

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 02.04.2018

+ **W.P.(C) 3069/2018 & CM No.12213-14/2018**

MS. ABHIRUCHI PASSI AND ANR. Petitioners
Through: Mr.Gaurav Bhardwaj, Adv.

versus

UNION OF INDIA AND ORS. Respondents
Through: Mr.Piyush Gaur & Ms.Akshara
Chauhan, Advs. for R-1.
Mr.Apoorv Kurup with Ms.Isha
Mital, Adv. for R-2.
Mr.Anil Soni, Standing Counsel
with Mr.Abhinav Tyagi, Adv.
for R-3.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition, the petitioners who claim to have obtained M.Tech. qualification through Distance Education from a 'deemed to be university' namely Institute of Advanced Studies in Education, Rajasthan, have impugned a public notice issued by respondent No.3 in December 2017 permitting the students who have undergone Diploma/P.G. Diploma/Degree/M.E./M.Tech. in Engineering during the years 2001 to 2005 from four 'deemed to be universities' including

the institute from where the petitioners have obtained their M.Tech Degree through Distance Education, named to register online on the AICTE website for appearing in the test which the respondent No.3 proposes to hold for students having acquired qualification through the Distance Education Mode from the four 'deemed to be universities' during the years 2001 to 2005.

2. Learned counsel for the petitioners submits that the said notification has been issued by misreading the decision dated 03.11.2017 of the Hon'ble Supreme Court in SLP(C) No.19807-808/2012, ***Orissa Lift Irrigation Corporation Ltd. Vs. Rabi Sankiar Patro & Ors.*** reported as (2018) 1 SCC 468. He submits that though the decision of the Supreme Court relates only to Graduation Degrees, the respondents have erroneously applied the same to Post Graduation Engineering Degrees also. He submits that the case of those students who have obtained Post Graduation Engineering Degree through Distance Education Mode was not at all an issue before the Hon'ble Supreme Court and therefore, the respondent No.3 was wholly unjustified in directing the students who have obtained Post Graduation Degree through Distance Education Mode in the aforesaid years i.e. 2001 to 2005 to apply for the online test.

3. Learned counsel for the petitioner also contends that the decision of the Supreme Court in the case of ***Orissa Lift Irrigation Corporation Ltd.(supra)*** has been rendered by ignoring the earlier decision in the case of ***Bharathidasan***

University vs. AICTE, reported as (2001) 8 SCC 676 as also by overlooking the provisions of Section 3 of the UGC Act.

4. On the other hand, learned counsels for the respondents who appear on advance notice, draw my attention to the order dated 22.01.2018 wherein the Hon'ble Supreme Court had while dealing with MA No.17-18/2018 in C.A. No.17869-17870/2017, rejected an identical argument raised by the applicant therein to the effect that the ratio of the original judgment dated 03.11.2017 in the case of ***Orissa Lift Irrigation Corporation Ltd.(supra)*** was not applicable to those candidates who had after obtaining B.E. Degree from the regular and approved institutions, acquired only their Masters Degree in Engineering from 'deemed to be universities' through Distance Education Mode.

5. Since reliance has been placed by learned counsels for the respondents on the contentions raised before the Hon'ble Supreme Court in MA No.17-18/2018 filed in C.A. No.17869-17870/2017, it is deemed appropriate to reproduce the same which reads as under:-

“C] Diary No.356 of 2018 in C.A. No.17869-17870 of 2017 (I.A. No.1080 of 2018)

M.A. Nos.17-18 of 2018 in C.A. No.17869-17870 of 2017 (I.A. Nos.1049 and 1054 of 2018)

The candidates had acquired first degrees in Engineering from a regular and approved Institution

and as such their first degrees are not invalid or irregular on any count. However, these candidates had later acquired Master's degrees in Engineering from Deemed to be Universities through distance education mode.

Mr. Kapil Sibal, learned Senior Advocate invited our attention to the advertisement issued by AICTE in which all candidates including those who had secured Master's degrees in Engineering from Deemed to be Universities in question through distance education mode were also required to appear at the test. In his submission this Court was principally concerned with first degrees in engineering which were acquired through distance education mode and not the Master's degrees. He further submitted that those candidates who had acquired such Masters' Degrees in engineering were not covered by the judgment."

6. At this stage, it may also be appropriate to reproduce the relevant observations made by the Hon'ble Supreme Court while rejecting MA No.17-18/2018 in C.A. No.17869-17870/2017 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.”

7] xxx xxx xxx

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.

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.”

7. Having considered the aforesaid decision dated 03.11.2017 of the Hon’ble Supreme Court as also the subsequent order dated 22.01.2018 passed by the Hon’ble Supreme Court, I find that there can be no doubt about the fact that the decision of the Hon’ble Supreme Court was meant to apply to students who had Engineering Degrees both at the Graduation or Post Graduation level. In my opinion, there is no merit in the submission raised by learned counsel for the petitioners that impugned public notice is contrary to the ratio of the decision of the Hon’ble Supreme Court in the case of ***Orissa Lift Irrigation Corporation Ltd. (supra)***.

8. As far as the other two submissions raised by learned counsel for the petitioners are concerned, I am of the considered view that since the learned counsel for the petitioners seeks to assail the correctness of the decision of the Hon’ble Supreme Court in the case of ***Orissa Lift Irrigation Corporation Ltd. (surpa)***, the aforesaid issues are not maintainable before this Court.

9. In my considered view, the writ petition is absolutely without any merit and is dismissed with no order as to costs. The pending applications also stand disposed of.

(REKHA PALLI)
JUDGE

APRIL 02, 2018

gm

