

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Date of Decision:-10.12.2018

CWP No.15199 of 2018(O&M)

Dilraj Singh, M. Tech., PHD, Assistant Professor & Anr.

.....Petitioners.

Versus

Union of India & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Dr. B.M. Singh, Advocate for the Petitioners.

JASWANT SINGH, J.

Two petitioners namely Dilraj Singh and Kanwal Preet Singh Attwal, who are working as Assistant Professors in Department of Distance Education and Department of Computer Engineering respectively at the Punjabi University, Patiala, have filed the instant writ petition with a prayer seeking quashing of the impugned public notice dated 02.12.2017 (P-15), whereby their M. Tech Degres, which were obtained by them through Distance Education Mode from Institute of Advanced Studies in Education (in short 'IASE')-respondent no.4 have been suspended in view of the decision rendered by Hon'ble Supreme Court of India in **Orissa Lift Irrigation Corporation Ltd. Vs. Rabi Sankar Patro & Ors. 2018(1) SCC 468 (P-14).**

Learned Counsel for the petitioners has argued that vide

impugned notice Annexure P-15, their degrees (which were obtained between 2001 to 2005) have been wrongly ordered to be suspended by All India Council for Technical Education on the basis of judgment passed by Hon'ble Supreme Court in *Orissa Lift Irrigation case (supra)*. It is submitted that no notice was issued to the petitioners by the Hon'ble Supreme Court before passing the said judgment, although their material rights stand affected, especially in view of the fact that petitioners have been working in the Punjabi University on the basis of said degrees, after being duly selected through a fair selection process and, therefore, they ought to have been given a chance of hearing before passing the said judgment in Orissa Lift Irrigation. It is further argued that although a fresh test both in writing as well as practical is to be conducted for the students like petitioners, but the petitioners do not stand a chance to clear the examinations as they had completed their degrees way back in early 2000's and in view of the fact that syllabus has changed on the basis of which test is to be conducted, the petitioners are at a complete disadvantage. Thus, prayer has been made for quashing the impugned notice (Annexure **P-15**).

I have heard learned Counsel for the petitioners at length and have also perused the paper book with their able assistance. However, I am of the view that present petition deserves to be dismissed.

The controversy involved in the present case, need not be gone into detail as the facts are more or less admitted. It is evident that the Hon'ble Supreme Court after considering the facts of the case, especially the relevant rules and statutes governing the UGC, AICTE and the power of Universities like IASE to award degrees, had held that the said University had violated the statutory norms and rules while awarding

degrees/diplomas. Once that is so, then it cannot be held that the petitioners were required to be heard at length before passing the said Judgment in Orissa Lift Irrigation. It is further seen that the said Universities were wrongly granted ex-post facto approval, which was found to be illegal by the Hon'ble Supreme Court. It was under this situation that the Hon'ble Supreme Court had to take an extreme view. The relevant para no.46 of the said judgment is reproduced herein under:-

“ 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 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 factor 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 2001-2005 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.”

However, while passing the said judgment, the Hon'ble Supreme Court had also protected the rights of students like petitioners by awarding them two chances to clear an examination to be conducted jointly by UGC and AICTE and, therefore, it cannot be said that the petitioner's right stand prejudiced. Relevant para 53 of the said judgment is reproduced as under:-

“ Accordingly we direct:

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.

VII As regards students who were admitted after the Academic Sessions 2001-2005, their degrees in Engineering awarded by the concerned Deemed to be Universities through distance education mode stand recalled and be treated as cancelled. All benefits secured by such candidates shall stand withdrawn as indicated in Para 48 above. However, the entire amount paid by such students to the concerned Deemed to be Universities towards tuition fees and other expenditure shall be returned by the concerned Deemed to be Universities by 31.05.2018, as indicated in Para 48.

VIII By 31.05.2018 all the concerned Deemed to be Universities shall refund the sums indicated above in VII and an appropriate affidavit to that extent shall be filed with UGC within a week thereafter.

IX We direct the CBI to carry out thorough investigation into the conduct of the concerned officials who dealt with the matters and went about the granting permissions against the policy statement, as indicated in Para 49 above and into the conduct of institutions who abused their position to advance their commercial interest illegally. Appropriate steps can thereafter be taken after culmination of such investigation.

X The UGC shall also consider whether the Deemed to be University status enjoyed by JRN, AAI, IASE and VMRF calls

for any withdrawal and conduct an inquiry in that behalf by 30.06.2018 as indicated above. If the moneys, as directed above are not refunded to the concerned students that factor shall be taken into account while conducting such exercise.

XI *We restrain all Deemed to be Universities to carry on any courses in distance education mode from the Academic Session 2018- 2019 onwards unless and until it is permissible to conduct such courses in distance education mode and specific permissions are granted by the concerned statutory/regulatory authorities in respect of each of those courses and unless the off-campus Centres/Study Centres are individually inspected and found adequate by the concerned Statutory Authorities. The approvals have to be course specific.*

XII *The UGC is further directed to take appropriate steps and implement Section 23 of the UGC Act and restrain Deemed to be Universities from using the word 'University' within one month from today.*

XIII *The Union of India may constitute a three members Committee comprising of eminent persons who have held high positions in the field of education, investigation, administration or law at national level within one month. The Committee may examine the issues indicated above and suggest a road map for strengthening and setting up of oversight and regulatory mechanism in the relevant field of higher education and allied issues within six months. The Committee may also suggest oversight mechanism to regulate the Deemed to be Universities. The Union of India may examine the said report and take such action as may be considered appropriate within one month thereafter and file an affidavit in this Court of the action taken on or before August 31, 2018. The matter shall be placed for consideration of this aspect on 11.09.2018.*

Thus, it is seen that Hon'ble Supreme Court had considered all

aspects of the issue involved before passing the judgment in Orissa Lift

Irrigation case (supra).

The arguments that the petitioners were required to be heard, cannot sustain as the Orissa Lift judgment is a judgment in *rem*, issuing general directions to all the concerned Central/State Governments and its entities. The judgment has been passed by the Hon'ble Supreme Court after considering in detail all the issues involved and after coming to the conclusion that “*infirmity in their degrees is basic and fundamental and cannot be wished away.*” Not only this numerous review applications were filed, main review application being M.A. Nos.1795-1796 of 2017 and in the said review applications, similar relief as to the one sought by the petitioners through the instant writ petition was sought. However, the said review applications were also disposed off by the Hon'ble Supreme Court, vide its order dated 22.01.2018. The adjudication of claim as raised by petitioners has been dealt with in para nos.4 to 7 of the judgment, which reads as under:-

“4. At the same time, courses leading to award of degrees, whether graduate or post graduate degrees, was certainly the matter in issue. We therefore reject the submission of Mr. Kapil Sibal, learned Senior Advocate and do not find any infirmity in the understanding of and the advertisement issued by AICTE.

5. Mr. Anupam Lal Das, learned Advocate is right that JRN, AAI and IASE had no expertise in the field or subjects of Engineering and the status of Deemed Universities conferred on them was not because of their excellence in the field of Engineering. As against these three Deemed to be Universities, the case of VMRF stood on a better footing as its field of activity and excellence also included subjects in Engineering. However that was not the only basis of the judgment. The facts still remain that conferral of degrees in Engineering through distance education mode was never approved in principle by AICTE and the Study Centres were never inspected or approved. We therefore reject the

submission of Mr. Anupam Lal Das, learned Advocate.

6. *If award of degrees in Engineering through distance education mode by Deemed to be Universities, as a concept or principle was not accepted by AICTE, it is immaterial whether the Study Centre in question was ITM International. Said Institution was not by itself authorized to award degrees in Engineering on its own nor was it affiliated to any State or Central University at 10 the relevant time. The courses conducted by said institution led to award of degrees of AAI, which had no expertise or excellence in the field of Engineering and through distance education mode. We therefore reject the submission advanced by Ms. Meenakshi Arora, learned Senior Advocate.*

7. *We now turn to the general submission advanced by all the learned counsel that the candidates after securing the degrees in Engineering through distance education mode, have advanced in career and that their ability was tested at various levels and as such requirement of passing the examination in terms of the judgment be dispensed with in their case. We cannot make any such exception. The infirmity in their degrees is basic and fundamental and cannot be wished away.*

At the same time, we find some force in their submission that if the suspension of their degrees and all advantages were to apply as indicated in the judgment, the concerned candidates may lose their jobs and even if they were to successfully pass the test, restoration of their jobs and present position would pose some difficulty. ”

Thus, seeing the difficulty which would be faced by employees like petitioners, the Hon'ble Supreme Court, in its concluding paragraph held 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 11 question and all the advantages flowing there from 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.

c. We direct AICTE to conduct the test in May-June 2018 and declare the result well in time, in terms of our directions in the judgment and this Order. AICTE shall however extend the time to exercise the option to appear at the test suitably.

8. Except for the directions given in the preceding paragraph i.e. paragraph 7 and the clarification as regards courses leading to award of diplomas as mentioned hereinabove, we reject all the other submissions.

9. All applications, petitions and writ petitions stand disposed of in aforesaid terms.

No costs.

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Meaning thereby, all the assertions, as raised by petitioners before this court have already been dealt with by Hon'ble Supreme Court merely because there is change of syllabus, cannot be a ground of quash the impugned notice Annexure P-15, especially when it has been held by the Hon'ble Supreme Court that the degrees awarded by the Universities concerned were illegal *per se*. In case, the petitioners wanted themselves to be heard before the Hon'ble Supreme Court by invoking appropriate remedy available to them under law. However, the petitioners have not opted to do

before the Hon'ble Supreme Court, however, have failed to secure a favorable order, as desired by them.

In view of the above, finding no merit, present petition is ordered to be dismissed.

(JASWANT SINGH)
JUDGE

December 10th, 2018
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>