



2024:DHC:3519



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

+ **W.P.(C) 14047/2023**

KARAM BIR

..... Petitioner

Through: Mr. Aditya Kumar Yadav, Mr. Gaurav Chaudhry, Mr. Arpit Bamal, Mr. Alok Yadav, Mr. Varun Jawla and Mr. Vaibhav Chaudhry, Advocates.

versus

**ALL INDIA COUNCIL FOR TECHNICAL
EDUCATION(AICTE)**

..... Respondent

Through: Mr. Anil Soni, Standing
Counsel with Mr. Devvrat Yadav, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

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30.04.2024

1. The petitioner is presently 60 years of age. He obtained a B.Tech. degree in mechanical engineering from IASED University, Rajasthan in 2007. The degree was obtained through distance learning.

2. In its judgment in *Orissa Lift Irrigation Corp Ltd v. Rabi Sankar Patro*¹, rendered on 3 November 2017, the Supreme Court suspended all engineering degrees obtained by distance learning, awarded by the deemed universities for students who were enrolled between 2001 and 2005. This resulted in the B. Tech degree of the petitioner also being invalidated.

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3. The Supreme Court directed the respondent, All India Council for Technical Education (AICTE) to devise modalities to conduct appropriate tests in the written examinations as well as in practicals for the students who had been enrolled during the year 2001 and 2005 covering all subjects. The AICTE was also requested, by the Supreme Court, to deal with the matter sympathetically.

4. In compliance with the order passed by the Supreme Court, the AICTE framed modalities to allow affected students who had enrolled for their engineering degree with deemed universities providing degrees by distance learning between 2001 and 2005 to re-appear in the examination. Two chances to do so were granted in June 2018 and December 2018. The pass marks were set at 40%.

5. Subsequently, *vide* a subsequent notification, it was clarified that the higher of the marks obtained in the two examinations would be taken into consideration.

6. The decision to hold the aforesaid examination was publicised in local newspapers as well as put up on the website of the AICTE. This fact is acknowledged in para 7 (vi) of the writ petition.

7. The petitioner claims that, as he was settled abroad, he was never aware of the passing of the judgment of the Supreme Court in *Orissa Lift Irrigation Corp Ltd* on 3 November 2017, or of the consequent decision of the AICTE to hold remedial examinations for



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the candidates, who had enrolled for engineering degrees between 2001 and 2005 by distance learning, in 2018.

8. It is claimed that the petitioner came to learn of the examination which was to be held in June 2018 only in May 2018, on being so informed by a friend. He claims to have visited the website of the respondent in June 2018 to register himself for appearing in the said examination but found that registration had closed prior thereto.

9. He, therefore, addressed an email to the IASED University on 12 May 2018, praying that he be given an opportunity to appear in the June 2018 examination. Unfortunately, as the last date for applying for appearing in the June 2018 examination had expired, the petitioner could not participate therein.

10. *Vide* response dated 14 August 2018, the AICTE advised the petitioner to appear in the December 2018 examination. The petitioner accordingly attempted the December 2018 examination, in which he secured 37.86 %, which was less than the pass percentage of 40%. As a result, the petitioner has not been able to obtain his B.Tech degree.

11. It is in these circumstances that the petitioner has approached this Court under Article 226 of the Constitution of India by means of the present writ petition, containing the following prayer clause:

“In the aforesaid premises it is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

A. Direct the Respondent to allow the petitioner to avail his second chance to attempt the exam of which he was un-lawfully

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deprived of and his result be declared after considering the best of two scores attained in the two examination in an individual paper, as declared for the other candidates by the Respondent after public notice dated nil;
OR IN THE ALTERNATIVE

B. Set aside the pass percentage of 40% as per the impugned modalities set by the Respondent pursuant to the Hon'ble-Supreme Court's order/judgment dated 03.11.2017 in Civil Appeal Nos. 17869-17870 of 2017 titled as 'Orissa Lift Irrigation Corp Ltd. v. Rabi Sankar Patro & Ors.; and /or

C. Issue a writ of mandamus or any other appropriate writ order or direction to revise and re-fix the pass percentage to 35% from the existing 40% fixed by the Respondent for the AICTE examinations and consequently declare the petitioner as pass/qualified in the said examination; and / or

OR IN THE ALTERNATIVE

D. Direct the Respondent to treat and accept the marks obtained by the Petitioner i.e. 37.86%, as 40% [as per the principle of 'rounding off'] and accordingly declare them as pass/qualified in the AICTE examination conducted for validation of the Petitioners' degrees in Engineering by distance learning course awarded by the concerned Deemed to be Universities in pursuance to the Hon'ble Supreme Court's direction in the Civil Appeal No. 17869- 17870 of 2017 titled as 'Orissa Lift Irrigation Corp. Ltd. v. Rabi Sankar Patro & Ors.' dated 03.11.2017; and / or

E. Issue any further Writ or pass any further order(s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interests of justice."

12. I have heard Mr. Aditya Kumar Yadav, learned Counsel for the petitioner and Mr. Anil Soni, learned Standing Counsel for the AICTE.

13. It is obvious that none of the prayers in the writ petition can be granted.

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14. Mr. Yadav advances, essentially, three contentions. The first is that the AICTE did not take adequate steps to make everyone aware of the judgment of the Supreme Court in *Orissa Lift Irrigation Corp Ltd* or of the consequent decision to hold remedial examinations in June or December 2018. He submits that the mere publication of the information in national newspapers and on the website of the AICTE would not be sufficient, as candidates who had passed their examinations much prior thereto and were situated outside the country would not be aware of these developments.

15. The second submission of Mr. Yadav is that, as the petitioner had, on coming, in May 2018, to know of the holding of examination in June 2018, immediately communicated to the AICTE, praying that the petitioner be permitted to appear in the June 2018 examination, the AICTE ought, in the interests of justice, to have allowed the petitioner to appear, especially as there was still considerable time left to lapse before the examination was to be held.

16. The third and last submission of Mr. Yadav is that the respondent could have rounded off the marks obtained by the petitioner to 40%, in which event the petitioner would have obtained his B.Tech degree.

17. Unfortunately, none of these submissions is supported by any rule, regulation, circular, or by binding directives, which could support it.



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18. Insofar as the communication, by the AICTE, of the judgment of the Supreme Court and of the consequent decision to hold remedial examinations in 2018 is concerned, it is acknowledged in the writ petition itself that this information was put up on the website of the AICTE and published in national newspapers.

19. The law does not require the AICTE to do anything more. Mr. Yadav has also not been able to point out to me any directive by the Supreme Court in *Orissa Lift Irrigation Corp Ltd* or any other binding directive, rule, regulation or statutory provision which required the AICTE to take any further steps to inform the public about its decision.

20. Once the information was put up on the website of the AICTE, there is no reason for this Court to hold that the AICTE had not duly made the public aware of the decision of the Supreme Court or its decision to hold remedial examinations in 2018.

21. In fact, the petitioner himself claims to have come to learn of the holding of the examination in June 2018 sometime in May 2018 through a friend. If he came to learn of it in May 2018, there is no reason why, had he exercised due diligence, he would not have come to learn of the holding of the examination by the AICTE prior thereto.

22. The second submission also has to fail as, by the time the petitioner addressed the e-mail dated 12 May 2018 to the IASED University for being permitted to appear in the June 2018

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examinations, the last date for application for registration for appearing in the examination was already over. In fact, in para 7(vii) of the writ petition, it is acknowledged that “the registration for the June 2018 attempt were already closed long back”. Once the last date for registration for appearing in the examination was over, any e-mail written by a candidate could not clothe him with any right to appear in the examination. The e-mail written by the petitioner on 12 May 2018 cannot, therefore, constitute a basis for the petitioner to complain against his not having been allowed to appear in the June 2018 examination.

23. The petitioner ought to have been vigilant, in which case he would not find himself in the predicament in which he is.

24. The petitioner, nonetheless, did have an opportunity to appear in the December 2018 examination, so that it could not be said that he was left completely high and dry.

25. In the said examination, the petitioner secured only 37.86%. The pass percentage was 40%. Though Mr. Yadav submits that the AICTE could have rounded off the percentage of the petitioner to 40%, he is not able to draw attention to any rule, regulation or guideline or instruction which required the marks to be so rounded off.

26. There can be no judicial direction to the respondent to round off the marks in an examination unless there is some binding provision, which requires the respondent to do so.

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27. No mandamus can therefore issue to the respondent to treat the petitioner's marks as 40%.

28. For the aforesaid reasons, the Court is unable to come to the aid of the petitioner. None of the prayers in the petition can be granted.

29. The petition is accordingly dismissed, without any order as to costs.

C. HARI SHANKAR, J.

APRIL 30, 2024

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Click here to check corrigendum, if any

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