

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.5476 of 2022

Sibasis S/o Sarat Chandra Nayak,
Aged about 34 years,
Occ. Sr. Section Engineer,
Maha-Metro,
R/o Plot No.176, Lok Seva Nagar,
Nagoba Mandir Road,
Nagpur, Maharashtra.

... Petitioner

Versus

1. Maharashtra Metro Rail Corporation Limited,
through its Managing Director,
Maharashtra Metro Rail Corporation,
Metro House, Bungalow No.28/2,
Anand Nagar, C.K. Naidu Road,
Civil Lines, Nagpur, Maharashtra.
 2. The Executive Director (Signal),
Appellate Authority,
Maharashtra Metro Rail Corporation,
Bungalow No.28/2,
Anand Nagar, C.K. Naidu Road,
Civil Lines, Nagpur.
 3. Senior Deputy Chief Project Manager,
Disciplinary Authority,
Maharashtra Metro Rail Corporation,
SW Block Metro Bhavan,
East High Court Road,
Opposite Dr. Babasaheb Ambedkar College,
Nagpur, Maharashtra.
 4. Mrs. Kumkum Mishra,
Add. General Manager (Legal)/
Enquiry Officer,
Maharashtra Metro Rail Corporation,
SW Block Metro Bhavan,
East High Court Road,
Opposite Dr. Babasaheb Ambedkar College,
Nagpur, Maharashtra.
- ... Respondents

Mr. A.M. Sudame, Advocate for Petitioner.

**CORAM : DIPANKAR DATTA, CJ., &
NITIN W. SAMBRE, J.**

DATE : SEPTEMBER 7, 2022

ORAL JUDGMENT (Per Chief Justice):

1. Maharashtra Metro Rail Corporation Limited (hereafter 'MMRCL', for short) issued an advertisement dated 19th September 2016 inviting applications from eligible candidates for filling up vacant posts of Senior Station Controller, Chief Controller, Senior Technician, and Senior Section Engineer. The requisite 'Educational Qualification' for appointment on the 6 (six) vacant posts of Senior Section Engineer read as follows:

"03 years Engg. Diploma Course/BE/B.Tech. in any Discipline or equivalent from a Govt. recognized University/Institute."

2. The petitioner applied for appointment on one such post of Senior Section Engineer and was ultimately appointed by an order dated 31st May 2017. While working as Senior Section Engineer, the petitioner was served with a memorandum of charge-sheet dated 13th April 2020. He was charged on two counts. First, that he had secured the position of Senior Section Engineer on the basis of an invalid diploma. Secondly, that he had played fraud upon MMRCL while usurping a public post fraudulently, thereby putting the lives of thousands of passengers at stake. Incidentally, the petitioner was placed under suspension prior to the disciplinary proceedings being initiated against him.

3. The statement of imputation of misconduct in support of the articles of charge framed against the petitioner reveals that the

petitioner had obtained a diploma in Electronics and Telecommunication dated 20-4-2012, issued by Janardan Rai Nagar Rajasthan Vidyapeeth University, Udaipur (Rajasthan) (hereafter 'Vidyapeeth', for short). However, it transpired from the decision of the Supreme Court dated 3rd November 2017 in the case of **Orissa Lift Irrigation Corporation Limited vs. Rabi Sankar Patro and others**¹ that the Vidyapeeth was not justified in introducing any new course in technical education without the approval of the All India Council for Technical Education (hereafter 'AICTE', for short) and that upon verification of the diploma of the petitioner, the AICTE had specifically observed that:

"It has been the policy of AICTE, not to recognize the qualification acquired through distance mode at Diploma, Bachelors & Masters level in the field of Engineering, Technology, Architecture, Town Planning, Pharmacy, Hotel Management & Catering Technology, Applied Arts & Crafts."

4. The petitioner responded to the charge-sheet. One of the main defences raised by him was that the decision in **Orissa Lift Irrigation Corporation Limited** (supra) had been clarified by the Supreme Court by its order (on review) dated 22nd January 2018² as applying to degrees awarded by the "deemed to be Universities" and would not apply to diplomas issued by such "deemed to be Universities"; as such, the diploma issued to the petitioner by the Vidyapeeth is valid and not "required to be validated".

5. After receipt of the response from the petitioner, an Enquiry Officer was appointed by the petitioner's Disciplinary Authority. The petitioner was duly put on notice by the Enquiry Officer.

¹ (2018) 1 SCC 468

² (2018) 2 SCC 298

6. The order of suspension as well as the memorandum of charge-sheet were challenged by the petitioner before this Court. By an order dated 9th June 2020, this Court dismissed the writ petition observing that it would not be prudent to interfere at the stage of enquiry.

7. In the enquiry that followed, the charges levelled against the petitioner were found to be 'proved'. The Disciplinary Authority accepted the enquiry report and by its order dated 31st October 2020, dismissed the petitioner from service. An appeal carried from the order of the Disciplinary Authority was dismissed by the Appellate Authority on 11th February 2021. By an order dated 27th October 2021, a review of the appellate order preferred by the petitioner was also spurned.

8. By instituting this petition on 3rd September 2022, the petitioner questions the aforesaid orders dated 31st October 2020, 11th February 2021 and 27th October 2021 and seeks quashing of the said orders with further directions to MMRCL to reinstate him with continuity in service and all consequential benefits.

9. We have heard Mr. Sudame, learned advocate for the petitioner, at length. Having heard him, we do not consider it necessary to put the respondents on notice.

10. The decision in **Orissa Lift Irrigation Corporation Limited** (supra) traces in detail the genesis of the Vidyapeeth. The Vidyapeeth, in terms of the permission granted to it, was authorized to conduct courses through distance education in the subjects of Social Work, Education, Arts and Commerce. In due course of time, the Vidyapeeth started distance education programmes leading to degrees in Engineering, outside their field of specialization. The Supreme Court, *inter alia*, was called upon to decide the basic question as to whether the "deemed to be Universities" concerned,

including the Vidyapeeth, were within their right to do so.

11. After considering the statutory framework governing the “deemed to be Universities” and “distance education”, more specifically in the field of technical education, the Supreme Court made several directions, as contained in paragraph 66. The issue before the Court, as noted in the preceding paragraph, was answered in the negative. It was on perusal of the said decision that MMRCL woke up from its slumber and initiated disciplinary proceedings against the petitioner.

12. We had called upon Mr. Sudame to place before us any document to show that either the University Grants Commission (hereafter “UGC”, for short) or the AICTE had granted permission to the Vidyapeeth to commence distance education course in the subject of Electronics and Telecommunication. He has, however, failed to place any such document.

13. It is seen from the letter dated 26th February 2020 issued by the Education Officer of the UGC that the Vidyapeeth, which is a “deemed to be University”, had not been granted the approval of the UGC to “offer technical course under ODL mode”, ODL being the abbreviation of ‘Open and Distance Learning’.

14. It has also come on record, as can be seen from the final order of the Disciplinary Authority dated 1st October 2020, as under:

“Further, the discrepancy noted by IO in academic qualification of CO is noteworthy. It is not clear that, the CO, who scored below average marks in 10th and has done 12th class in Arts subject in 3 years period, took a break and did diploma in Electronics and Telecommunication field after 7 years gap. The Inquiry Officer has asked general questions to which CO did not reply. It seems that the doubt arises on the qualification of CO, if this is not so CO must not have had any trouble to answer such general questions asked by IO.

I am surprised to know that the person without doing any internship or apprenticeship or job or study does diploma in technical field after 7 years gap in education. CO had no Job in intervening period related to technical field. Further, CO had completed his qualification through distance mode with no able guidance and with no practical exposures, CO had scored well in technical field and placed at MAHA-Metro in S & T department which is totally related to technical field.

I have carefully read the judgments of the Hon'ble Supreme Court in this regard. By perusing all the documents on record, it is established that Diploma certificate of CO in Electronics and Telecommunication course from JRN Rajasthan Vidyapeeth University is invalid."

15. In view of the failure of the petitioner to place before us any authentic document to prove that he had obtained the diploma from a duly recognized Government institute as per the requirement of the advertisement, we are of the considered opinion that MMRCL was wholly justified in proceeding against the petitioner and in terminating his service for production of an invalid diploma.

16. In course of hearing, we had drawn Mr. Sudame's attention to paragraph 6 of the decision of the Supreme Court in **Distt. Collector & Chairman, Vizianagaram Social Welfare Residential School Society vs. M. Tripura Sundari Devi**,³. It reads as follows:

"6. It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the

³ (1990) 3 SCC 655

perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact.”

17. We have not been shown that the educational qualification was relaxable. Therefore, in terms of the caution sounded by the Supreme Court, no Court much less this Court should be a party to the perpetuation of a fraudulent practice.

18. In any event, we have looked into the materials on record and record our satisfaction that in taking disciplinary action against the petitioner, the disciplinary proceedings were conducted in compliance with the principles of fair play and upon affording reasonable and adequate opportunity to the petitioner. The penalty is commensurate with the gravity of the charges found proved. Natural justice in no way was violated and the decision-making process does not suffer from any illegality, irrationality or procedural impropriety warranting interference.

19. Therefore, there is no reason to interfere. The writ petition is, accordingly, dismissed. No costs.

[NITIN W. SAMBRE, J.]

[CHIEF JUSTICE]

Lanjewar