Before G.S Sandhawalia & Vivek Puri, JJ.

ALL INDIA COUNCIL FOR TECHNICAL EDUCATION — *Appellants*

versus

JATINDER SINGH —*Respondents*

LPA No. 474 of 2020 (O&M)

September 28, 2022

Constitution of India, Article 51, 226—All India Council for Technical Education AICTE-UGC Act-Promotion and seniority of persons educated through distant mode—Principal of restricted right given by Apex Court to be applied strictly—Stopping of illegal educational institutes imparting degrees in professional courses through the medium of distance education—Taking action against the centres established beyond the territorial jurisdiction of such institutes—Apex court has purposely and intentionally restricted the benefits granted to the candidates on earlier occasions and is not taking a liberal view that the degrees in question passed by such institutes could be considered valid per se right from the date the candidates had passed the examinations—The All India Council for Technical Education and maintenance of standards is under bounden duty to ensure that the implementation of the orders of the Apex Court had to be done in the same spirit as laid down by the Apex Court—The Apex court has taken a serious view of the commercialization of education system of technical education-Further there is an estoppel against the council on account of earlier stand taken by them in a litigation for the reasons best known to the council—The standards had been diluted by the grievance redressal committee of the Council by recommending that the marks of theory and practical's would be combined to calculate the 40% qualifying marks—The grievance redressal committee sat as a super body over the decisions of the expert committee and changed the modalities in the laid down parameters which it could not have done—Apparently the Council failed to notice the manner in which the Supreme Court has seriously observed about the limited benefits which had to be given to such persons who had acquired degrees through distant mode—Merely because some persons have been given the benefit of promotion on account of the result already declared as such would not validate or give others a cause of action as such to perpetuate an

illegality which has happened—Appeals dismissed.

Held that, keeping in view the above, we are of the considered opinion that the judgment of the learned Single Judge does not suffer from any perversity or infirmity which would warrant interference in the letters patent appeal. Rather, the learned Single Judge has only ensured that the purity of the examinations, as was the object of the Apex Court, has been restored and kept in mind.

(Para 40)

Sunil Chadha, Senior Advocate, with Akshay Chadha, Advocate, Devyani Sharma, Advocate, *for the appellants* (in LPA No. 474 of 2020) and for respondent No.3 (in LPA Nos. 433 and 519 of 2020).

Gurminder Singh, Senior Advocate, with Harpriya Khaneka, Advocate, *for the appellants* (in LPA No. 433 of 2020).

Rajiv Atma Ram, Senior Advocate with R.S. Kalra, Advocate and Randeep Singh Smagh, Advocate, *for the appellants* (in LPA No. 519 of 2020).

Neeraj Gupta, Advocate, *for the appellant (s)* (in LPA-648-2022).

Aalok Jagga, Advocate and Harkirat S. Jagdev, Advocate, for respondent No.5 (in LPA Nos. 433 and 519 of 2020).

Rohit Ahuja, DAG, Punjab. Salil Sabhlok, Advocate, for the respondent-UGC.

Parminder Singh, Advocate, for the respondent-PSPCL.

Pushpinder Kaushal, Advocate for respondent Nos.14, 17, 18, 19, 23, 26 & 27 (in LPA No.433 of 2020).

G.S. SANDHAWALIA, J.

(1) The present judgment shall dispose of LPA Nos. 433, 474 and 519 of 2020 (O & M) and LPA-648-2022 (O & M) and RA-LP-4-2021 in LPA-474-2020 as common questions of facts and law are involved in all the matters. RA-LP-4-2021 has been filed against the interim order dated 29.01.2021 vide which CM-201-LPA-2021 had been dismissed in LPA No. 474 of 2020.

(2) The said LPAs all stem out from the order of the learned Single Judge passed in CWP No. 28211 of 2018, Jatinder Singh and

others vs. State of Punjab and others, which was allowed on 07.01.2020. The appellants herein including the All India Council for Technical Education (in short 'the Council') and the other appellants are aggrieved against the finding of the learned Single Judge wherein, the writ petition was allowed and the action of the Council in changing the modality/yard stick after the conduct of the examination was held to be bad in law. Resultantly, public notice dated 20.06.2018 (Annexure P-6) was quashed and the subsequent result declared on 27.07.2018. The Council was directed to re-compute the result of the examination as per the modality and the yard stick contained in its public notice dated 25.01.2018 (Annexure P-5). Further directions were given that while re-computing the result, the benefit of additional marks for the discrepant questions would only be confined to the candidates who had attempted the same and, therefore, it was directed that the exercise be completed and revised and result be notified within a period of 4 weeks. The same was apparently in view of the fact that the learned Single Judge found that the change in modality as such was in violation of the judgmentof the Apex Court dated 03.11.2017 in ***Orissa Lift Irrigation Corporation Ltd.*** *versus* ***Rabi Sankar Patro and others***[1] and the subsequent order of the Apex Court dated 22.01.2018 in ***Orissa Lift Irrigation Corporation Ltd.*** *versus* ***Rabi Sankar Patro and others***[2].

(3) The reasoning which weighed with the learned Single Judge was that the change of modality/yard stick by the Council was not permissible in view of the earlier decision of the Delhi High Court which was not interfered with by the Apex Court in Writ Petition (Civil) No. 952 of 2018, Sanjay Kumar and others vs. University Grants Commission and another on 14.09.2018. The unsuccessful candidates had approached the Court and the prayer was to revise and re-fix the pass percentage at 30%and to re-examine their case by dividing the entire examination in two parts i.e Theory and practical papers (80% marks) and the internal assessment to be conducted by the Universities concerned (20% marks). It was held that the Council did not have a license to take decisions contrary to the settled provisions of law and make alterations once the modalities had been fixed keeping in view the principle laid down by the Apex Court in ***K. Manjisree*** *versus* ***State of A.P and another***[3] and ***Himani Malhotra*** *versus* ***High Court of***

[1] (2018) 1 SCC 468
[2] (2018) 2 SCC 298
[3] (2008) 3 SCC 512

Delhi[4] which are on the issue "Of changing the Rules after the game has started". It was found that once the examination had been conducted between 03.06.2018 to 12.06.2018, the objections had been dealt with by the Expert Committee while computing the result, the council 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 while placing reliance upon the judgment in ***Guru Nanak Dev University*** *versus* ***Garg and others***[5]. Resultantly, it was found the changing of yard sticks after the conduct of the examination amounted to dilution of standards which had already been frowned uponby the Apex Court in Orissa Lift's case (Supra) and, therefore, once the modalities had been framed and issued vide public notice dated 25.01.2018, the alteration and dilution after the conduct of the examination on 03.06.2018 to 12.06.2018 militated against the very object for which the examination had been directed to be held by the apex Court.

(4) The objections regarding the non-joinder of necessary parties and that all the candidates who had appeared and qualified the examination ought to have been arrayed as respondents was rejected by placing reliance upon the judgment of the Apex Court in ***Parbodh Verma and others*** *versus* ***State of Uttar Pradesh and others***[6] by noting that the 1448 candidates who had qualified could not be impleaded as it was not feasible to do so. Even otherwise, the qualified candidates were before the Court in a representative capacity and had filed written statements and advanced their submissions and, thus, it was not possible to join each andone of them individually. The issue of locus and maintainability of the writ petitioners who were holders of B. Tech degrees from recognized institutions was upheld as it was noticed that 25 employees of the respondent-Punjab State Power Corporation had cleared the examinationand were thus, entitled to the benefits of seniority and 40% AMIE/B. Tech degree quota under the Service Regulations. Thus, if the conduct and declaration of results was held valid, the writ petitioners would be adversely effected and, thus, would have locus standi and could file the writ petition challenging the action of the Council.

(5) The challenge against the judgment in LPA Nos.433 and

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[4] (2008) 7 SCC 11
[5] (2005) 13 SCC 749
[6] (1984) 4 SCC 251

474 of 2020 is obviously firstly by the private respondents who were arrayed as private respondent Nos.5 to 29 in the writ petition apart from the challengeby the Council. Similarly, LPA No. 519 of 2020 and LPA No. 648 of 2022 has also been filed by other aggrieved persons seeking the leave to file appeal on the ground that they were also adversely effected.

(6) In sum and substance, the brigade of senior counsels appearing questioned the locus standi of the writ petitioners on the ground that they had objected in the written statement to the maintainability of the writ petitions at their instance as they were neither participants in the examination nor in any manner directly connected with it. Having not sat in the examination, the writ petitioners were thus not entitled to maintain the same. The appellants being successful in passing the examination whichwas held under the directions of the Apex Court would have a better lengthof service in accordance with the Service Rules and thus, they would have the benefit of ranking senior to the writ petitioners in the promotional cadre. Similarly, it is argued by Mr. Gurminder Singh, Sr. Advocate and Mr. Sunil Chadha, Sr. Advocate that the change of modalities was a power conferred upon the Council under the Act and recognized by the Supreme Court, thus, it could not be questioned by the writ petitioners. It is pointed out that the decision dated 24.09.2018 had not been quashed though challenged which pertained to the change of modality by which best of two scores attained in the two examinations was to be taken into account which was also a decision as per the public notice issued by the Council. It was accordingly argued that it is a test of ability and not on merit and it was a question between the Council and the examinees and that by virtue of the said decision, the result of the first examination had been modified and the second attempt candidates would steal a march. It was, thus, the case of the senior counsels that the change in criteria was not adversial to any person and the judgments in *K. Manjusree* and *Himani Malhotra (supra)* were not applicable. Reliance was also placed upon the decision in ***LPA No. 961 of 2021, Gurcharan Singh and others*** *versus* ***State of Punjab and others*** decided by the co-ordinate Bench on 16.05.2022 and authored by one of us, G.S. Sandhawalia, J. that the change of modality could not be held to be prejudicial as it applied to one and all.

(7) It is pointed out that the status report had to be filed by the Council before the Apex Court and, thus, it was not justified for the learned Single Judge to have interfered in the conduct of the said

examination which had been held under the directions of the Apex Court and to substitute his opinion against the opinion of the experts. It was submitted that the benefit of the examination had been granted in other departments to the examinees and, therefore, reference was made to the promotion orders dated 24.07.2019 passed by the concerned Secretary qua the Water Resources Department of Punjab and order dated 09.10.2020 (Annexures A-7 and A-8), which were sought to be placed on record by way of CM-1356-LPA-2020 in LPA-433-2020. It is accordingly argued that once they had qualified in first test, there was no need to sit in the second test and by initiating litigation, a right as such had been taken away to take part in the second test in view of the directions of the learned Single Judge.

(8) Mr. Sunil Chadha, Sr. Advocate appearing for the Council has submitted that since the matter regarding the issue of change of rules when the game had started was pending before a larger Bench and the said principle as such had been doubted in ***Tej Prakash Pathak and others*** *versus* ***Rajasthan High Court and others***[7]**.** He also placed reliance upon the judgment in ***Salam Samarjeet Singh*** *versus* ***High Court of Manipur at Imphal and others***[8] wherein, there was a difference of opinion by the two Judge Bench and the matter was placed before the larger Bench for final adjudication. It is, however, pertinent to notice that Mr. Chadha for the Council could not justify in any manner as to why the criteria was down graded in spite of the fact that the matter had initially also been raised before the Delhi High Court and opposed therein by the Council at that point of time. Rather before the Apex Court when the matter was taken in appeal in ***Sanjay Kumar's*** *case (supra),* only the benefit of filing a representation was given which was to be considered.

(9) Mr. Rajiv Atma Ram, Senior Advocate appearing on behalf of the appellants in LPA No.519 of 2020 has submitted that the appellant in his case was working as an XEN, on Current Duty Charge, in Haryana Police Housing Corporation and it is submitted that he is adversely affected sincehe filed CWP No.1591 of 2017 seeking benefit of promotion to the post of Executive Engineer, hearing of which was deferred on 20.01.2020 on account of the fact that the impugned judgment had been passed on 07.01.2020 by noting that the AICTE had to revise the result and, therefore, no final adjudication had taken place

[7] (2013) 4 SCC 540
[8] (2016) 10 SCC 484

in his case. Reliance was accordingly placed upon the judgments of the Apex Court in ***Ram Janam Singh*** *versus* ***State of U.P.***[9]***, Sri V.N. Krishna Murty and others*** *versus* ***Sri Ravikumar and others***[10]. It was argued that all parties had not been impleaded and only employees ofthe Power Corporation had been impleaded. There were as many as 1448 affected persons, who should have been impleaded and the learned Single Judge has not rightly come to the conclusion that the respondents were represented in a representative capacity and reliance upon ***Parbodh Verma's*** *case (supra)* had been wrongly placed upon. It was argued that a public notice should have been issued as persons from different states were affected and it was a All India test with PAN India ramifications and while referring to Para No.47 of the judgment in ***Orissa Lift's*** *case (supra).* Reliance was placed upon the pleadings in para No.16 of the writ petition that chances of promotion were adversely effected and it was not a condition of service and there is only a right of consideration and no absolute right of promotion. Therefore, without putting the other persons to notice, the learned Single Judge was in error in allowing the writ petition. It was argued that the delay was not dealt with and the writ petition had been filed only on 30.10.2018 after the second test had been notified and the writ should have been dismissed on that account. The objections raised by the concerned persons had been dealt with by experts and the persons who sat in the examination had a vested right of the validation test which has been taken away by the judgment and the litigation initiated, even though they were not party.

(10) The arguments were ably met by counsel for the writ petitioners Mr. Alok Jagga by submitting that he had impleaded all the persons who were affecting the petitioners' seniority which could have led to their reversion. He placed reliance upon the written statement of the Corporation to submit that the 25 employees of the Corporation had cleared the exam and the process to allot seniority to the said persons was in progress and they could get promotions from the post of Junior Engineers/Assistant Additional Engineers to the rank of Assistant Engineers/Sub Divisional Officers. It was accordingly argued that Annexure P-7 had specifically not been quashed as it applied to persons who would get a second chance having not qualified the first exam. Reliance was placed upon the pendency of CWP No. 16872 of 2020, Sukhdeep Singh and others vs. State of Punjab and

[9] (1994) 2 SCC 622
[10] AIR (2020) SC 4038

others, which had been filed and in which an interim order had also been passed restraining the concerned persons from making any promotions from private respondents in pursuance of the declaration of the results while referring to the present litigation. Therefore, in such circumstances, litigation had been initiated after taking permission from the learned Single Judge while withdrawing CWP No. 2627 of 2019, Dheeraj Pal and another vs. State of Punjab and others on 26.09.2019 (Annexure A-1) on the day judgment had been reserved wherein, the second examination conducted between 16.12.2018 to 19.12.2018 had been challenged and which had been withdrawn with liberty to file a fresh writ petition since the result had been declared.

(11) It is, thus, argued that the writ petitioners had engineering degrees on regular side and had locus standi as the validity test directed by the Apex Court had to be held but there could not be any dilution of standards. The distant mode of education for technical degrees had already been frowned upon by the Division Bench of this Court in CWP No. 1640 of 2008, Kartar Singh vs. Union of India, which view in principle had been upheld by the Apex Court in ***Orissa Lift's*** *case (supra).* It is submitted that the first dilution took place on 19.06.2018 (Annexure P-6) and was in violation of para No.47 of the judgment of the Apex Court which had also further ordered that CBI inquiries be made into the matter in which the institutions had abused their position. It is accordingly argued that theremedy lay by filing the writ petition and there was illegality by lowering the standards by reducing it to 40% of theory and practical combined firstly and thereafter giving the opportunity of best of both examinations on 24.09.2018. It is submitted that there was a wrong change of heart by the experts though they had already rejected the requests received by taking a decision on 01.05.2018 and giving of grace marks regarding the discrepancy in the answer key was only to be given to those who had attempted the same. The said issue as such was not being challenged by the Council also and the change in criteria had amounted to reduction of standards. It is accordingly the contention of Mr. Jagga, while referring to the judgment of the Delhi High Court (Annexure R-3/6) that the Council had never objected to the said decision, rather defended it before the said Court.

(12) It is accordingly his contention that there is only a restoration done on the basis of Para No.47 of the judgment in *Orissa Lift's case (supra)* and it did not give any right to be considered for promotion. He placed reliance upon observations made in the

subsequent order of the Apex Court in ***Ashok Kumar and others*** *versus* ***Depinder Singh Dhesi and others***[11] to submit that contempt petitions were dismissed by making certain observations and the validation test was only to save appointments and not to give any right of promotion. He submitted that the locus standi of the writ petitioners was apparent as they were affected directly and even if they did not belong to the category as such of examinees. Reliance was placed upon ***Pratap Kishore Panda*** *versus* ***Agni Charan Das***[12] and ***Mohammed Faizal K.A.*** *versus* ***D. Sali and others***[13] in this regard. While placing reliance upon Section 10 of the All India Council for Technical Education Act, 1987, it is pointed out that it was within the ambit as such to provide suitable performance appraisal systems in technical institutions and universities but dilution of standards could not be permitted. Reliance was placed upon judgment of the Apex Court in ***Ramjit Singh Kardam and others*** *versus* ***Sanjeev Kumar and others***[14] to contend that it was not a case of raising the bar and, therefore, the argument that the said question whether the rules of the game issue had been referred to a larger Bench in***Tej Prakash Pathak's*** *case (supra)* would not be applicable since it is the issue of dilution of standards and violation of the orders of the Supreme Court.

(13) It is accordingly contended that there was an estoppel against the candidates of the Council since the relief had not been granted by the Delhi High Court on 21.05.2018 (Annexure R-3/6) and even before the Apex Court, no relief had been granted on 14.09.2018 except to approach the Council. The dilution having already taken place, challenge could thus be raised. It was submitted that there was no delay as such in approaching the Court since it had only been done after the holding of the examination. The writ petition was only filed after benefits were given repeatedly to dilute the standards and resultantly, the interim order had been passed firstly on 01.11.2018 by the learned Single Judge whereby, the process of promotion had been directed to remain stayed. It is submitted that against the interim order, ***SLP (C) No. 1259 of 2019, Er. Paramjit Singh and others*** *versus* ***State of Punjab and others*** had been preferred but no interference had been ordered and only directions had been issued to the learned Single Judge on 18.02.2019 to decide the

[11] (2019) 8 SCC 280
[12] (2015) 17 SCC 789
[13] (2017) 14 SCC 394
[14] (2020) 20 SCC 209

issue expeditiously.

(14) After giving our thoughtful consideration on the issue, we are of the consideration opinion that the order of the learned Single Judge does not suffer from any infirmity. Rather, the said judgment has addressed all the issues keeping in view the background of the case.

Issue of maintainability of writ petition

(15) It is a matter of record that the issue firstly was dilated upon by the Division Bench of this Court in ***Kartar Singh's*** *case (supra)* regarding the technical/professional courses being run through distant education mode by 4 institutes namely Vinayaka Misson's Research Foundation, Salem, Tamil Nadu; IASE Gandhi Vidya Mandir, Sardar Shahar, Rajasthan; JRN Vidyapeeth, Udaipur, Rajasthan and Allahabad Agriculture Research Institute, Allahabad, U.P. The prayer before this Court was to stop the illegal education institutes imparting degrees in professional courses through the medium of distant education and to take action against the centers established beyond the territorial jurisdiction of such institutes. In one order, which was subject matter of appeal before the Division Bench, challenge was to the order of the learned Single Judge of this Court that the degree in Engineering obtained through the medium of distant education is a valid degree for the purpose of public appointment. The same issue as such was raised whether such a writ petition was maintainable or not by the persons who are beneficiaries of such education system and the Division Bench had to deal with the vexed question whether public interest litigation was not maintainable for the reasons it raised a service dispute. Similar is the issue herein. Primarily, the cause of action stems from the fact that the candidates who had given the test as such are liable to be considered for promotion on the strength of the validation test which was being permitted by the Apex Court. Resultantly, the Division Bench had come to the conclusion that there was a malady of grant of degrees by shops under the guise of study centres and, therefore, the petitioner had a right as such to invoke the writ jurisdiction. On the same principle, the serious objection which has been raised to the *locus standi* of the writ petitioners on the ground that they were not the candidates who sat in the examination and would have no grouse needs to be repelled. The observations of the co-ordinate Bench in ***Kartar Singh's*** *case(supra)* which has been upheld in ***Orissa Lift Irrigation Corporation*** *case (supra)* read thus:-

> "125. The challenge in the public interest litigation is the malady of grant of degrees by the shops under the

guise of study centres established by deemed to be Universities without any semblance of educational activities. The grievance is that such unethical conduct of the deemed to be Universities is of duping the candidates, who get tempted to the advertisements and the publicity carried out by these Universities in remote parts of the States and that such Institutes are churning out so called graduates without undergoing the courseas per the curriculum approved by the Commission and/or AICTE. Since the candidates aspiring to obtain degrees are numerous, therefore, the petitioner has invoked the writ jurisdiction to advance a public cause to avoid the exploitation and duping of innocent candidates under the guise of employment opportunities under the State or its instrumentalities. Thus, such petitioner has a right to invoke the jurisdiction of this Court.

126. We find that the judgments cited by Mr. Mata are not of any help to the argument raised. In P. Seshadri Vs. S. Mangati Gopal Reddy (2011) 5 SCC484, the Hon'ble Supreme Court observed that the Court is to examine; whether the petition has been filed by a busybody having little or no interest in the proceedings. The credentials, the motive and the objective of the petitioner have to be apparently and patently above board. The respondents-deemed to be Universities have not brought any fact on record to show that the motive and the objective of the petitioner in invoking writ jurisdiction of this Court lacks objectivity and is a tool of exploitation of the private respondents.

127. In Centre for Public Interest Litigation Vs. Union of India (2012) 3 SCC 1 (for short '2G Spectrum case'), the Hon'ble Supreme Court observed that it is the duty of the Court to exercise its jurisdiction in larger public interest and rejected the plea of the State that the scope of judicial review should not be exceeded beyond the recognized parameters. This Court in exercise of judicial review under Article 226 is examining the action of the deemed to be Universities in granting degrees through the distance education mode in technical subjects and to some extent inaction of the statutory authorities in failing to regulate the grant of such degrees. Therefore, it is the duty of this Court,

as observed in 2G Spectrum case, to exercise its jurisdiction to prevent the youth of these states falling prey in the hands of such deemed to be universities in larger public interest.

128. The Hon'ble Supreme Court has held that the Court is obliged to ensure that it resolves the causes of litigation in the country referring to maxim boni judicis est causas litium dirimere i.e take steps that the litigation does not flood the courts. In Kazia Mohammed Muzzammil v. State of Karnataka, (2010) 8 SCC 155, the court observed:

"58. We reiterate this principle with respect and approval and hope that all the authorities concerned should take care that timely actions are taken in comity to the rules governing the service and every attempt is made to avoid prejudicial results against the employee/probationer. It is expected of the courts to pass orders which would help in minimising the litigation arising from such similar cases. Timely action by the authority concerned would ensure implementation of rule of fair play on the one hand and serve greater ends of justice on the other. It would also boost the element of greater understanding and improving the employer-employee relationship in all branches of the State and its instrumentalities. The courts, while pronouncing judgments, should also take into consideration the issuance of direction which would remove the very cause of litigation. Boni judicis est causas litium dirimere."

129. Recently in Priya Gupta Vs. State of Chhattisgarh (2012) 7 SCC 433, the court reiterated the principal that courts should take steps for avoiding litigation. It observed:

44. The consistent effort of this Court to direct corrective measures and adherence to law is not only being thwarted by motivated action on the part of the authorities concerned, but there has also been a manifold increase in arbitrary admissions. Repeated defaults have resulted in generating more and more litigation with the passage of time. This Court, thus, now views this matter with greater emphasis on directions that should be made to curb incidents of disobedience.

45. The maxim boni judicis est causas litium dirimere places an obligation upon the Court to ensure that it resolves the

> causes of litigation in the country. Thus, the need of the hour is that binding dicta be prescribed and statutory regulations be enforced, so that all concerned are mandatorily required to implement the time schedule in its true spirit and substance. It is difficult and not even advisable to keep some windows open to meet a particular situation of exception, as it may pose impediments to the smooth implementation of laws and defeat the very object of the scheme. These schedules have been prescribed upon serious consideration by all concerned. They are to be applied stricto sensu and cannot be moulded to suit the convenience of some economic or other interest of any institution, especially, in a manner that is bound to result in compromise of the abovestated principles.
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> 130. Therefore, we do not find any merit in the objection raised that the Writ Petitions filed in public interest are not maintainable."

(16) Reliance can also be placed upon the right as such of the writ petitioners to the extent that how they would be adversely effected by the dilution of standards as persons who were not qualified as such would be given the benefit of qualification by tweaking the criteria which had already been fixed and by bringing the standard down repeatedly in spite of the fact that the Apex Court had frowned upon the whole issue and had also ordered for a CBI inquiry. In *Pratap **Kishore Pandas'** (case) supra,* the Apex Court had not approved the finding of the High Court wherein, it had been held that the appellants had no *locus standi* to challenge the mode of the recruitment of the respondents since they did not belong to the reserved class. It was accordingly held that the respondents would be given the seniority over the appellants on account of retrospective regularization and, therefore, there would be a direct impact upon the appellants to have the*locus standi* to challenge the validity of the appointment. The relevant portion from ***Pratap Kishore Panda's** (case) supra* reads thus:-

> "16 The other question to which we must turn our attention is whether the Appellants had the locus standi to challenge the mode of recruitment of the Respondents. The High Court has held that since they were not of the reserved class, they did not have the locus standi to challenge mode of recruitment of the Respondents who were of the reserved class, on the principle that unequals cannot be treated as

> equals.While we accept the principle itself, we do not find it pertinent to the factual scenario before us. The unrefuted factual position is that by virtue of their retrospective regularization, several of the Respondents gained seniority over the Appellants. In light of thedirect impact on them, the Appellants would have the locus standi to challenge the validity of theappointment of the Respondents. However, for the reasons discussed above, the challenge while allowedis not successful."

(17) In ***Mohammed Faizal K.A.*** *case (supra),* while allowing the appeals, the objection which was raised was whether the appellants have *locus standi* to challenge the decision. The same was repelled on the ground that by way of wrongful inclusion and promotion of respondent No.1 as Deputy Superintendent of Police, which was done in furtherance of the order of the learned Single Judge, it had made the appellant junior to the said respondent and affected his further prospects of promotion and seniority. Thus, it was held that it was always open to him to contend that though he might not be eligible to be included in the select list but respondent No.1 also could not be legitimately included in the subsequent select list since he was already promoted to the post of a DSP. Thus, the contention raised by counsel for the writ petitioners is valid that even the employer had admitted that on account of the clearing of the exam the process to allot seniority was in progress and, therefore, they had *locus standi* and interest in the litigation as benefits were being given wrongly and in violation of the law laid down by the Apex Court. The argument, thus, raised that solely because they are not candidates as such and, therefore, are not affected directly is without any basis and the objection to the maintainability of the writ petition by the appellant is without any basis. Thus, it is the duty and responsibility of the appellant-Council to implement the judgment of the Apex Court in its true spirit rather than water it down on the ground that the Council was the sole repository of power.

Principle of Restricted Right given by Apex Court and to be applied strictly:

(18) The Apex Court, while deciding the issue initially in ***Orissa Lift's*** *case (supra)* on 03.11.2017 issued various directions while upholding the view of this Court and set aside the decision of the High Court of Orissa wherein, the employee had obtained the B.Tech (Civil) degree from JRN Vidyapeeth, Udaipur, Rajasthan through

distant education mode in the year 2009. Specific directions as such were issued that the 1994 AICTE Regulations would apply to deemed to be universities and that the *ex post facto* approval granted by UGC for the academic session 2001-05 was liable to be set aside. The degrees in Engineering awarded by the said universities stood suspended and also that every single advantage on the basis of that degree also stood suspended. The Council was directed to conduct an appropriate test both of the written examination and the practicals for the students admitted during the academic session 2001-05 and the discretion was left to come out that such modalities as it would think appropriate. The students were to be given not more than two chances to clear the examination. The fact remains that two chances were to be given in May- June, 2018 or such dates as the Council may determine failing which the concerned students would have their degrees recalled and cancelled if they did not clear the test or chose not to appear in the same. Further direction was also issued that any promotion or advancement in career on the basis of such degree should also be withdrawn but the monetary benefits and advantages on that behalf were not to be recovered. For the persons admitted after 2005, the degrees stood recalled and treated as cancelled and even any benefit secured by the candidate as a result of such degrees should be treated as cancelled including any promotion or any advancement in career. Observations were made that the conduct of the concerned officialsis to be looked into and needs to be investigated and directions were thus issued to CBI to look into the matter and take appropriate steps. It was specifically averred that the idea is not to achieve excellence in the field but it was only an attempt to be guided by pure commercial angle. The UGC was also castigated as such for failing to control the situation regarding the commercialization of education. Accordingly, following directions were issued on 03.11.2017 in ***Orissa Lift's*** *case (supra)*:-

> "46. 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 allthe degrees granted in pursuance thereof in respect of Courses leading to award of degrees in Engineering. However, since 2004 UGC Guidelines themselves 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 sessions 2001- 2005 is protected. Though we cannot wish away the fact that the concerned Deemed to be Universities flagrantly violated and entered into areas where they had no experience and started conducting courses through distance education system illegally, the over bearing interest of the concerned students persuades us not to resort to recall of all the degrees in Engineering granted in pursuance of said ex-post-facto approval. However, the fact remains that the facilities available at the concerned Study Centres 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 concerned students. We, therefore, deem it appropriate to grant some chance to the concerned students 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.

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 orbenefits 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.

48. As regards the students who were admitted after the ex-post-facto approval granted in favour ofsuch Deemed to be Universities, in our view, there was no sanction whatsoever for their admission. The Policy Statements as well as warnings issued from time to time were absolutely clear. The students were admitted on the strength either provisional recognition or on thestrength of interim orders passed by the High Court. We therefore, declare that in respect of students admitted after the academic sessions of 2001-2005, the degrees in Engineering awarded by the concerned Deemed to be Universities through Distance Education Mode shall stand recalled and be treated as cancelled. Any benefit which a candidate has secured as a result of such degrees in Engineering in the nature of promotion or advancement in career shall also stand recalled. However, if any monetary benefit was derived by such candidates that monetary benefit or advantage will not be recovered by the concerned departments or employers. We, further direct that the entire amountpaid by such students to the concerned Deemed to be Universities towards tuition fee and all otherexpenditure for such courses through distance education learning shall be returned by the concerned Deemed to be Universities to the respective

students. This direction shall be complied with by the concerned Deemed to be Universities scrupulously and the amounts shall be returned by 31st of May, 2018 and an appropriate affidavit to that extent shall be filed with UGC within a week thereafter.

49. The factual narration mentioned hereinabove makes certain things distinctly clear. The affidavit of Mr. Ved Prakash discloses how permissions were granted to introduce courses in the present cases without any authority. On one hand, the authorities were proclaiming their policy statements and on the other, despite there being complaints, they went about granting permissions. Their conduct and approach is difficult to explain on any rational basis and leaves much to be desired. We are, prima facie of the view that the conduct of the concerned officials needs to be looked into and investigated whether the exercise of power by them was completely genuine or colourable. We do not express any final opinion in that behalf but direct the CBI to carry out thorough investigation into the matter and to take appropriate steps after culmination thereof.

50. The record further shows that time and again warnings were issued to the concerned Deemed to be Universities. Dr. Rajeev Dhavan, learned Senior Advocate is right in his submission that if a Deemed to be University is not to be found functioning within the mlimits, its recognition as Deemed to be University could be withdrawn. In our view, the concerned Deemed to be Universities had gone far beyond their limits and to say the least, had violated binding policy statements. Even when they did not have any experience in the concerned field and had no regular faculty or college in Engineering, they kept admitting students through distance education mode. When there was nothing at the core, the expansion was carried at the tertiary levels in brazen violation. The idea was not to achieve excellence in the field but the attempts appear to be guided by pure commercial angle. We therefore, direct the UGC to consider whether the Deemed to be University status enjoyed by the concerned institutions, namely, JRN, AAI, IASE and VMRF calls for any such withdrawal and conduct an inquiry in that behalf. If the concerned Deemed to be Universities fail to

return the moneys to the concerned students as directed above, that factor shall also be taken into account while conducting such exercise.

XXX XXX XXX

53. Accordingly we direct:

I. 1994 AICTE Regulations, do apply to Deemed to be Universities 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 atthe 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 Session 2018- 2019 onwards unless and until it is permissible to conduct such courses in distance education mode and specific 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 levelwithin one month. The Committee may examine the issues indicated above and suggest a road map for strengthening and setting up of oversight andregulatory 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 monththereafter 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."

(19) From the above, it would be clear that all benefits secured were treated as cancelled and only for the interim period of 2001-05, candidates have been given a chance. Rather the Committee had also been constituted to examine the issue and suggest the road map for considering and setting up the over-sight and regulatory mechanism in the field of higher education and allied issues within six months. It is not disputed that the matter is still pending before the Apex Court regarding this aspect. The effort as such to get the order modified was also rejected on 22.01.2018 reported in 2018 (2) SCC 298 ***(Orissa Lift's case** (supra)* by partly allowing the application onlyto the extent of the diplomas awarded and it was clarified that the validity of the courses leading to the diploma was not subject matter of the judgment. Rather, it was specifically held that candidates who exercised the option to appear in the examination in pursuance to the same could retain degrees in question and all advantages flowing therefrom till one month after the declaration of the result of the test or till 31.07.2018, whichever is earlier. It was accordingly held that the exception has been given to those who have passed the examination in the first attempt that they should not be put to inconvenience and would be entitled to retain all advantages but if they fail, the directions given in the judgment dated 22.01.2018 in ***Orissa Lift's** case (supra)* shall apply. The

relevant portion reads thus:-

> "a) All such candidates, who wish to appear atthe forthcoming test to be conducted by AICTE in May- June 2018 and who exercise option to appear at the test in terms of the judgment, can retain the degrees in question and all the advantages flowing therefrom till one month after the declaration of the result of such test or till 31.07.2018 whichever is earlier.
>
> b) This facility is given as one-time exception so that those who have the ability and can pass the test in the first attempt itself, should not be put to inconvenience. If the candidates pass in such first attempt, they would be entitled to retain all the advantages. But if they fail or choose not to appear, the directions in the judgment shall apply, in that the degrees and all advantages shall stand suspended and withdrawn. At the cost of repetition, it is made clear that no more such chances or exceptions will be givenor made. They will undoubtedly be entitled to appear on the second occasion in terms of the judgment but this exception shall not apply for such second attempt.
>
> c) We direct AICTE to conduct the test in May- June 2018 and declare the result well in time, in terms of our directions in the judgment and this Order. AICTE shall however extend the time to exercise the option to appear at the test suitably.
>
> 8. Except for the directions given in the preceding paragraph i.e. paragraph 7 and the clarification as regards courses leading to award of diplomas as mentioned hereinabove, we reject all the other submissions.
>
> 9. All applications, petitions and writ petitions stand disposed of in aforesaid terms. No costs."

(20) Thereafter also, it was also pointed out that in ***Ashok Kumar's*** *case (supra),* certain set of candidates claimed promotion on the basis of higher qualifications on account of the B.Tech degrees while alleging that they had secured the degrees in 2001-05 and, therefore, invoked the contempt jurisdiction of the Apex Court. It was accordingly clarified by the Apex Court that the protection granted, if any, was to candidates who had got the benefit at an earlier point of time since the degrees were obtained in violation of the norms and parameters. The directions were never done in the manner to confer

advantages upon the candidates who did not enjoy the benefits so obtained. Thus, only a protection was granted to the persons who had sat in the first examination and had taken advantages on an earlier occasion of the said degrees by getting promotions and, thus, it was only for the purposes of protecting such persons. The relief, thus, was very limited to the extent of only protecting the interests of persons who had gained benefits but not even extended to persons who had cleared the test subsequently. Also those who had never got any benefits as such on the basis of the said degrees obtained between 2001-05 could not claim the same. This aspect would be clear from the following paragraphs of the said order:-

> "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 onthe 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 theexamination, the Degree would stand annulledcompletely 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. 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 incontinuous 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 recognize 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 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."

(21) Thus, from the above portions, it would be apparent that the

Apex Court was purposely and intentionally restricting the benefits granted on an earlier occasion and not taking a liberal view as such that the degreesin question could be considered valid *per se* right from the date the candidates had passed the examination. The appellant-Council which is entrusted with the management, education and maintenance of standards and for the purposes of performing its functions under Section 10 of the Act is under a bounden duty to ensure that the implementation of the orders of the Apex Court had to be done in the same spirit as laid down by the Apex Court, which had taken a serious view of the commercialization of theeducation system of technical education. Apparently, the Council does not seem to be following the path and the responsibility as such which had been entrusted to it by the Supreme Court who had left it open to the Council to devise the formulae.

Estoppel principle against the Council on account of earlier stand in the litigation before the High Court:

(22) It would be apparent from the fact that initially on 25.01.2018, a public notice had been issued on account of the several representations received which had been placed before the Committee of Experts regarding the examination to be conducted in view of the judgment of the Apex Court dated 03.11.2017 in ***Orissa Lift's*** *case (supra)*. A considered decision as such was accordingly notified on 25.01.2018 by the Expert Committee that there would be no negative marking proposed keeping in view the profile of the candidates appearing in the exam. The nature of the examination and minimum passing marks were to be 40% separately both in the theory paperstaken together without any minimum marks fixed for Paper-I and Paper-2. Similarly, the same percentage was fixed for passing the practical paper. Thus, the decision which had been taken in finalizing the modalities were held to be as per the directions of the Apex Court vide the orders dated 03.11.2017. The request for mercy appeal was also rejected on the groundof being outside the purview of the Council. It was further clarified that the requirement of 40% marks was to be separately in theory and practical and if a candidate gets less than 40% marks in either of the two, it would be considered as a failure and the second opportunity would be given after a gap of six months. The said public notice reads thus:-

"PUBLIC NOTICE

Subject: Regarding mercy appeal, curriculum and modalities of the examination to be conducted by AICTE UGC in

respect to Hon'ble Supreme Court Judgement dated 03.11.2017.

AICTE is receiving several representations of similar type on the subject cited above. The representations were place before the committee of experts. The committee examined the representationsand concluded that:-

. The modalities regarding the conduct of the test (s) were prepared well within the time frame given by the Hon'ble Supreme Court vide its order dated 3rd November, 2017 and 22nd January, 2018.

. While framing the curriculum (28 UG and 34 PG programmes in Engineering and Technology) for the proposed exams, due consideration was given that the curriculum should comprise of mainly Basic/Foundation courses and the core courses, the knowledge of which is highly essential for being an Undergraduate Engineer (B.Tech) or a Post Graduate Engineer (M.Tech).

. The curriculum for the varied disciplines (both UG & PG Programmes in engineering and Technology) was designed by experts after taking into consideration the curriculum of recognized Indian Universities/Institutions running similar programmes, curriculum pattern of GATE and similar Qualifying/Competitive Exams being conducted in the country and as per the present need of society.

Generally, in a UG Programme in Engineering and Technology, there are around 30-35 theory courses apart from practicals and project work during the complete duration of the programme and in the case of PG Engineering Programme these vary from 10-12 courses depending on the different disciplines for the proposed exams, 12-16 courses (depending on the length and breadth of the courses) in the case of UG programmes and only 6 courses in the case of PG programmes were finalized and this is also in line with the AICTE model curriculum.

. In the case of practical examination, a list of 50 practicals and 25 practicals has been finalised for UG and PG Programme in Engineering and Technologyrespectively. Out of this list, only 2 practicals each are to be performed by the candidates. Further theory and practicals go hand in

hand and accordingly due care has been taken in this direction.

. **In the pattern for theory exam, the pattern of GATE and similar other exams have been taken into consideration and accordingly the paper shall comprise of multiple choice questions of 1 and 2 marks. Keeping in view he profile of the candidates appearing in the exam and the nature of the examination i.e., qualifying only, more emphasis shall be given on comprehensive type and application type questions and so negative marking has been proposed as is being done in the case of GATE or other similar examinations. This will enable the candidates to attempt more number of questions without the fear of negative marking.**

. In most of the Technical Universities in India minimum passing marks are 40%. In the present case total 40% marks are required in both the theory papers taken together without any minimum marks fixed in paper one or two.

. Taking in view the above points, it is very clear that a rational decision has been taken in finalising the modalities including curriculum of theory and practical exams and mode of assessment as per the directions of the Hon'ble Supreme Court vide its orders dated 03.11.2017 and 22.02.2018.

. Some candidates have also requested for mercy appeal to exempt from the above examination. In this regard it is to be informed that it is not in the purviewof AICTE."

(23) However, for the reasons best known to the Council, the standard was diluted by the Grievance Redressal Committee of the Council by recommending that the marks of theory and the practicals would be combined to calculate the 40% qualifying marks after the examination was held on 03.06.2018 and after the answer keys had been made available on the website and objections had been invited. The relevant portion reads thus:-

"NOTICE

As per the Hon'ble Supreme Court Judgment in SLP No. 19807-8/2012 titled as Orissa Lift Irrigation Corp. Ltd. Vs.

> Shri Rabi Sankar Patro & Ors, AICTE-UGC conducted examination of the students who registered in the following 4-deemed to be universities during 2001-2005.
>
> 1. JRN Rajasthan, Vidyapeeth, Udaipur, Rajasthan
>
> 2. Advanced Studies in Education, Sardarshahar, Rajasthan (IASE)
>
> 3. Allahabd Agricultural Institute, Allahabad (AAI)
>
> 4. Vinayaka Mission's Research Foundation, Salem *Tamil Nadu (VMRF)*
>
> Examinations of UG courses were conducted on 03.06.2018 followed by practical examinations. The answer keys of theory were made available on AICTE website and grievances of students were invited on answer keys. Grievances so received were placed before the subject experts and recommendations of the subject experts were incorporated in final keys.
>
> The revised UG keys are available on AICTE website www.aicte-india.org.
>
> AICTE also received several grievances on modalities on examination. They were also placed before the expert committee. After examining all the grievances, committee recommended that "**marks of theory & practical may be combined to calculate 40% qualifying marks**". AICTE has accepted the above recommendation of the committee."

(24) The same was in spite of the fact that on an earlier occasion, a writ petition had been filed before the Delhi High Court seeking directionsto rationalize the modality of the examination on validation of B.Tech examination and to make it a test of merit and not a test of elimination. The prayer clause before the Delhi High Court was as under:-

> "i) Pass an order, writ and/or direction upon the respondent authorities to rationalize the modality of the examination of validation of B.Tech examination by giving refresher course to the candidates.
>
> ii) Pass a direction upon the respondent authorities to make the examination a test of merit and not a test of elimination.

iii) Pass a direction/writ of mandamus upon the respondent authorities to keep the modalities of the examination as such as not to impinge upon the right to life/right to livelihood of sincere and honest candidates.

iv) Pass such other order and/or orders that may be deemed fit and proper in the facts and circumstances of the case."

(25) The Delhi High Court while noticing that the Expert Committee as such had taken a decision on 01.05.2018 on the representation received that the total 40% marks were required in both theory papers taken together without any minimum marks fixed in Paper 1 or Paper 2 was a decision taken by the Committee Members. The same had been done on a meeting of the Expert Committee by designing a examination that only most rudimentary concepts of Engineering that any engineering student or professional ought to know. Therefore, the minutes showed that the legitimate concerns of the candidates had been duly considered while refusing to change the modalities for the said examination. The minutes of the meeting read thus:-

"Minutes of meeting of the committee constituted on "Hon'ble Supreme Court Judgment in SLP No.19807-08/2012 titled as Orissa Lift Irrigation Corp. Ltd. V. Shri Rabi Sankar Patro & Ors."

A meeting of the committee was held at AICTE, headquarter, New Delhi on May 1st, 2018 to discuss the representations received from various candidates and case filed in Delhi High Court (W.P.3569/2018 and C.M. NO.1077/2018) regarding modalities, syllabus and norms of examination to be conducted of Theory and Practical Examination in June 2018. Following were present:

Committee Members:-

Dr. R.K. Wats, Professor & Head Media Centre, NITTTR., Chandigarh.

1. Dr. S.S. Banwait, Professor, Deptt. Of Mech. Engg., NITTTR, Chandigarh

AICTE Officers:

1. Prof. Rajive Kumar, Advisor I. P & AP Bureau
2. Sh. N.K. Bhandari, Consultant, P & AP Bureau

3. Dr. T.C.Shama, Consultant P & AP Bureau

The committee was briefed about the various representation being received regarding modalities, syllabus of the examination and case filed in Delhi High Court regarding rationalization of modalities of examination and syllabus etc. After going through the representations etc., the committee came to the following conclusion:

1. **The Committee Members informed that modalities regarding the conduct of the test were prepared well within the time framed given by the Hon'ble Supreme Court vide its orderdated 3rd November, 2017 and 22nd January, 2018.**

2. While framing the curriculum (28 UG and 34 PG programmes in Engineering and Technology) for the proposed exams, due consideration was given that the curriculum should comprise of mainly Basic/Foundation courses and the core courses, the knowledge of which is highly essential forbeing on Undergraduate Engineer (B.Tech) or a Post Graduate Engineer (M.Tech).

3. It is informed that the curriculum for the varied disciplines (both UG & PG Programmes in Engineering and Technology) was designed by experts after taking into consideration the curriculum of recognised Indian Universities/Institutions running similar programmes, curriculum pattern of GATE and similar Qualifying/Competitie Exams being conducted in the courtry and as per the present need of society. It is informed that generally in a U Programme in Engineering and Technology, there are around 30-35 theory courses apart from practicals and project work during the complete duration of the programme and in the case of PG engineering Programme these vary from 10-12 theory courses apart for practicals and project work. However, while designing the curriculum for different disciplines for the proposed exams, 12 16 courses (depending on the length and breadth of the courses) in the case of UG programmes and only 6 courses in the case of PG programmes were finalized this is also in line with the AICTE model curriculum.

4. In the case of practical examination, a list of 50 practicals and 25 practicals has been finalised for UG and PG

Programme in Engineering and Technology respectively. Out of this list only 2 practicals each are to be performed by the candidates. It is informed that theory and practicals go hand in hand and accordingly due care has been taken in this direction.

5. While finalising the pattern for theory exam, the pattern of GATE and similar other exams have been taken into consideration and accordingly the paper shall comprise of multiple choice questions of 1 and 2 marks. Keeping in view the profile of the candidates appearing in the exam and he nature of the examination i.e., qualifying only, more emphasis shall be given on comprehensive type and application type questions and no negative marking has been proposed as is being done in the case of GATE or other similar examination. This will enable the candidates to attempt more number of questions without the fear of negative marking.

Taking in view the above points, it is very clear that a rational decision has been taken in finalizing the modalities including, curriculum of theory and practical exams and mode of assessment as per the directions of the Hon'ble Court vide its orders dated 03.11.2017 and 22.02.2018.

In most of the Technical Universities in India minimum passing marks are 40%. In the present case, total 40% marks are required in both theory papers taken together without any minimum marks fixed in paper one or two."

(26) The writ petition was thus dismissed with following relevant observations:-

"12. As regards the second prong of the Petitioner's prayer, that the syllabus for the examination to be held on 03.06.2018 be reduced soa s to bring it in consonance with what the Petitioners perceived to be the syllabus of the B.Tech/M/Tech degree course in the years they underwent their studies and received their respective degrees. I find that the Supreme Court vide its decision dated 03.11.2017 in **Orissa Lift Irrigation (supra)**, had categorically left it entirely to the Respondent No. 1/AICTE's discretion to decide the modalities for conducting the said examination. This Court cannot, against the orders of the Supreme Court, interfere with the discretion conferred on the Respondent No. 1, unless and until there is anything on record to show that such discretion has been exercised in a perverse

> manner. In fact, on a perusal of the minutes of the meeting of the Expert Committee, I find that the Respondent No. 1 had pre-emptively allayed any concerns or anxieties that the candidates may have had about the impending examination, by designing an examination that only tests the candidates on the most rudimentary concepts of Engineering, that any engineering student or professional ought to know. Thus, while there is nothing on record to show that the Respondent No. 1 had exercised its discretion in a perverse or arbitrary manner, the minutes of the meeting of the Expert Committee show that the Respondent No. 1 had, in fact, duly considered the legitimate concerns of the candidates while devising the modalities for he said examination. Therefore, this Court does not deem it appropriate to interfere with the Respondent No. 1's discretion and reduce the syllabus for the examination to be held on 03.06.2018."

(27) The result was declared on 27.07.2018 as per the changed modalities dated 19/20.06.2018 (Annexure P-6) by combining 40% marks of both theory and practical, as noticed above. The matter was taken to the Apex Court consisting of the same Bench and one of the Members in Principal namely Sh. Uday Umesh Lalit, J., as the Hon'ble Chief Justice then was and a Member of the Bench on the earlier two occasions also. The same was dismissed on 14.09.2018 without giving any benefit as such with only a liberty to give representation. The said order reads thus:-

> "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."

(28) Thus, it does not now lie in the mouth of the Council as such to say that what it had been opposing throughout on an earlier occasion needsto be modified and, thus, they are estopped from taking a different stand altogether.

Limited Scope of Grievance Redressal Committee:

(29) It is also a conceded position that a report has been prepared by the Council on 05.10.2018 (Annexure R-3/7) and also presented

before the Apex Court which was taken on record on 16.11.2018. Nothing has been shown before this Court as to what was the reason to substitute the opinionof the experts which had initially been arrived at, as reproduced above and then duly published on 25.01.2018 (Annexure P-5). Thus, it does not lie in the mouth of the Council as such, in the absence of any report arrived at by the experts, as to how and on what basis the modalities were changed. Only on the ground that it is the sole repository of power as such and as upheld by the Apex Court, it cannot contend that it has the absolute right to dilute the standards. A perusal of the reply filed by them before the learned Single Judge would also go on to show that an Expert Committee was constitutedon 20.11.2017 after the first meeting of the Executive Committee which was held on 15.11.2017. The same consisted of senior Professors of NITs and National Institute of Technical Teachers Training and Research. A meeting was also called of the Vice Chancellor and Representatives of all the 4 deemed universities alongwith UGC Officers to get all the details and the Expert Committee had finalized the modalities and norms. The Grievance Redressal Committee had then met on 19.06.2018 to consider the largenumber of representations received regarding the modalities of the exam. All grievances were considered including the combining of theory and practical papers and the Committee recommended that the candidate needsto secure 168 i.e. 40% marks in theory and practical exams taken together to qualify. The same was notified on the website. The said request had already been declined on 01.05.2014, which would be clear from the minutes reproduced above in Para No.25 and nothing has been shown what was the ground to deviate from a decision already taken by the Committee which was overseeing the holding of the examination.

(30) Thus, it would be apparent that the Grievance Redressal Committee sat as a super body over the decision of the Expert Committee which had been constituted earlier and had laid down the parameters. It changed the modalities which, in the considered opinion of this Court, it could not have done because its ambit was only regarding the objections received qua the questions set in the paper whether they were out of syllabus or wrong or multiple questions as such or the feasibility of giving more options. It did not have the jurisdiction as such to sit as a super body over the experts who had already fixed the parameters in its meeting held on 01.05.2018, as reproduced above in deference to the orders of the Superme Court. The defence taken that on 24.09.2018 after the decision of the Apex Court

to decide the representation, the Committee was competent as such, cannot be held to be justified in any manner. Even in the reply also, the same talks about the representations received in a large number and placed before the Committee and that the Expert Committee had accepted only one grievance that the best of two scores shall be considered.

(31) It is pertinent to mention that the said decision dated 24.09.2018 is subject matter of CWP No. 16872 of 2020 and the said decision (Annexure P-7) was never interfered with by the learned Single Judge since it was rightly pointed out by the counsel for the writ petitioner that it would only apply to persons who would get a second chance having not qualified in the first. The writ petitioner was never aggrieved against the said issue to that extent since a separate litigation had been initiated for challenging the drop of standards by further diluting the standards. Thus, the argument raised that the principle of the rules of the game being changed can be looked from a different prospective to the extent that a different Committee was renewing a decision which was taken earlier by more eminent persons. No justification as such has been given in the written statement as to whether the Committee as such which was looking into the issue of the answer keys could supersede the earlier view taken in view of its limited role once the result had been declared. Even otherwise, the candidates who had once sat in the examination were precluded from raising such a ground or claiming such a right. It would lead to a very absurd situation that a syllabus or the parameters and the criteria having been finalized, it can be allowed to be challenged by the candidates who, after sitting in the examination and knowing that they are not likely to clear the same, could seek for dilution of the standards. Thus, the reasoning which has been arrived at by the learned Single Judge cannot be faulted in any manner regarding the method the Council has gone about in changing and varying the modalities and it amounts to putting a cart before the horse.

(32) Apparently, the Council failed to notice the manner in which the Supreme Court has seriously observed about the limited benefits which had to be given to the persons who had acquired these degrees through distant mode. Thus, it would not lie with the Council to now further perpetuate the illegality by reducing the standards which it is justifying by challenging the orders of the learned Single Judge. The argument that it was universal variation and not adversial to any specific person would not apply in the present facts

and circumstances and the reliance upon the judgment also in LPA No. 961 of 2021, ***Gurcharan Singh's*** *case (supra)* is misplaced to that extent. The said case was only a case of Constables who were aggrieved against the non-selection on account of dispensing with the interview process. Rather, the said decision was upheld by noticing that it would prejudice none, which were not the facts and circumstances in the present case as the order of the Apex Court is being openly violated as such. The argument raised that the matter is pending before the Apex Court and, therefore, the learned Single Judge is not justified in interfering is not tenable and is an argument of despair. It is settled principle that the law laid down by the Supreme Court is binding on all Courts under Article 141 of the Constitution of India and, therefore, if there is an open violation as such, it is the duty of the Constitutional Courts as such to ensure that the said violation is quashed. Merely because some persons have been given the benefit of promotion on account of the result already declared as such would not validate or give the others a cause of action as such to perpetuate an illegality which has happened as the principle of equality enshrined under Article 14 does not operate as a negative principle. Reliance can be placed upon the judgments in ***Shanti Sports Club and another*** *versus* ***UOI and others***[15] and ***R. Muthukumar and others*** *versus* ***The Chairman and Managing Director Tangedco and others***[16]**.**

(33) The said benefits which have been granted as such also have to be subject as per final decision of the litigation and eventually even therights of the said persons will have also to be acted upon in principal in a uniform manner.

Issue of Delay:

(34) Further argument raised that there was delay as such and the candidates who had qualified in the first test would not need to sit in the second test and, therefore, the chance to qualify was being taken away on account of the late filing of the writ petition also is not liable to be accepted. The decision of approaching this Court and getting an interim order as suchin the initial part on account of the petitioners is only on account of the repeated change of criteria at the hands of the Council. It is only after the declaration of result on 27.07.2018, the cause of action as such accrued. The litigation was pending before the Apex Court till 14.09.2018 in ***Sanjay Kumar's*** *case (supra)* and was

[15] (2009) 15 SCC 705
[16] (2022) Live Law SC 140

in favour of the respondents and it is not disputed that the writ petition was filed immediately thereafter on 30.10.2018. The interim order was passed on 01.11.2018 wherein, the learned Single Judge had stayed the promotion process and thereafter the matter was taken to the Apex Court in ***Er. Paramjit Singh's*** *case (supra)* and only directions were issued to decide the issue expeditiously and there wasno vacation of stay order.

(35) In such circumstances, it cannot be said that there was any delay as such at the instance of the writ petitioners who could have only come after the result was declared on the basis of change in modalities and the benefit has been granted as such to the candidates who had taken the first ability test. The first tinkering as such with the procedure took place only on 19/20.06.2018 after the examination was held on 03.06.2018 andthen the result was declared and the matter was still pending before the Apex Court and only on 14.09.2018, the SLP was dismissed.

Non-impleadment of Parties and Pendency before the Larger Bench:

(36) The argument as such of Mr. Rajiv Atma Ram that they were not impleaded as such and that the affected persons should have been impleaded since it was an all India test has also been validly dealt with by the learned Single Judge by placing reliance upon the judgment in ***Parbodh Verma's*** *case (supra)* that a three Judge Bench has to be followed in preference over ***Ram Janam Singh's*** *case (supra).* It should be noticed that the dispute as such is not an issue of *personam* but an issue of *rem.* The matter was already before the High Court on an earlier occasion and the contesting party as such was the Council who had varied the parameters on account of the stay as such being granted. It was open to them as such to put to notice the concerned persons who were likely to be effected as those working in the Power Corporation. Therefore, it cannot be faulted as such that the other persons who had qualified the test on the basis of the changein criteria were necessarily to be impleaded. It is not that the learned Single Judge decided the matter in the absence of parties as it would be noticed from the *zimini* orders also that on account of the urgency of the situation, the hearing of the case as such was also taken up on 04.03.2019, which was otherwise a holiday. Thus, the concerned parties including the Council as such were represented by a brigade of senior counsels and it cannot be said that the order was passed without adhering to the principles of natural justice. Reliance upon the

judgment in ***Ramjit Singh Kardam's*** *case (supra)* is well justified. Similarly, reliance upon ***Sri V.N. Krishna Murty's*** *case (supra)* is a matter where the issue was dealt with regarding the aggrieved person and the right as such seeking leave to appeal. The Apex Court had discussed the provisions of Section 96 and 100 CPC regarding the issue of the locus to question the judgment and it was held that aggrieved person denotes an elastic and illusive concept whose rights may be affected. The LPAs filed by persons who were not parties are, thus, being entertained and their applications for leave to appeal are allowed to that extent to come to a logical conclusion that the action as such of the Council was not justified in the facts and circumstances. The Apex Court in ***Ramjit Singh Kardam's*** *case (supra)* had also upheld the judgments of this Court wherein the selection of the Physical Training Instructors was set aside. The issue raised before the Apex Court under point No.(3) was regarding whether the decision to call the number of candidates 8 times the number from all eligible candidates was an arbitrary decision or not while noticing the judgment in ***Tej Prakash Pathak's*** *case (supra).* It was noticed that even if the change is to be effected, the same cannot be effected arbitrarily and that the change in criteria of the selection was never notified by the Commission and the selected candidates were kept in total dark.

(37) Even otherwise, the argument which is being raised that once the matter regarding the issue of change of rules when the game had started is pending before the Larger Bench, the learned Single Judge should nothave applied the other principles is without any basis. It is settled principle that the law laid down by the Apex Court is binding and cannot be put in suspended animation. The proceedings thus cannot be kept awaiting for the decision of the reference. Reliance in this regard can be placed upon the law as has been laid down by the Apex Court in the case of ***State of Orissa*** *versus* ***Dandasi Sahu***[17]**,** wherein it was held that on mere pendency on one point before the larger Bench, the Court could not postpone the adjudication and can decide the lis on the law as it stands today. The said view was thereafter followed in the case of ***State of Rajasthan*** *versus* ***M/s R.S. Sharma & Co.***[18]**,** wherein it was held that the adjudication could not be postponed on the ground that the matter is pending consideration before the Constitution Bench and the cardinal principles of the administration of

[17] (1988) 4 SCC 12
[18] (1988) SCC 4 353

justice is to ensure quick disposal of disputes in accordance with law, justice and equity and as per the law as it stands on that date. In the case of ***State of Maharashtra & anr.*** *versus* ***Sarva Shramik Sangh, Sangli & ors***.[19], the issue as to whether the Irrigation Department was to be considered as an "industry" was pending before the Larger Bench and it was held that merely due to the pendency of the said issue before the larger Bench, the determination of the present pending industrial dispute cannot be kept undecided until the judgment of the larger Bench is received.

(38) The said principle was followed by the Division Bench of this Court in the case of ***M/s Dhingra Jardine Infrastrure Pvt. Ltd.*** *versus* ***The State of Haryana and others***[20] and, therefore, keeping in view the settled principle laid down by the Apex Court, the argument raised by Mr. Chadha that since the matter regarding the issue of change of rules when the game had started was pending before the larger Bench and the Single Judge has erred in applying the other principle also stands decided against him conclusively. We see no reason to take a different view sincewe are bound by the judgment of the Apex Court which holds the field today.

(39) As noticed above herein also, the change is as such by Grievance Redressal Committee which was not set up in pursuance of the orders of the Apex Court. Therefore, we are of the considered opinion that the Committee had no jurisdiction to over rule the earlier parameters which had been set up by the expert committee and on 01.05.2018, the matter had already been reconsidered but not accepted.

(40) Resultantly, keeping in view the above, we are of the considered opinion that the judgment of the learned Single Judge does not suffer from any perversity or infirmity which would warrant interference in the letters patent appeal. Rather, the learned Single Judge has only ensured that the purity of the examinations, as was the object of the Apex Court, has been restored and kept in mind.

(41) Accordingly, the appeals stand dismissed and all miscellaneousapplications including review of order dated 29.01.2021 stand disposed of.

Dr. Payel Mehta

[19] (2013) 6 SCC 16
[20] (2017) 2 PLR 65