

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

CWP No.28211 of 2018 (O&M)

Reserved on:-26.09.2019

Date of pronouncement: 07.01.2020

Jatinder Singh and others

.....Petitioners

versus

State of Punjab and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Aalok Jagga, Advocate for the petitioners.

Mr. Luvinder Sofat, AAG, Punjab.

Mr. Parminder Singh-1, Advocate for respondent
No.2/PSPCL.

Mr. Chetan Mittal, Senior Advocate with
Mr. Tribhawan Singla, Advocate for respondent No.3.

Mr. Salil Sabhlok, Advocate for respondent No.4.

Mr. D.S. Patwalia, Senior Advocate with
Mr. Kanan Malik, Advocate for respondent No.7.

Mr. Kanwaljeet Singh, Senior Advocate with
Mr. Pushpinder Kaushal, Advocate for
respondents No. 8,11 to 13, 19 and 26.

Mr. Pankaj Jain, Advocate for respondents
No. 6, 14, 17, 18, 20, 24, 25 and 28.

Mr. Rajesh Garg, Senior Advocate with
Ms. Nimrata Shergill, Advocate for respondents
No.9, 10, 15, 16, 21, 22, 23 and 29

TEJINDER SINGH DHINDSA, J.(ORAL)

Petitioners by way of filing the instant petition have assailed the
criteria and modalities adopted by the 3rd respondent/All India Council for
Technical Education while conducting a validation test and declaration of

result thereof in respect of candidates who had obtained the B.Tech Degree between the years 2001 to 2005 by way of distance education mode.

A brief factual matrix would be necessary.

The petitioners and private respondents herein are engineers serving under the Punjab State Power Corporation Limited. Issue as regards validity of educational qualifications and B.Tech Degrees obtained through distance education mode from four deemed to be Universities i.e. Institute of Advance Study in Education (IASE), Sardarshahar Rajasthan;(ii) JRN Rajasthan Vidyapeeth, Udaipur, Rajasthan; (iii) Allahabad Agricultural Research Institute, Allahabad; (iv) Vinayaka Mission Research Foundation, Salem, Tamil Nadu, during the session 2001 to 2005 came to be raised before this Court in **CWP No.1640 of 2008 titled as Kartar Singh Vs. Union of India and others**. It was submitted that the afore-noticed Deemed to be Universities had set-up “**study centres**” in violation of the regulations framed by the UGC and that such study centres completely lacked infrastructure and facilities for courses in engineering and that the programmes through distance education mode were illegal and without approval. The writ petition was allowed by a Division Bench of this Court vide judgment dated 06.11.2012 and the relevant extract reads as follows:-

“184. In terms of the directions of the Commission it was necessary for the Deemed to be Universities to seek approval from AICTE. In view of the above, we hold that the Deemed to be Universities have started courses in technical education in violation of the guidelines, instructions, circulars and regulations

framed by the Commission not only when they started such courses but also in establishing study centres outside there territorial limits and in subjects for which they were not granted Deemed to be Universities status. Therefore, degrees awarded by such Deemed to be Universities is an illegal act and such illegality cannot be removed or cured by the actions of either the commission or DEC”.

It was further held as under:-

“190. In view of the above, we hold that the approval granted by the Distance Education Council on 29.08.2007 to the Institutes in question is illegal and unwarranted and beyond the scope of authority vested in it. As a necessary consequence the degrees granted by such Deemed to be Universities are illegal and the candidates cannot be deemed to be qualified in the purported subjects in the absence of approval from the commission.

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Though the Court is sympathetic with the cause of the students but the larger public interest demands that the students, who have not got formal education, should not be considered eligible for appointment under the State.”

The High Court of Orissa however took a divergent view pertaining to a B-tech (Civil) Degree acquired by a candidate from a

deemed to be University through Distance Education Mode in *writ petition Number 3848 of 2010 titled as Rabi Sankar Patro versus Orissa Lift Irrigation Corporation Limited*. Two sets of appeal thus arose, one from the judgment passed by the High Court of Orissa and the other arising from the decision of this Court in **Kartar Singh's case (supra)**. The two sets of appeals were clubbed together and were decided by the Hon'ble Supreme Court on 03.11.2017 vide judgment in **Orissa Lift Irrigation Corporation Limited Vs. Rabi Sankar Patro and others (2018) 1 SCC-468**. The view taken by this Court in **Kartar Singh's case (supra)** was upheld. It was held that the deemed Universities had been conducting the distance education courses through off campus study centres without the approval of the University Grants Commission and the All India Council of Technical Education. It is further held that the action of conferring degrees through distance education mode was without jurisdiction. Even the ex-post facto approval granted by Distance Education Council (DEC) was completely illegal. The Hon'ble Apex Court further observed that since the UGC Guidelines 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 session 2001-05, is protected. A view was taken to grant a chance to the concerned students to have their ability tested by authorities competent in that behalf. Accordingly it was directed that all the degrees in engineering granted to students who were enrolled during the academic sessions 2001-05 would stand suspended till they pass an examination under the joint supervision of AICTE-UGC. AICTE was directed to device within one month from the date of judgment modalities

to conduct appropriate test/tests both in theory as well as in practicals for the concerned students admitted during the academic session 2001-05, covering all the concerned subjects. It was left entirely to the discretion of AICTE to formulate modalities as it may think appropriate and the test (s) were to be conducted in the National Institutes of Technology in the respective states where the students were located. Choice was to be given to the students to appear in the examination to be conducted ideally during May-June 2019 or on such dates as AICTE was to determine. Not more than two chances were to be afforded to the concerned students and if they were not to pass the test/tests their degrees were to stand recalled and cancelled. In the eventuality of the concerned candidate clearing the test/tests all the advantages or benefits were to be restored.

Application thereafter came to be preferred seeking clarification and modification of the directions issued by the Hon'ble Supreme Court in its judgment and order dated 03.11.2017. Vide order dated 22.01.2018 the Hon'ble Supreme Court as a one time relaxation in favour of those candidates, who were enrolled during the academic years 2001-05 directed that such candidates who wish to appear in the forth-coming test to be conducted by AICTE in May and June 2018 and who exercise option to appear in the test in terms of the judgment, they can retain the degrees in question as also the advantages flowing therefrom till one month after the declaration of the result of such test or till 31.07.2018, whichever is earlier. Such relaxation was given as a one time exception so that those candidates who have the ability and can pass the test in the first attempt itself should not be put to inconvenience. The candidates who passed in the first attempt were held entitled to retain all the advantages but if a candidate failed or

chose not to appear, the directions in the main judgment were to apply inasmuch as the degree and all advantages flowing therefrom were to stand suspended and withdrawn.

Admittedly the private respondents herein had obtained their B-tech Degrees from a deemed university through distance education mode in the academic sessions 2001-05 and as such exercised their option to appear in the test to be conducted by AICTE pursuant to the Hon'ble Supreme Court directions contained in the judgement dated 03.11.2017.

The All India Council for Technical Education, issued a public notice dated 25.01.2018 (Annexure P-5) laying down the modalities for the examination to be conducted towards compliance of the directions issued by the Hon'ble Supreme Court vide judgment dated 03.11.2017. In brief the modalities, paper pattern and norms for B.E/B.Tech examination were contained in the public notice dated 25.01.2018 and it was stipulated that for Undergraduate Degree Programmes (B.E/B.Tech.) the candidates have to appear in both theory (written) as well as practical examinations. Candidates were required to pass both the exams (theory and practical) separately. Minimum passing marks were 40% separately in theory and practical. It was further laid down that if a candidates fails i.e.gets less than 40% marks in either theory exams or practical exam, it shall be considered as a failure and shall have to appear again in both theory and practical exam. Only one more chance was to be afforded for such candidate to re-appear in the qualifying exam (theory and practical both) after a gap of six months. As regards paper pattern it was clarified that questions in both the papers of the theory exam would be multiple choice (MCQ) type and conducted on OMR sheets. There was to be no negative

marking in the theory papers.

Pursuant to the public notice dated 25.01.2018 (Annexure P-5) the examination was conducted on 03.06.2018 followed by practical examination. On 20.06.2018 notice was issued by AICTE at Annexure P-6 stating that several grievances on the modalities of the examination conducted were received and after examining the same, an expert committee has recommended that “*Marks of Theory and practical may be combined to calculate 40 per cent qualifying marks*”. It was notified that AICTE has accepted such recommendation of the expert committee. Thereafter yet another public notice dated 24.09.2018 was issued by AICTE (Annexure P-7) dealing with representations and grievances raised at the hands of candidates who had appeared in the examination on 03.06.2018 and had remained unsuccessful. Vide such public notice a decision was notified that while preparing the final result after the 2018 re-appear examination, best of two scores (attained in the two examinations- June and December 2018) in an individual paper (viz.) theory paper-I, theory paper-II and practical shall be considered.

Apparently, after uploading the answer keys of the questions on the website of AICTE certain representations were received and it was found that some of the questions in the papers were incomplete/incorrect etc. and accordingly AICTE took a decision to award marks to all students in respect of such questions irrespective whether the questions were attempted or not.

Based collectively on the afore-noticed sequence of events and decisions taken by AICTE the private respondents herein who had appeared in the examination conducted on 03.06.2018 cleared the same as

per result attached at Annexure P-9. On 21.09.2018 (Annexure P-11) a communication was issued by the employer i.e. Punjab State Power Corporation Limited for consideration of grant of further service benefits by taking the B-tech degrees obtained by the private respondents to be valid based upon the result of the examination conducted by AICTE on 03.06.2018.

Petitioners are aggrieved of the mode and manner of change of modalities by the AICTE pertaining to the validation test conducted on 03.06.2018 and pursuant to which the private respondents would now avail service benefits under the relevant service regulations on the premise that they possess a valid B.Tech Degree. It is the case of the petitioners that such exercise would directly impact and adversely effect them.

Counsel for the petitioners has argued that without any challenge having been made to the initial modalities laid down by AICTE in the public notice dated 25.01.2018 (Annexure P-5) and the candidates including the private respondents having participated in the examination on 03.06.2018, the 3rd respondent i.e. AICTE in a completely illegal and arbitrary manner has changed and diluted the modalities and which was impermissible in law. It is urged that it is after conduct of the examination, the rules of the game have been changed inasmuch as the original requirement was for a candidate to obtain minimum of 40% passing marks separately in theory and practical but such requirement has been diluted after the examination to the effect that it would be sufficient for a candidate to obtain 40% passing marks taking theory and practical together so as to qualify the examination. It has been vehemently argued that the action of AICTE is in direct contravention to the judgment of the

Hon'ble Supreme Court dated 03.11.2017 (Annexure P-3). In this regard, it has been contended that directions had been issued by the Hon'ble Supreme Court to AICTE to frame the modalities and to thereafter conduct the test so as to afford a chance to such candidates who had obtained the B.tech Degree from the deemed universities through distance education mode between the years 2001-05. However, no liberty had been granted by the Hon'ble Supreme Court to alter and change the modalities after the conduct of the examination. The action of AICTE in awarding marks across the Board for questions that had been wrongly framed etc. irrespective of the fact whether such questions had been attempted or not by the candidates concerned has also been questioned by terming the same as illogical and irrational. Yet another submission raised by counsel is that engineering being a highly technical subject and the candidates being holders of public posts, the objective of conducting the validation test was to see whether the candidates in question have actually undertaken the course of engineering or not. Under such circumstances bare minimum standards were required to be maintained as per modalities initially laid down vide public notice dated 25.01.2018 (Annexure P-5). It is contended that by virtue of subsequent public notice at Annexures P-6 and P-7 the modalities have been altered leading to dilution of standards and such course of action cannot sustain.

Per contra learned Senior Counsel representing respondent No.3- AICTE has submitted that certain unsuccessful candidates pertaining to the test conducted on 03.06.2018 had filed writ petition (civil) No.952 of 2018 titled as Sanjay Kumar and another Vs. University Grants Commission and another before the Hon'ble Supreme Court raising certain grievances and

while declining to interfere in such writ petition vide order dated 14.09.2018, liberty had been granted to the petitioners therein to make an appropriate representation to the AICTE and with a further direction to the Council to consider the same expeditiously. It is contended that it was towards compliance of such directions issued by the Hon'ble Supreme Court on 14.09.2018 that a committee of senior academicians from Institutes of National Importance was constituted and the representations were placed before such committee and it is on the recommendation of such expert committee that the decision had been taken that while preparing the final result after the re-appear examination to be held in December 2018, best of two scores (attained in the two examinations i.e. obtained in June 2018 and December 2018) in an individual paper viz. Theory Paper-I, Theory Paper-II and practical would be considered. It is such decision which was notified vide public notice dated 24.09.2018 (Annexure P-7). The issuance of public notices at Annexures P-6 and P-7 post holding of the examination is stated to be in conformity with the directions of the Hon'ble Supreme Court contained in the judgment dated 03.11.2017 and whereunder as per Senior Counsel complete and full discretion was vested with the AICTE to finalize all the modalities for conducting the examination. Learned Senior counsel further submits that after the answer keys had been uploaded on the site of AICTE, a large number of representations had been received. The representations were then placed before an expert committee which in turn had opined that certain questions in the papers were incomplete/incorrect/having double answers etc. and accordingly pertaining to such questions a decision was taken in principle to award marks to all students across the Board. It has

been argued that such decision was taken as per recommendations of the subject experts and which should not call for any interference at the hands of this Court in exercise of its extraordinary writ jurisdiction under Article 226 of the Constitution of India.

An attempt was also made by learned Senior Counsel to impress upon this Court that the conduct of test as per directions of the Hon'ble Supreme Court would be in the nature of a validation test so as to assess the ability of candidates who had already obtained the B.tech Degree from a deemed university through the distance education mode and as such, such test necessarily has to be viewed only as a “*qualifying test*”, whereas the submissions advanced on behalf of the petitioners lay much emphasis on merit. It is urged that viewed from such perspective the challenge as regards change of modalities after conducting of the examination as also award of marks to all candidates pertaining to certain questions which were not well-drafted/carried inappropriate answers irrespective of such questions having been attempted or not is bound to fail.

Counsel representing private respondents have filed separate written statements. Apart from reiterating the submissions advanced on behalf of AICTE, certain preliminary objections with regard to maintainability and locus of the petitioners to file the instant writ petition have been raised. In this regard it has been contended that petitioners were neither the candidates in the examination process conducted by AICTE under question and neither are they effected by such examination process in any manner and as such the petitioners would have no locus to even file the instant petition. Objections with regard to maintainability has been raised by submitting that since petitioners are claiming violation of

the directions issued by the Hon'ble Supreme Court in the judgement dated 03.11.2017 (Annexure P-3) the remedy available would be under the contempt of Courts Act and not by way of filing of a writ petition. The writ petition is further stated to be bad for non-joinder of necessary parties. It has been urged by counsel representing the private respondents that the petitioners have deliberately not impleaded the universities from where the private respondents had obtained their B.tech degrees and further more all the candidates who had participated in the examination held on 03.06.2018 conducted by AICTE and declared successful have not been arrayed as party respondents inspite of being necessary parties. Accordingly it is prayed for dismissed of the writ petition.

Counsel for the parties have been heard at length and the pleadings on record have been perused.

The Hon'ble Supreme Court in the case titled as **Orissa Lift Irrigation Corporation Limited Vs. Rabi Sankar Patro and others** decided on 03.11.2017, while holding the B.Tech Degrees obtained from the four Deemed to be Universities through distance education mode to be bad in law had taken a sympathetic view and as a one time measure directed the 3rd respondent/AICTE to conduct an examination of these candidates. The directions in such regard were in the following terms:-

“47. 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 benefit 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.”

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53. Accordingly we direct:

I. 1994 AICTER Regulations, do apply to Deemed to be Universitites 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 Sessions 2018-2019 onwards unless and until it is permissible to conduct such courses in distance education mode and specify 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.”

Towards compliance of such directions the modalities for the examination were duly framed and a public notice dated 25.01.2018 at Annexure P-5 were issued by AICTE. A bare perusal of the same would reveal that while finalizing the curriculum for the proposed examination due consideration was given to the aspect that the curriculum should comprise of mainly basic/foundation courses as also the core courses the knowledge of which is highly essential for being an Undergraduate Engineer (B.Tech) or Post Graduate Engineer (M.Tech). A list of 50 practicals for Undergraduate and 25 for Postgraduate courses were finalized and uploaded on the AICTE website and out of these 50 and 25 practicals respectively, two practicals were to be performed by the candidates. It was further decided that a candidate has to appear both in written and practical examination and has to secure 40% marks separately in both theory and practical examinations and the questions in both the theory papers were to be of multiple choice and there was no negative marking. It was clarified in clear terms in the public notice dated 25.01.2018 (Annexure P-5) that if a candidate fails to secure the minimum bench mark of 40% marks in either theory exam or practical exam, it shall be considered as a failure and such candidate shall have to appear again in

both theory and practical exam. Only one more chance shall be given to such candidate to re-appear in the qualifying exam (theory and practical both) after a gap of 6 months. No further chance shall be given to the candidate in case of failure in the second attempt/re-appear chance. After laying down the modalities as afore-noticed the examination for both Undergraduate and Postgraduate in theory as well as in practical were conducted between 3rd of June 2018 to 12th of June 2018. It is after conduct of the examination a public notice dated 20.06.2018 at Annexure P-6 was issued, changing the modality and stating that the candidates now need to secure 40% marks in theory and practical exams taken together so as to be treated as qualified. A second change in modality was notified vide public notice dated 24.09.2018 (Annexure P-7) whereby the AICTE is stated to have accepted a grievance put forth by the candidates and decided that while preparing the final result after the forthcoming December 2018/re-appear examination best of two scores i.e. obtained in June 2018 and December 2018 in an individual paper viz. Theory Paper-I, Theory Paper-II and practical shall be considered.

The question that arises for consideration is whether the modality and yardstick for successfully negotiating the examination and which stood duly notified vide public notice dated 25.01.2018 (Annexure P-5) could be altered and diluted after conduct of the examination?

In Maharashtra State Road Transport Corporation Vs. Rajendra Bhim Rao Mandve (2001) 10 SCC 51, the Hon'ble Supreme Court had observed that the rules of the game i.e. the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced.

In K. Manjusree Vs. State of A.P. and another (2008) 3 SCC 512, the Hon'ble Supreme Court was examining the selection process as regards 10 posts of District and Sessions Judges (Grade-II) in the Andhra Pradesh State Higher Judicial Service initiated vide advertisement dated 28.05.2004. In such matter the Selection Committee prescribed minimum marks for interview but such decision was taken after commencement of the selection process. Holding the same to be bad in law it was held as follows:-

“29. xxxx xxxx xxxx

If the selection committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview.”

In Hemani Malhotra Vs. High Court of Delhi 2008 (5) SCR 1066, the Hon'ble Supreme Court was examining the selection process as regards direct recruitment to the Delhi Higher Judicial Services and where the written examination was held on 12.03.2006. The precise question which came to be formulated and examined by the Hon'ble Apex Court was as to whether introduction of the requirement of minimum marks for

interview, after the entire selection process was completed would amount to changing the rules of the game after the game was played. Reiterating the view taken in **K.Manjusree's case (supra)** it was observed that the authority concerned can prescribe minimum marks both for written examination and *viva voce*, but if minimum marks are not prescribed for *viva voce* before the commencing of the selection process, the authority concerned cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview.

Adverting to the facts of the present case, it is the pleaded case of AICTE in the written statement that in pursuance to the directions issued by the Hon'ble Supreme Court in the judgment dated 03.11.2017 in **Orissa Lift Irrigation Corporation Limited's case (supra)**, an expert committee was constituted on 20.11.2017 to device modalities and other details for conduct of the examination. On 25.01.2018, the expert committee of AICTE finalized the modalities, norms and syllabus of the examination in respect of proposed examination and posted the same on the AICTE website. In such regard public notice dated 25.01.2018 (Annexure P-5) was issued. It is in pursuance to such modalities having been finalized that the examination (theory as well as practical) was conducted between 3rd of June 2018 to 12th of June 2018. Under such circumstances, it was not open for the AICTE to have altered the modalities/yardstick for qualifying the examination after the conduct of the examination. Undoubtedly, complete discretion had been vested with the AICTE to frame the modalities. Such discretion stood exercised pursuant to an expert committee having been constituted and such committee having

deliberated upon the matter and modalities being put in public domain vide public notice dated 25.01.2018 (Annexure P-5). After conduct of the examination between 3rd of June 2018 to 12th of June 2018, the modalities/yardstick could not be altered as the same would clearly amount to changing the rules of the game after the game had been played.

At this stage, it would be apposite to take note that a number of writ petitions came to be filed in the High Court of Delhi at the hands of candidates who were B.Tech Degree holders from the institute of Advance Studies in Education, Sardarshahar, Rajasthan, raising a challenge to the modalities issued vide public notice dated 25.01.2018 at Annexure P-5. A common prayer in the writ petitions was for issuance of an order, writ or direction to rationalise the modality of examination and for the syllabus of the examination to be held on 3rd of June 2018 to be reduced so as to bring the same in consonance with what the candidates perceived to be the syllabus of the B.Tech/M.Tech Degree course in relation to the years they underwent their studies and received their respective degrees. Such prayer was declined and the writ petitions were dismissed by the High Court of Delhi vide common judgments dated 21.05.2018 (placed on record as Annexure R/9-3 alongwith the written statement filed on behalf of respondents No.9, 10, 15, 16, 21 to 23 and 29). In spite of the modalities contained in the public notice dated 25.01.2018 (Annexure P-5) having been upheld by the High Court of Delhi, AICTE has chosen to change the modality/yardsticks and dilute the same after conduct of the examination. Such course of action adopted by the AICTE cannot be approved.

AICTE has placed heavy reliance upon order dated 14.09.2018 passed by the Hon'ble Supreme Court of India while dismissing writ

petition (civil) No. 952 of 2018 titled as *Sanjay Kumar and others Vs. University Grants Commission and another* in support of its action. The order dated 14.09.2018 in Sanjay Kumar's case (supra) reads as follows:-

“SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Writ Petition (s) (Civil) No(s). 952/2018

SANJAY KUMAR & ORS.

Petitioner(s)

VERSUS

UNIVERSITY GRANTS COMMISSION & ANR

Respondent (s)

Date : 14-09-2018 This petition was called on for hearing today.

CORAM :

*HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE ASHOK BHUSHAN*

*For Petitioner(s) Mr. Siddharth Luthra, Sr. Adv.
Mr. Praveen Agrawal, AOR*

For Respondent (s)

*UPON hearing the counsel the Court made the following
ORDER*

We do not see any reason to interfere in the petition. The writ petition is accordingly, dismissed. Pending applications, if any, stand disposed of.

We however, give liberty to the petitioners to make an appropriate representation to AICTE. If the representation is made within two weeks from today, the AICTE is directed to consider it expeditiously.

*(B.PARVATHI)
COURT MASTER*

*(RAJINDER KAUR)
BRANCH OFFICER*

Contention raised by learned Senior Counsel representing AICTE that the change of modality/yardstick was in terms of the liberty granted by the Hon'ble Apex Court vide order dated 14.09.2018 afore-reproduced is found to be wholly misconceived on three counts i.e.(i) the first change of modality and thereby requiring a candidate to secure the minimum bench mark of 40% marks by taking theory and practical exams together was notified vide public notice dated 20.06.2018 at Annexure P-6. The order passed by the Hon'ble Apex Court giving liberty to the petitioners in **Sanjay Kumar's case (supra)** to make an appropriate representation to AICTE was passed much later in point of time i.e. on 14.09.2018 and possibly cannot be invoked to justify change of modality notified on 20.06.2018 (Annexure P-6);(ii) as per order dated 14.09.2018 liberty was given to the petitioners in **Sanjay Kumar's case (supra)** to make an appropriate representation within two weeks from the date of passing of the order and directions were issued to AICTE to consider the same expeditiously. Such liberty granted to the petitioners therein has to be read in co-relation to the prayers raised in that petition. Afterall, such liberty had been granted while declining to interfere in the petition. It would be relevant to take note that the petitioners in **Sanjay Kumar's case (supra)** were the unsuccessful candidates in the examination conducted between 3rd of June 2018 to 12th of June 2018. They had prayed before the Hon'ble Apex Court for issuance of direction to AICTE to revise and fix the pass percentage at 30% as also to re-examine the petitioners by dividing the entire examination into two parts being theory and practical papers (80% marks) and internal assessment to be conducted by the Universities concerned (20% marks). In the considered view of this Court

the liberty granted to the petitioners therein would have to be construed so as to make a representation to AICTE against the backdrop of the prayers raised in the petition and for AICTE then to deal with the same. The assailed change of modality/yardstick in the instant petition vide Annexures P-6 and P-7, is completely alien to the prayers raised before the Hon'ble Apex Court and which led to the passing of the order dated 14.09.2018 in Writ Petition (Civil) No.952 of 2018; (iii) in any event the liberty granted vide order dated 14.09.2018 by the Hon'ble Apex Court in **Sanjay Kumar's case (supra)** and the directions issued to AICTE to consider the representation made by the petitioners therein would not afford to AICTE a licence to take decisions contrary to settled principles of law. As has been noticed hereinabove AICTE, in the present case has proceeded to make alterations in the modality/yardstick for qualifying the examination after conduct of the same and which would be against the dictum laid down by the **Hon'ble Supreme Court in K.Manjusree and Himani Malhotra's case (supra)**.

On yet another aspect AICTE is found wanting. After conduct of the examination between 3rd of June to 12th of June 2018, the answer keys of the questions were uploaded on the AICTE website and objections were invited. The objections came to be dealt by an expert committee. As per stand of AICTE certain questions in the examination were found to be incomplete/incorrect and carrying double answers etc. and as such a decision was then taken to award marks pertaining to such questions to all students across the Board. The issue in the present case is not as regards taking a different view as opposed to the experts in the field as regards certain questions having not been framed properly or appropriate answer

options not being offered. In such matters this Court must exercise restraint and would be reluctant to enter the thicket of correctness of the answer keys as also framing of questions. Ordinarily such matters should be left to the experts in the field. Be that as it may the precise issue that arises is that even if the view of the experts pertaining to certain inappropriate questions/answer options was to prevail, is the benefit in relation to such questions to be granted across the Board or confined to such candidates who had attempted such questions. Such issue is no longer *res integra*. **In Guru Nank Dev University Vs. Saumil Garg and others (2005) 13 SCC 749** such issue came to be dealt with by the Hon'ble Supreme Court pertaining to the Punjab Medical Entrance Test conducted by Guru Nank Dev University, and it was held as under:-

“There is yet another problem, that of seven questions which are so vague that they are incapable of having a correct answer. The appellant University, in respect of those seven questions, has given the credit to all the students who had participated in the entrance test irrespective of whether someone had answered the questions or not. We do not think that that is the proper course to follow. It is wholly unjust to give marks to a student who did not even attempt to answer those questions. This course would mean that a student who did not answer say all the seven questions would still get 28 marks, each correct answer having four marks. The reasonable procedure to be followed, in our opinion, would be to give credit only to those

who attempted the said questions or some of them.”

In the present case, as per modalities framed and put in public domain vide public notice dated 25.01.2018 (Annexure P-5) the theory examination was to consist of multiple choice questions carrying 1/2 marks. It was clearly stipulated that there would be no negative marking. In other words there was no occasion for any candidate to shy away from attempting a question inspite of having entertained a thought that the question itself is not property drafted or does not carry appropriate answer options. Under such circumstances a candidate who chose not to attempt the offending question(s) could not have been granted the benefit of additional marks in relation thereto. Such view is being taken as per dictum laid down in **Saumil Garg's case (supra)** wherein also the test comprised of multiple choice questions and there was no negative marking. It is accordingly held that while computing the result, AICTE ought to have confined the benefit of award of additional marks in relation to the offending questions only to such candidates who had attempted the same.

This Court is also of the view that the impugned action of the AICTE in altering the modalities and changing the yardsticks vide Annexures P-6 and P-7 after conduct of the examination tantamounts to dilution of standards. It would be crucial to take note that the Hon'ble Supreme Court while pronouncing on the validity of degrees in Engineering awarded by the four deemed to be Universities through distance education mode pertaining to the years 2001 to 2005 had noticed the following shortcomings and infirmities:-

*a) The concerned Deemed to be Universities
namely AAI, JRN and IASE started distance education*

programmes leading to degrees in Engineering, outside their field of specialization. Such programmes were started without taking any approval from UGC and/or AICTE and when there was no approved engineering college or faculty at their main campus.

b) Further, such programmes were being conducted in Study Centres, majority of which were not maintained and managed by the concerned Deemed to be Universities. The demonstrators/lecturers employed at such Study Centres were not on the payroll of and were not selected by such Deemed to be Universities.

c) Those Study Centres were not inspected at any stage, nor any facilities therein were assessed to see if they meet the standards prescribed for imparting courses in Engineering. Similarly, no authority had checked what kind of courses were being conducted nor was there any inspection at the time the examinations were said to have been conducted.

d) The Visiting Committee of DEC had visited the main campus of the concerned Deemed to be Universities and seen the record but not visited any Study Centres. No member or representative of AICTE was part of such Visiting Committee, the report of which was simply endorsed by the Joint Committee of UGC-DEC-AICTE.

e) *Under 1985 UGC Regulations, minimum of 180 actual teaching days in an academic year with 40 clock hours every week are required for courses leading to degrees of B.A./B.Sc./B.Com. Assuming that these regulations apply to courses in Engineering, this requirement would be more pronounced and crucial when courses leading to award of degrees in Engineering are in issue. Such technological programmes by very nature require extensive practical training.*

f) *The application preferred by JRN for Ex-post-facto approval shows that its Study Centres for programmes leading to degrees in Engineering were located in institutions which themselves were running independent courses. If 180 actual teaching days with 40 clock hours per week is the requirement which must be satisfied by those institutions for running their own courses, no scope is left for any outside institution such as JRN for using such facilities for imparting any courses in technical education. If the facilities were sufficient to justify the independent strength of those institutions, the additional burden caused by students of JRN could not possibly be accommodated.*

g) *The inspection to ensure maintenance of standards was specifically contemplated under the Notification of MHRD issued on 05.04.2006. Para 10*

of the Memorandum of Undertaking dated 10.05.2007 also spoke of inspection for the purposes of continuation/withdrawal of approval. In the teeth of these policy statements, the Joint Committee of AICTE-DEC-UGC endorsed its acceptance on 07.08.2007 without there being inspections at all.

h) Aforesaid aspects regarding complete absence of any inspection become crucial particularly when communications of DEC and UGC issued from time to time highlighted complaints regarding those Deemed to be Universities.

i) As far as second period is concerned, again no inspections, at any stage, were carried out. The provisional approval dated 03.09.2007 by DEC was completely mechanical and the assertion therein that DEC would not insist on territorial jurisdiction, was against the mandate of MHRD in its letter dated 29.07.2009 and of the decision in the ninth meeting of the Joint Committee of UGC-DEC-AICTE. The consequent approval dated 13.11.2007 by UGC is equally mechanical and suffers from same infirmity.

j) Though decision was taken in the meeting held on 19.02.2008 to review cases of ex-post-facto approvals within a month, nothing was done. In fact, the first communication thereafter was three months after on 12.05.2008. It spoke nothing about review of

ex-post-facto approval already granted. At this juncture, the logical exercise ought to have been to consider and assess the claim course-wise, cause inspections and see whether ex-post-facto approvals were rightly granted or not. However, that was not to be.

k) On the other hand, UGC in its meeting of 21.05.2008 went on to ratify the decision of the Chairman to accord approval. At the same time, in response to application dated 08.05.2008 by JRN, DEC went on to grant provisional recognition for the year 2008-09.

l) In spite of clear instructions by MHRD in its letter dated 29.07.2009 to withdraw permissions already given to conduct B.Tech/B.E. Programmes through distance education and not to admit students for current year, no steps were undertaken to implement those directions and withdraw permissions already given.

m) Even after dissolution of DEC and Public Notice dated 27.06.2013 issued by UGC that no deemed to be University would be allowed to take courses through distance education, when JRN again applied to UGC for grant of approval, no reply was given by UGC; on which score JRN was able to get an interim order dated 26.11.2013 from the High Court.

As a matter of fact in the face of Regulation 18 of 2010 UGC Regulations, such a request or application could never have been considered.

n) Similar is the case with regard to interim orders dated 17.12.2015 and 15.09.2016. Thus JRN could continue admitting standards despite aforementioned Policy statements, on the strength of interim orders.

o) During this period, the High Court of Punjab and Haryana vide its decision dated 06.11.2012 had already held the degrees in Engineering awarded by Deemed to be Universities through distance education mode to be invalid. That decision was appealed against by students and IASE but not by JRN. In any case, the Interim Order of this Court only protected concerned students whose degrees stood invalidated.

p) If interim orders dated 26.11.2013, 17.11.2015 and 15.09.2016 by one High Court could become a justification for continuing to conduct courses leading to degrees in Engineering through distance education mode across the country, the final declaration issued by another High Court on 06.11.2012 and the policy statements referred to earlier, had greater binding force.

q) One one hand it was being proclaimed by

the concerned authorities in their public notices like 27.06.2008 and 27.06.2013 or policy statements such as 2010 UGC Guidelines that no Deemed to be University will be allowed to conduct courses in distance education mode, and on the other hand DEC kept granting provisional approval and UGC helped the concerned Deemed to be University by its total inaction.

Furthermore, upon applications having been preferred seeking clarification and modification of the directions issued vide judgment dated 03.11.2017, the Hon'ble Supreme Court, had taken note of the general submission advanced on behalf of the candidates that after securing the degrees in engineering through distance education mode, they have advanced in career and their ability had been tested at various levels and as such requirement of passing the examination in terms of the main judgement be dispensed with. While rejecting such submission the Hon'ble Apex Court had observed ***“the infirmity in their degrees is basic and fundamental and cannot be wished away.”***

It was only towards taking a sympathetic view, the engineering degrees held by the candidates were ordered to be suspended and as a one time measure AICTE was directed to frame modalities and to conduct a test. Stand projected on behalf of AICTE is that towards compliance of the judgement and directions issued by the Hon'ble Supreme Court, the first meeting of the Executive Committee of AICTE was held on 15.11.2017 and an Expert Committee was constituted on 20.11.2017 consisting of Senior Professors of NITs and National Institute of Technology Teachers

Training and Research (NITTTR) to device modalities and other details for conduct of the forthcoming examination. A meeting of the Vice Chancellors/representatives of all the four deemed to be universities was also called upon alongwith UGC Officers so that appropriate data of the students enrolled in these universities during session 2011 to 2005 in Engineering courses conducted through distance education mode be obtained. It goes without saying that it is after due deliberations at the hands of the expert committee comprising of Senior Professors of NITs and National Institute of Technical Teachers Training and Research that the modalities were framed and issued vide public notice dated 25.01.2018 (Annexure P-5). Even the All India Council for Technical Education Act 1987 was enacted with the object of establishment of an All India Council for Technical Education to ensure planned quantitative growth and for regulation as also proper maintenance of norms and standards in the technical education system. Section 10 of the Act regulates the function of the council and mandates that it shall be the duty of the council to take all such steps that would ensure coordinated and integrated development of technical education and maintenance of standards. Section 10 mandates the council to evolve suitable performance appraisal systems for technical institutions and Universities imparting technical education as also to lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examination. Further, the council is obligated to take all necessary steps to prevent commercialisation of technical education. Against such avowed object for which AICTE was set up and coupled with the infirmities and shortcomings noticed by the Hon'ble

Supreme Court leading to the findings being recorded that the B.Tech Degrees, obtained by candidates from the four Deemed to be Universities by way of distance mode of education are not valid, it was imperative for AICTE to have framed relevant and strict modalities so as to conduct an examination and which was primarily in the nature of validation of the degrees obtained by the candidates in question. The Hon'ble Supreme Court in such regard had given complete discretion to AICTE to frame modalities for conduct of the examination. Apparently it is towards exercise of such discretion that the modality and yardsticks for qualifying the examination were laid down in the public notice dated 25.01.2018 at Annexure P-5. Alteration and dilution of the same after conduct of the examination between 03.06.2018 to 12.06.2018 can only be viewed as dilution of standards and which militates against the very object for which the examination had been directed to be held by the Hon'ble Apex Court.

An objection has been raised with regard to non joinder of necessary parities. It has been asserted on behalf of the respondents that all the candidates who appeared and qualified the examination ought to have been arrayed as party respondents and in their absence no relief can be granted.

Such objection is not well founded.

In the case of ***Parbodh Verma Vs. State of U.P. (1984) 4 SCC 251***, the Hon'ble Supreme Court had observed that the High Court could not hear and dispose of a writ petition under Article 226 without the persons who would be vitally effected by its judgment being party respondents. It would be significant to notice that the Hon'ble Apex Court had further observed that if some of the effected persons are before the

High Court as respondents in a representative capacity then it would be sufficient in case their numbers is unmanageable and it is time consuming to serve by joining each one of them as respondents individually. In the present case AICTE in its written statement has disclosed that at the Undergraduate level/B.Tech Degree, 4960 candidates had registered and out of which 3645 had actually appeared in the examination that was conducted in the month of June 2018 and out of which 1448 have qualified. This Court finds merit in the submission advanced on behalf of the petitioners that it was not feasible to implead all the qualified candidates keeping in view their large numbers. In any event the qualified candidates are before this Court in a representative capacity. Their case has been put forth in terms of filing of written statements and by advancing submissions. Furthermore, it is a matter where no relief has been sought against any particular candidate or a question has been raised with regard to the eligibility of an individual candidate. A larger issue has been raised with regard to the manner and methodology adopted by the AICTE while conducting the examination towards purported compliance of the judgment of the Hon'ble Supreme Court in **Orissa Lift Irrigation Corporation Limited's case** (supra).

Even as regards locus and maintainability of the instant petition, there is no dispute that the petitioners have obtained their B.Tech Degrees from recognized institutions. In the written statement filed on behalf of respondent No.2/Punjab State Power Corporation Limited, it has been clearly stated that as many as 25 employees of the Corporation have cleared the examination and as such they would now be entitled to benefits such as seniority under the 40% AMIE/B.Tech Degree quota under the

service regulations. Clearly if the process of conduct of the examination and declaration of result thereof by AICTE is held to be valid, the petitioners would be adversely impacted.

It is after passing of the judgment dated 03.11.2017 by the Hon'ble Supreme Court that the AICTE has taken certain decisions in terms of issuance of public notices at Annexures P-6 and P-7 and thereafter has declared the result. Such subsequent decisions were certainly open to be assailed by the petitioners by way of filing of a writ petition on grounds available as per law.

In view of the above, the objection raised by the respondents questioning the locus standi of the petitions in having filed the instant writ petition is found to be without merit.

For the reasons recorded above, writ petition is allowed. Action of AICTE in changing the modality/yardstick after conduct of the examination is held to be bad in law. Public notice dated 20.06.2018 at Annexure P-6 to the extent of change of modality is quashed. Consequent thereto even the result of the examination by applying change of modality as per Annexure P-6 is set aside.

AICTE is directed to re-compute the result of the examination strictly as per modality/yardstick contained in the public notice dated 25.01.2018 (Annexure P-5). While re-computing the result, AICTE would now confine the benefit of additional marks qua the discrepant questions only to the candidates who had attempted the same. Such exercise be completed and revised result be notified within a period of four weeks from today. Further course would be as per directions issued by the Hon'ble Supreme Court in **Orissa Lift Irrigation Corporation Limited's**

case (supra) and subsequent order dated 22.01.2018 (Annexure P-4).

Writ petition is allowed in the aforesaid terms.

Pending application(s), if any, shall also stand disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

January 07, 2020

shweta

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No