioners contended that after obtaining permission from the employer, petitioners have prosecuted the course of study leading to awarding of B.Tech Degree from JNTUH through Correspondence–cum-Contact Course mode. This course is administered by JNTUH, which is a recognized University and it is permissible for the University to administer courses through correspondence as per the curriculum. On a clarification sought by the A.P.Public Service Commission, the Principal Secretary to the Higher Education in his letter No.13065/EC/A2/ 2013, dated 27.01.2014 clarified that the B.Tech Degree offered by the JNTUH in the Correspondence-cum-Contact mode is treated as valid like any other B.Tech., day time degree offered by the Universities for the purpose of Education and employment, who got admitted till the year 2009. He submitted that the degree awarded to them has to be treated as regular degree and petitioners are eligible to compete to the post in issue. He, therefore, submitted that rejection of applications of the petitioners and not permitting them to sit for the written examination on the ground that the degree obtained by them was through Correspondence cum Contact mode, is *ex facie* illegal.

7. In support of his contentions, learned senior counsel placed reliance on the following decisions:

i) **Parshvanath Charitable Trust and others vs. All India Council for Technical Education and others** ^[1]

ii) **Bharathidasan University and another vs. All India Council**

for Technical Education and others^[2].

8. Learned standing counsel submitted that petitioners admittedly pursued their Bachelor of Technical Education/ Bachelor Educational Courses through Correspondence-cum- Contact mode while working in the respondent company. Therefore, the course of study undergone by them is not a regular course of study, whereas recruitment rules prescribe undergoing of regular course of study to be eligible to be appointed to the post in issue. Learned standing counsel submitted that such prescription is valid. Learned standing counsel submitted that it is permissible for the employer to prescribe such qualification and there is no illegality or irregularity in prescribing such qualification. There is lot of difference between a person undergoing regular course of study and a person undergoing correspondence cum contact mode of study, more particularly in professional courses.

9. In support of his contention, he placed reliance on the decision of this Court in **Kukkala Venkateswarlu and others vs. Acharya Nagarjuna University, Nagarjuna Nagar, Guntur, A.P., and others**^[3].

10. Points for consideration in this writ petition are,

(1) Whether not treating the Degree obtained by petitioners through Correspondence-cum-Contact Course as valid to compete in the recruitment to the post of Management Trainee (E&M) is illegal ? and

(2) Whether petitioners are otherwise eligible for consideration for recruitment?

11. Before appreciating rival contentions, it is to be noted that the notification No.1 of 2015 and the recruitment rules of the respondent company prescribing particular educational qualifications and other conditions of recruitment are not under challenge. It is also to be noted that two important ingredients of the recruitment notification No.1 of 2015 are,

1) (a) The candidate must hold BE/B.Tech degrees/AMIE Certificate or its equivalent in Electrical, Mechanical or Electrical and Electronics Engineering (**Regular**);

(b) with 55% minimum marks; and

2) must be within the age of 30 years as on 01.02.2015.

POINT NO.1:

12. The respondent company notified rules regulating recruitment to various cadres called as “the Singareni Collieries Company Limited Executive Cadre Recruitment Rules” (hereinafter referred to as Recruitment Rules). The post of Management Trainee (E&M) is governed by these recruitment rules. The vacancies in the cadre of the Management Trainee (E&M) are intended to be filled up by in-service employees to the extent of 33¹/₃% and balance by direct recruitment from open market. The recruitment rules prescribe educational and other qualifications. The respondent company enables serving employees to compete in open market recruitment subject to fulfilling the qualifications prescribed for direct recruitment. This facility is subject to their eligibility to compete in open market recruitment.

13. The qualifications and eligibility prescribed are as under:__

Sl. No.	Name of the Post, Grade, No.of Vacancies, Roster Description	M i n i m u m qualification, experience & Maximum age
1	Executive Cadre MANAGEMENT TRAINEE (E&M) (MEN ONLY) E-2 Grade. Rs.20600-46500 Total Vacancies : 67 [(RESERVED (OPEN TO ALL i.e. L O C A L & NON-LOCAL): 26 VACANCIES. (OC-13; BCA-2; BCB-2, BCC-1’ BCD-1; BCE-1, SC-4L; ST-2). LOCAL – 41 VACANCIES: (OC-23; BCA-3; BCB-3; BCD-3; BCE-1, SC-6, ST-2)]	BE/B.TECH/AMIE OR its equivalent qualification in Electrical, Mechanical OR Electrical & Electronics Engg. Regular) with a minimum 55% marks in aggregate from the Institution by UGC & AICTE Age: 30 years as on 01.02.2015. 5 years age relaxation will be allowed to the BC, SC, ST candidates.

14. Learned senior counsel placed heavy reliance in paragraph no.20 of the decision of the Supreme Court in **Parshvath Charitable Trust** to contend that **Kukkala Venkateswarlu** has not considered the said judgment and in view of the said judgment, the decision of the Supreme Court in **Annamalai University vs. Secretary to Government, Information and Tourism Department and others** ^[4] has no application and the decision in

Kukkala Venkateswarlu requires re-consideration. There is no merit in the said contention.

15. The decision of Supreme Court in **Parshvanth Charitable Trust** has no application to the facts of this case. In the said case, the existing college was shifted to a new place though applications for approval were submitted to various authorities including AICTE, even before the approvals were granted, institution was shifted. The AICTE issued show-cause notice calling for explanation as to why action should not be initiated against shifting of institution and operation from different place than the place where approval was granted. On 07.01.2011, AICTE passed orders withdrawing the approval. Even before withdrawal of the approval the college of the appellant trust was not included in the centralized administrative process. This necessitated institution of litigation before the Bombay High court. The cancellation of approval was challenged by the Trust before the Bombay High Court in the next round of litigation. Having regard to the issue involved, the Supreme Court observed in paragraph-20 that the Council created under the AICTE Act is not intended to be an authority either superior to or to supervise and control the universities and thereby superimpose itself upon such universities. It further observed that the role of AICTE vis-à-vis the universities is only advisory, recommendatory and one of providing guidance to ensure maintaining of proper standards and qualitative norms. The Division Bench of Bombay High Court dismissed the writ petition upholding the decision of AICTE. The Supreme Court confirmed the decision of the Division Bench. Supreme Court has also upheld non-inclusion of the appellate college in the counseling for admissions as valid. Supreme Court held that

“31. There being no compliance with the legal requirements and binding conditions of recognition, the withdrawal of approval by AICTE can also be not interfered with”

16. In the instant case, the issue for consideration is whether it is permissible for the employer to prescribe acquisition of particular qualification and in a particular mode. In matters of prescribing appropriate qualification and eligibility criteria, it is prerogative of employer to decide. Courts cannot mandate the employer to prescribe particular qualification or particular eligibility criteria. In matters of prescription of qualification small

window of judicial interference is available only if it found to be totally irrational and perverse. It cannot be said that correspondence course is same as course of study administered on campus. Thus, prescription of such requirement cannot be said as irrational. If employer prefers a person who has pursued his professional course in regular mode to a person acquiring degree through correspondence mode, it cannot be said as illegal or arbitrary. It is not the allegation of the petitioners that particular qualification is prescribed only to deprive the opportunity of advancement in service to the petitioners. Petitioners entered into service of the respondent company by holding Diplomas and while working in the respondent company, they have obtained degrees through the Correspondence-cum-Contact mode. The qualification prescribed for the post in issue is to possess degree obtained after pursuing the course of study by regular mode. In other words employer excludes consideration of the degree obtained by any other mode other than by pursuing the course of study through regular stream. The distinction brought about is apparent. There is valid classification - Two modes of imparting professional course are different.

17. This very issue has come before this Court in **Kukkala Venkateswarlu**. The said decision concerns the very same post, but it was with reference to internal recruitment. There were two writ petitions instituted before this Court. In W.P.No.4962 of 2015, the petitioners possessed degree in B.Tech/BE, similar to the petitioners in this case, i.e., obtaining professional degree by pursuing the course of study through distance mode. In W.P.No.7632 of 2015 petitioners claimed that a pass in Section A & B of Associate Membership Course in Mechanical Engineering from the Institution of Mechanical Engineers (India) is recognized equivalent to AMIE and, therefore, are eligible to be considered for recruitment to the post in issue. This Court by relying on the decision of the Supreme Court in **Annamalai University**, held that such prescription is valid, that degree obtained after prosecuting through distance education mode cannot be equated to that of regular degree. This Court held that since UGC Act makes a distinction between the degree from distance mode and regular degree, which is binding on all universities, the same cannot be equated.

18. In **Annamalai University**, Supreme Court held that in the matter of ensuing standard of education alternative system envisaged under the Open

University Act, cannot be a substitution to formal system of education. It is further held that in matters of higher education, it is necessary to maintain minimum standards of instructions and such minimum standards of instructions are required to be defined by UGC.

19. Following the decision in **Annamalai University**, in **Kukkala Venkateswarlu**, learned single Judge of this Court held that provisions of the UGC Act have binding force. The Court took note of notification issued by UGC on 11.03.2015 advising the universities/institutions not to offer Bachelor Level Programmes in Engineering and Technology by distance mode till the finalization of UGC regulations. This Court is informed that against the decision of learned single Judge, Writ Appeal No. 752 and 843 of 2015 are filed and they are pending consideration by the Division Bench.

20. The decision of the Supreme Court in **Bharathidasan University** has no application to the facts of this case. In the said decision, the issue for consideration was whether it is necessary for the appellate university to obtain approval from the AICTE to start a department for imparting a course or programme in technical education or a technical institution as an adjunct to the University to conduct technical course of its choice and selection. The said decision do not come to the rescue of petitioners.

21. It is also settled principle of law that what qualifications are required to be prescribed and how to make selections and recruitment are within the exclusive domain of the employer. Unless the qualifications prescribed are found to be irrational, having no nexus to the object sought to be achieved and *ex facie* discriminatory, the Court cannot upset prescription of such higher qualification and direct consideration of persons with lesser qualifications.

22. As long as there is justification to prescribe a particular qualification, such prescription stands the rigors of Articles 14 and 16 of the Constitution of India.

23. Thus, I see no illegality in prescribing that candidates must have acquired professional educational qualification through regular mode. As petitioners have not acquired their professional degrees through regular mode, they are not eligible to be considered for the post of Manager Trainee (E&M).

POINT NO.2:

24. The petitioners have more serious hurdles to cross. As noticed above, the prayer sought and the limited grievance ventilated by the petitioners in the writ petition is confined to not accepting the educational qualifications possessed by them as valid. The petitioners are above age of 30 years as on the cutoff date prescribed in the notification.

25. The prescription of age in the open advertisement is sacrosanct to any recruitment notification. Unless this condition is fulfilled, candidates cannot be permitted to participate in the recruitment. Insofar as direct recruitment is concerned, all candidates intending to compete stand on par and no distinction can be made based on their present status. Depending on the Human Resources Policy of employer, he may permit his employee to compete in any open market recruitment, be it in the same organization or in any other organization. What all is required by a serving employee is to seek permission of his employer to compete in direct recruitment. The respondent company permits serving employees to compete in direct recruitment. However, all persons, including serving employees are required to fulfill the eligibility as prescribed in the notification.

26. The rules governing the post and the recruitment notification has not provided relaxation to serving employees, with reference to age. Thus, even assuming that there is merit in the contention of the petitioners that the Degrees obtained by them are valid and rejection is illegal, the petitioners are not entitled to compete since they are not within the age prescribed for the post. This being an essential requirement for participation in the direct recruitment, the petitioners have to be non-suited on this ground alone. Though learned senior counsel sought to persuade the court not to consider the aspect of age of eligibility since the employer is not raising such an objection, this court in exercise of equity jurisdiction need not grant relief sought for by petitioners when they are not eligible for consideration on other parameters. Furthermore, though not explicit, the respondent company also raised the plea of ineligibility of petitioners as with reference to age.

27. For all the reasons stated above, the writ petition fails and is accordingly dismissed. There shall be no order as to costs.

Miscellaneous petitions if any pending in the writ petition shall stand

closed.

JUSTICE P.NAVEEN RAO

Date: 09.02.2016

Note: L.R. copy to be marked : Yes

B/o.

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HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.18838 of 2015

Date: 09.02.2016

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[\[1\]](#) (2013) 3 SCC 385
[\[2\]](#) (2001) 8 SCC 676
[\[3\]](#) 2015 (5) ALD 483
[\[4\]](#) (2009) 4 SCC 590