

SUPREME COURT OF INDIA

Ashok Kumar

Vs.

Depinder Singh Dhesi

C.A.No.17869-17870 of 2017

(Uday Umesh Lalit and Vineet Saran,JJ.,)

13.08.2019

JUDGMENT

Uday Umesh Lalit,J.,

1. These Contempt Petitions filed by nine Petitioners submit inter alia that the alleged Contemnors have wilfully and deliberately violated the Judgment dated *03.11.2017*¹ passed by this Court in Civil Appeal Nos.17869-17870 of 2017 and other connected matters (“the Judgment”, for short) and clarificatory Order dated *22.01.2018*² passed by this Court in

Miscellaneous Application Nos.1795-1796 of 2017 arising from aforesaid Civil Appeals (“the Order”, for short). In the submission of the Contempt Petitioners the following directions issued by this Court in the Judgment stand violated:-

"58. AICTE is directed to devise within one month from the date of this judgment modalities to conduct appropriate test(s) both in written examination as well as in practicals for the students concerned admitted during the academic sessions 2001-2005 covering all the subjects concerned. 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 the 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 students concerned and if they do not pass the test(s) their degrees shall stand recalled and cancelled. If a particular student does not wish to appear in the test(s), the entire money deposited by such student towards tuition and other charges shall be refunded to that student by the deemed to be university concerned within a month of the exercise of such option. The students be given time till 15-1-2018 to exercise such option. The entire expenditure for conducting the test(s) in respect of students who wish to undergo test(s) shall be recovered from the deemed to be universities concerned by 31-3-2018. If they clear the test(s) within the stipulated time, all the advantages or benefits shall be restored to the

candidates concerned. We make it clear at the cost of repetition that if the candidates concerned do not clear the test(s) within the time stipulated or choose not to appear at the test(s), 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.

66.6. If the students clear the test(s) within the stipulated time, all the advantages/benefits shall be restored to them and their degrees will stand revived fully.”

It is also submitted that the directions issued above were reiterated in following terms in the Order:-

“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 ”

2. According to the Contempt Petitioners:-

(i) They had enrolled themselves in courses leading to Degrees in Engineering through Distance Education Mode during the period 2001-2005.

(ii) In terms of the Judgment, the Petitioners appeared in the test held by *AICTE*³ on 03.06.2018 and qualified in the first attempt.

(iii) The Petitioners are presently posted as Junior Engineers in Public Health Engineering Department, Haryana.

(iv) Soon after clearing the examination, representations were made by the Petitioners that they were entitled to all the benefits arising from their Degrees in terms of the Judgment and the Order.

(v) The representations so preferred were more or less identical in terms and by way of sample one of the submissions made therein was:-

“Therefore, it is requested to add my higher qualification i.e. B.Tech (Civil) and

due benefit for promotion may please be given to me.”

3. Alleging that no action was taken in respect of representations preferred by the Petitioners, it is submitted in the Contempt Petition:-

“6. That the above said representation has not been replied to till date nor any action has been taken on the same. Rather the ACRs of the candidates who are junior to the Petitioners have been called for and their files have been forwarded to the Additional Chief Secretary for issuing orders of promotion. It is pertinent to mention that the above mentioned junior candidates had obtained their B.Tech degree through regular mode and the Petitioners herein had obtained their B.Tech Degrees from the Deemed Universities through the ODL Mode. However, after the Petitioners have cleared the June 2018 AICTE exam their degrees have become valid and hence they are to be treated at par with those Junior Engineers who have obtained their Degrees through the Regular Mode. The fact that the Petitioners have been ignored and the ACRs of the Junior Candidates have been called for shows that the Contemnors / Respondents have deliberately and wilfully violated the directions of this Hon’ble Court passed in Judgment dated 03.11.2017 and 22.01.2018.”

4. In the affidavit-in-reply filed on behalf of the alleged Contemnors/Respondents, it was submitted that opinion of the Advocate General was sought inter alia, on the following issue:-

“ii) Whether the Judgment of Hon’ble Supreme Court in SLP No.17869-17870 of 2017 titled as *Orissa Lift Corporation Ltd. vs. Rabi Sankar Patro and others* in the matter is applicable to the candidates to whom no benefit of acquisition of higher qualification has been granted till date and the said Judgment is applicable only to those officer/officials to whom benefit of such degrees had already been given in the matter of recruitment / promotion etc.”

The opinion given by the Deputy Advocate General was to the following effect:-

“The very intent of the aforesaid direction is to restore the degrees of such candidates (enrolled during academic sessions 2001-2005) from the date of issuance itself, so that the benefits granted to them on the basis of such degrees are not withdrawn and further, that they become eligible for consideration for various benefits denied to them owing to lack of validity of such degrees. However, the said directions cannot be construed in a manner, so as to include any advantage/benefit not granted to a candidate/employee viz. initial entry into service, promotion, increment etc. because of lack of validity of such degree at that particular point of time. Moreover, such an interpretation of the directions of the Hon’ble Court would lead to administrative chaos especially in the matters of selection and promotions.”

5. An additional affidavit has also been filed on behalf alleged Contemnor No.3 placing

reliance on letter No.3712-2CS-II-72/21209 dated 18.07.1972 in terms of which an employee could be permitted to join academic courses/appear in examinations after appropriate permissions. The letter stated inter alia:-

“It has been noticed that Government employees who are permitted to join academic instructions/appear in examinations proceed on leave on one pretext or the other, for a major part of the year in order to make preparations. As this tendency is undesirable and affects Government work adversely, it has been decided to place certain restrictions on permission accorded to Government employees in this respect, as under:-

(i) Ad hoc employees should not be permitted to join courses or appear in examination.

(ii) Only those regular employees who have completed 5 years of service should be accorded such permission. In reckoning the 5 years period service rendered by the employee in any other Office/Department of Government should also be considered.

2. However, those regular employees who have already been permitted to join a particular course of study, or who were studying for a particular course at the time they joined Government service, should be allowed to complete that course, without the necessity to having to obtain any permission.”

6. We heard Mr. Siddharth Dave, learned Senior Advocate for the Petitioners and Mr. Maninder Singh, learned Senior Advocate for the alleged Contemnors.

7. At the outset, the reasons for issuing directions which are relied upon by the Petitioners as evident from the Judgment and the Order are required to be stated and taken into account. Two kinds of students were before the Court (i) those who were enrolled during the academic sessions 2001-2005 and (ii) those who were enrolled after the academic sessions 2001-2005. It was noted in para 23.6 that *UGC*⁷ had issued “2004 UGC Guidelines” in terms of which concept of ex-post facto approval in respect of deemed to be Universities which had started courses in Distance Education without any approval from the concerned authorities was introduced. In accordance with these “2004 UGC Guidelines” some of the deemed to be Universities applied for ex-post facto approval and were granted such approval, as a result of which the students enrolled during academic sessions 2001-2005 stood on a different footing as against those who were enrolled after the academic sessions 2001-2005. Though the Judgment did not approve of the entire exercise undertaken by the concerned authorities, including the grant of ex-post facto approvals, a concession was given to the students who were enrolled during the academic sessions 2001-2005 and the matter in that behalf was dealt with in paragraph 57 as under:-

"57. 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 the 2004 UGC Guidelines themselves had given liberty to the deemed to be universities concerned 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 sessions 2001-2005 is protected. Though we cannot wish away the fact that the deemed to be universities concerned flagrantly violated and entered into areas where they had no experience and started conducting courses through distance education system illegally, the overbearing interest of the students concerned persuades us not to resort to recall of all the degrees in Engineering granted in pursuance of the said ex post facto approval. However, the fact remains that the facilities available at the study centres concerned 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 students concerned. We, therefore, deem it appropriate to grant some chance to the students concerned 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 to 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.”

8. In spite of the conclusion that (a) courses leading to Degrees in Engineering could not be taught through Distance Education Mode without there being express guidelines issued by AICTE3 permitting such mode; and (b) the deemed to be Universities in question were not entitled to start courses in Engineering through Distance Education Mode without prior approval under the AICTE3, the facility of benefit as detailed in paragraphs 57 and 58 of the Judgment was extended to the students. Though the Degrees obtained through Distance Education Mode were prima facie not in accordance with law, the students enrolled during the academic sessions 2001-2005 were given two chances to prove their worth and it was directed that if they clear the test, they would continue to derive advantages flowing from such Degrees. It may be mentioned here that there could possibly be variety of advantages derived by the candidates on the basis of such Degrees awarded at least 10 years before the Judgment was pronounced. During this period some of the candidates might have progressed in career on the basis of such Degree, while some could possibly have acquired Post-Graduate qualifications such as M.Tech and M.B.A. on the strength of such Degrees. It was in this light, that the Court ruled that though from the date of the Judgment all the advantages and benefits flowing or arising from such Degrees would stand suspended, the benefits or advantages would get revived after the candidates had cleared the examination, spoken of in said paragraphs 57 and 58. If any candidate either failed to clear the examination in two attempts or if he chose not to appear in the examination, the Degree would stand annulled completely disentitling the candidate to all the benefits and advantages flowing from such degrees.

9. Some candidates approached this Court submitting that if in terms of the Judgment the benefits or advantages were to be withdrawn and could be regranted or restored only after the candidates had cleared the examination, it may entail some prejudice to the candidates. Some of the candidates who had obtained Post-Graduate Degrees and were employed on the strength of such Degrees would be required to surrender such benefits; and even if they were to pass the examination in the first attempt, it may still require restoration of the benefits leading to situations of inconvenience and prejudice. The directions in the Judgment were therefore modified to a certain extent in the Order. It was, therefore, laid down by way of further concession in the Order that all the candidates who desired to appear in the upcoming examination could retain all the advantages and benefits till one month after declaration of the result of test or till 31.07.2018 whichever was later. The benefit of retaining the advantages was thus extended only till the first attempt. Those who could not clear the examination in first attempt or chose not to appear in the examination conducted in May/June, 2018 were not entitled to the concessions extended by the Order.

10. It was, therefore, clear that the candidates who, on the strength of such Degrees awarded through Distance Education Mode, had attained a particular level in their career or were enjoying certain benefits as on the date of the Judgment and if they pass the examination, those benefits would stand restored. If the candidates could clear the examination in the first attempt itself, there would not even be any break in continuous enjoyment of those benefits or facilities. The idea was, candidates should not stand deprived of the status that they were enjoying as on the day of the Judgment provided the candidates could prove their worth and ability. But if, the concerned candidates had not attained any particular status, as on the date when the Judgment was passed, the width of the directions was not to confer any additional advantage which was not even enjoyed as on the date. It was not the idea to hold the candidates to be entitled to certain additional benefits which the candidates were, as a matter of fact, not even enjoying on the date of the judgment. If the degrees stood restored in terms of the directions in the Judgment and the Order, the candidates would certainly be eligible to such entitlements as are available in accordance with law, but “restoration” would only be of those benefits, which they were enjoying as on the date of the Judgment. In short, the intent was to restore status quo ante and not to confer any additional advantage by the Judgment and the Order.

11. In the present case serious objection has been raised on behalf of Department that the concerned candidates had enrolled themselves in courses leading to Degrees in Engineering through Distance Education Mode without express permission of the Department and/or the Department did not recognise the Degrees in Engineering awarded through Distance Education Mode or that the concerned candidates were not granted any study leave to pursue such courses. If the Degrees were so obtained in violation of the norms and parameters laid down by the concerned Department, the matter assumes completely different complexion. The directions issued by this Court in the Judgment and the Order never directed to confer such advantages which the candidates were otherwise not enjoying on the date when the Judgment and clarificatory Order were passed. If there was serious infirmity in the Degrees so obtained by the candidates, the matter ought to be sorted out either through representation or through properly instituted challenge in that

behalf. If the promotion was not granted and was not being enjoyed as on the day when the judgment was passed, there was no violation of any direction issued by this Court. As is evident, the representations made by the Contempt Petitioner claimed conferral of certain status and benefits which they were not enjoying earlier. If there be any grievance on that front, the entitlement needs to be established in proceedings other than a Contempt Petition.

12. Mr. Maninder Singh, learned Senior Advocate, was, therefore completely justified in relying upon the following observations passed by this Court in *J.S. Parihar vs. Ganpat Duggar and others*⁵ :-

“6. The question then is whether the Division Bench was right in setting aside the direction issued by the learned Single Judge to redraw the seniority list. It is contended by Mr S.K. Jain, the learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three Benches, the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned Single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2-7-1991. Subsequently promotions came to be made. The question is whether seniority list is open to review in the contempt proceedings to find out whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the Single Judge; the Division Bench corrected the mistake committed by the learned Single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned Single Judge when the matter was already seized of the Division Bench.”

13. We, therefore, do not find any violation on part of the alleged Contemnors.

14. These Contempt Petitions are dismissed. Each of the petitioners shall deposit Rs.5000/- by way of costs in the concerned Department within four weeks, failing which the

Department shall recover the same in accordance with law.

Judgment Referred.

¹*Orissa Lift Irrigation Corporation Limited vs. Rabi Sankar Patro and others-(2018) 1 SCC 468*

²*Orissa Lift Irrigation Corporation Limited vs. Rabi Sankar Patro and others-(2018) 1 SCC 468 -*

³*All India Council for Technical Education*

⁴*University Grants Commission*

⁵*(1996) 6 SCC 0291*