

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M.GANGA RAO

+ Writ Petition Nos.18002, 23237,
25658, 25820 and 25826 of **2013**,
10501, 10635, 10858, 10921, 11089,
11873, 11874, 12094 and 39775 of **2014**

% 26-12-2017

1. The Govt. of A.P., Rep. by its Prl. Secretary to Govt.,
Municipal Admn. & Urban Development Dept.,
Secretariat, Hyderabad

2. Hyderabad Metropolitan Water Supply & Sewerage Board,
Rep. by its Managing Director, Khairatabad, Hyderabad;
and others

... Petitioners

Vs.

\$ K.Venugopal Rao, S/o K.Ranga Rao, Occ: Technical Officer (Works),
Now holding FAC of the post of Manager (Engg),
O/o. General Manager (E), Project Division No.VI, S.R. Nagar,
R/o H.No.9-6-27/1, Durga Bhavani Nagar Colony,
Champapet, Hyderabad-500 079; and others

... Respondents

! Counsel for State & Board: Addl. Advocate General (Telangana) &
Mr. T.Sudhakar Reddy, Standing Counsel

Counsel for the respondents: Mr. T.Suryakaran Reddy, Senior Counsel; &
Mr. J.Nagaraja Rao

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> Head Note:

? Cases referred:

1. 2017 SCC OnLine SC 1281

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Common Order: (per V.Ramasubramanian, J.)

Aggrieved by the orders passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, in various original applications filed either by the employees of the State Government or by the employees of the Hyderabad Metropolitan Water Supply and Sewerage Board (HMWSSB), in favour of persons who had secured either a Degree in Engineering or a Diploma in Engineering through the distance mode from the Institute of Advanced Studies in Education (IASE), Rajasthan, the State as well as the HMWSSB has come up with the above writ petitions.

2. Heard the learned Additional Advocate General for the State of Telangana and Mr. T.Sudhakar Reddy, learned Standing Counsel appearing for the State as well as the Board, and Mr. T.Suryakaran Reddy, learned Senior Counsel appearing for the respondents in a majority of the writ petitions and Mr. J.Nagaraja Rao, learned counsel appearing for the respondents in some other writ petitions.

3. The respondents in these writ petitions either secured a Diploma in Engineering or a Degree in Engineering through the distance mode, offered by a Technical Institution known as

IASE, Rajasthan. After a lot of bickerings as between the rival group of employees, the Managements granted promotions recognizing the Degrees and Diplomas and in some cases they refused to grant recognition. Orders were passed on various dates by the employer, depending upon the exigencies created by the employees.

4. The employees approached the Tribunal and the Tribunal allowed their applications, directing the employer to recognize the Degrees and Diplomas offered by the IASE, Rajasthan, for the purpose of promotion and career advancement. Aggrieved by the said order, the State as well as the Water Supply Board has come up with the above writ petitions.

5. Insofar as the writ petitions that concern Degrees in Engineering offered by the IASE, Rajasthan, are concerned, the issue is no longer *res integra* in view of the decision of the Supreme Court in **Orissa Lift Irrigation Corp. Ltd. v. Rabi Sankar Patro**¹. Therefore, these writ petitions deserve to be allowed and the impugned orders of the Tribunal set aside.

6. However, Mr. T.Suryakaran Reddy, learned Senior Counsel appearing for the respondents, contended that the Supreme Court has granted two opportunities for persons who have taken such Diplomas and Degrees, to be permitted to write a test to be conducted by the All India Council for Technical

¹ 2017 SCC OnLine SC 1281

Education (AICTE) and that since such a test is scheduled to be held in June, 2018, all those candidates who are now holding the post either on temporary basis or on *ad hoc* basis or on full additional charge basis, shall be allowed to continue, at least till they availed one opportunity to write the examination. The said plea is made by the learned Senior Counsel on the ground that these persons have continued to hold full additional charge from the year 2008 onwards and that therefore it will be inequitable to throw them out all of a sudden.

7. Though we really sympathize with such persons, the law does not seem to be in their favour. Once it is found that the qualifications on the basis of which they were placed in full additional charge or granted *ad hoc* promotions, are not recognizable, they will be persons who will be holding the post without meeting the requirements. Therefore, it is not possible by a judicial order to allow them to continue, especially since the same would involve a violation of the order of the Supreme Court on our part. Therefore, insofar as the cases arising out of Degrees in Engineering are concerned, the writ petitions deserve to be allowed accordingly they are allowed.

8. Insofar as the cases that concern Diplomas in Engineering offered by the IASE, Rajasthan, are concerned, it is contended by Mr. J.Nagaraja Rao, learned counsel for the respondents, that the decision of the Supreme Court in **Orissa Lift Irrigation Corp. Ltd.**, dealt only with Degrees in

Engineering and not Diplomas. It is his further case that the Diplomas offered by the IASE, Rajasthan, are not cancelled yet and that therefore the question of derecognizing other validly competent Diplomas does not arise. The third contention raised by the learned counsel is that while a Degree in Engineering may be a professional course, a Diploma may not be and that therefore the decision of the Supreme Court cannot be applied to Diploma holders.

9. We have carefully considered all the above submissions. It is true that in several portions of its judgment, the Supreme Court referred only to the Degrees in Engineering offered by the IASE, Rajasthan and not to Diploma in any single place. But it does not follow as an inference that what is sauce for the goose cannot be sauce for the gander. In fact, there are more reasons than one for persuading us to adopt some reasoning as contained in **Orissa Lift Irrigation Corp. Ltd.**, even to the case of Diploma holders.

10. If we carefully look at the timeline as to how the institutions have developed in the country, it could be seen that the AICTE was established first as an expert body without any statutory sanction in the year 1945. It received statutory sanction under the AICTE Act, 1987.

11. Similarly, the State of Andhra Pradesh created State Board of Technical Education and Training (SBTET) in the year 1957 as an expert body. It received statutory sanction under the

Andhra Pradesh Education Act, 1982, after 25 years of its constitution. Therefore, at least from the year 1982 the provisions of the A.P. Education Act, 1982 would govern cases of persons holding Diplomas.

12. It could be seen that the Government was obliged under Section 6(1) of the A.P. Education Act, 1982, to establish SBTET. The functions of such Board are defined in sub-section (2) of Section 6. Under Clause (b) of sub-section (2) of Section 6 of the A.P. Education Act, 1982, one of the functions of the Board is to work in liaison with the Southern Regional Committee of the All India Council for Technical Education in the formulation of schemes for the State. Under Clause (c) of sub-section (2) of Section 6, the State Board is entitled to affiliate or recognize institutions conducting courses below undergraduate level and prescribe courses of study for them. Under Clause (d) of sub-section (2) of Section 6, the State Board is empowered to inspect institutions periodically and ensure that the standards of the courses and the institutional facilities provided are satisfactory.

13. More importantly, Clause (e) of sub-section (2) of Section 6 stipulates that it will be the function of the Board to conduct examinations and award Diplomas and Certificates conforming to the minimum standards prescribed by the AICTE.

14. Section 20A of the A.P. Education Act, 1982, makes it clear that on and from the commencement of the A.P. Education

(Amendment) Act, 1987, no individual shall establish a private institution. The proviso saves an institution established before the commencement of the Act and recognized by the competent authority prior to such commencement.

15. Under the Amendment Act 22/1987, Section 21-A was inserted into the A.P. Education Act, 1982. Section 21-A(1) of the A.P. Education act, 1982, makes it clear that no institution imparting education and located in this State shall affiliate itself to any University outside the State of Andhra Pradesh. Therefore, there is a total prohibition on the Degrees secured through an institution located in Andhra Pradesh but affiliated to a University outside the State.

16. The IASE, Rajasthan, is obviously an institution located outside the State. If they have to run contact programmes through an institution established within the State, that becomes prohibited by Section 21-A(1) of the A.P. Education Act, 1982.

17. There cannot be a Diploma, except by SBTET, to which a statutory recognition was granted under the 1982 Act, after 25 years of its establishment. Therefore, we need not even go to the decision of the Supreme Court in **Orissa Lift Irrigation Corp. Ltd.**, insofar as the Diploma holders are concerned.

18. The contention that the Diplomas awarded by the IASE, Rajasthan, have not yet been cancelled, does not take the

respondents anywhere. The employer has not derecognized the Diplomas. He has simply stated that these Diplomas will not be recognized for the purposes of recruitment, promotion, career advancement etc. It is always open to the respondents to make use of the Diplomas for all other purposes except the purposes for career advancement, promotion etc. It is not necessary for an employer to seek a declaration that the Degree or Diploma is invalid, for the purposes of recognizing the same for career advancement. Therefore, the second argument does not hold good.

19. The question as to whether a Diploma is a professional course or not is something that falls beyond the purview. We are concerned in these cases about the right of the employer to say that the Diplomas obtained through distance education mode from a particular University is not acceptable to them. Today, the stand taken by the State before the Tribunal, stands vindicated by the judgment of the Supreme Court in ***Orissa Lift Irrigation Corp. Ltd.*** Therefore, all the writ petitions deserve to be allowed accordingly they are allowed. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

M.GANGA RAO, J.

26th December, 2017.
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